

R.C.C. NO. 42

VOL. II, July 29, 1986

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Tuesday, July 29, 1986

OPENING OF SESSION

At 9:40 a.m., the President, the Honorable Cecilia Muñoz Palma, opened the session.

THE PRESIDENT: The session is called to order.

NATIONAL ANTHEM

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

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Honorable Jose E. Suarez.

Everybody remained standing for the Prayer.

PRAYER

MR. SUAREZ: Dear Lord, I am not much at saying prayers. I do not have to tell You because You already know that I have been privately communicating with You rather frequently since the beginning of June, seeking Your divine guidance in making correct decisions for our people.

I entered this Commission awed by the enormity of the task before us. Having just emerged from the streets battling the evil forces of the dictatorship, I did not feel exactly comfortable in the presence of a select group. Midway to our common goal, however, I feel so relaxed with my colleagues. Everybody is so contributive and supportive. I have never worked with a nicer bunch of ladies and gentlemen. Imbued with a deep sense of nationalism, they serve as an inspiration to me.

And, dear Lord, there is so much talent and decency around me that I pray to see the day when, in the not-too-distant future, these colleagues of mine will walk the corridors of power. Then, perchance, if they see me pounding once again the streets of Central Luzon clamoring for justice for our people, they will give me a knowing smile of recognition, or perhaps even a shaking of the head which, after all, if we are to believe Dick, could signify an approval.

Dear Lord, take good care of my colleagues, especially the frail and fragile Fely, the ailing Pepe, Cosoy and Efrain who, I was cheered to learn last night, has not changed his sex at all. I pray that our dear leader, the kindly Celeng, shall be in good health in order that we may continue making honest decisions for our country and our people, that we may succeed in finally establishing a just and humane government. Amen.

ROLL CALL

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

THE SECRETARY-GENERAL, reading:

Abubakar Present [*] Natividad Present

Alonto Present [*] Nieva Present

Aquino Present Nollado Present

Azcuna Present [*] Ople Present [*]

Bacani Present [*] Padilla Present

Bengzon Present [*] Quesada Present

Bennagen Present Rama Present

Bernas Present Regalado Present

Rosario Braid Present Reyes de los Present [*]

Brocka Present Rigos Present

Calderon Present [*] Rodrigo Present

Castro de Present Romulo Present [*]

Colayco Present Rosales Absent

Concepcion Present Sarmiento Present

Davide Present Suarez Present

Foz Present Sumulong Present

Garcia Present [*] Tadeo Present

Gascon Present Tan Present

Guingona Present Tingson Present [*]

Jamir Present Treñas Present

Laurel Present [*] Uka Present

Lerum Present Villacorta Present

Maambong Present Villegas Present

Monsod Present [*]

The President is present.

The roll call shows 34 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.

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

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

APPROVAL OF JOURNAL

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

THE PRESIDENT: Is there any objection? (Silence) 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 Resolution on First Reading, Communications and Committee Report, the President making the corresponding references:

PROPOSED RESOLUTION ON FIRST READING

Proposed Resolution No. 535, entitled:

RESOLUTION IN RECOGNITION BY THE CONSTITUTIONAL COMMISSION OF THE INVALUABLE SUPPORT AND CONTRIBUTION OF THE PHILIPPINE SOCIAL SCIENCE COUNCIL IN THE PUBLIC CONSULTATIONS AND FOR PROVIDING RESOURCE MATERIALS FOR THE DRAFTING OF THE NEW CONSTITUTION.

Introduced by Hon. Bennagen, Villacorta and Garcia.

To the Steering Committee.

COMMUNICATIONS

Letter from Mr. Jose Leonidas of 128 N. Domingo St., San Juan, Metro Manila, urging the Constitutional Commission to adopt some measures for the preservation of the environmental balance.

(Communication No. 358 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Communication from Bishop Emerito P. Nacpil and Mr. Emmanuel G. Cleto both of the United Methodist Church in the Philippines, submitting suggestions from a group of lay persons and clergy, entitled: "Theories of a Constitution for the Filipino People, Today and for the Future."

(Communication No. 359 — Constitutional Commission of 1986)

To the Steering Committee.

Communication signed by Ms. Mila Polotan and seven hundred seventy-seven others, urging the Constitutional Commission not to incorporate in the Constitution the issue of the U.S. bases.

(Communication No. 360 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from Mr. Wilfred D. Asis of Room 207, Ong Hoc Bldg., Butuan City, submitting various constitutional proposals for consideration by the Constitutional Commission.

(Communication No. 361 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from Prof. L. V. Toralbilla of 4762 Neptune Drive, Alexandria, Va., U.S.A. 22309, expressing his thoughts in a political synthesis, entitled: "A Democracy for the Philippines."

(Communication No. 362 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from Msgr. Manuel Dormido of P.O. Box 883, Bacolod City, suggesting a Maharlika system of government which is similar to the parliamentary system of government.

(Communication No. 363 — Constitutional Commission of 1986)

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

Letter from Mr. Candido B. Talosig of Saint Mary's College, Bayombong, Nueva Vizcaya, containing various constitutional proposals for consideration by the Constitutional Commission.

(Communication No. 364 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from Mr. Meletico Palomata of 31 Camias St., Zone 1, Purok 2, Signal Village, Taguig, Metro Manila, containing some revelations regarding the "Sabah" issue.

(Communication No. 365 — Constitutional Commission of 1986)

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

Position paper submitted by Mr. William H. Quasha of Don Pablo Bldg., 114 Amorsolo St., Makati, Metro Manila, proposing that foreign investors be allowed to acquire and own land in the Philippines as an investment incentive, with appropriate restrictions.

(Communication No. 366 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Communication from Mr. Moises B. Dayon, Acting Secretary, Sangguniang Panlungsod, Davao City, submitting Resolution No. 240, S. 1986 of said sanggunian, supporting the move in the Constitutional Commission to incorporate in the Constitution provisions on free secondary education in public schools.

(Communication No. 367 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Communication signed by Miss Josefa de Lange of 39 11th St., New Manila, Quezon City, and four hundred ninety-eight others with their respective addresses, seeking the inclusion in the Constitution of a provision obliging the State to protect the life of the unborn from the moment of conception.

(Communication No. 368 — Constitutional Commission of 1986)

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

Letter from Mr. Dionito B. Aplacador of Cataingan West, Masbate, containing suggestions on the various issues in the Constitutional Commission.

(Communication No. 369 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from Sr. Luz Emel Soriano, r.a., and two hundred seventy-six others, saying that the issue of U.S. military bases should not be in the Constitution and should be left to the government to negotiate so as to protect the national interest.

(Communication No. 370 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from Ms. Perla Golez of Bacolod City and sixty-nine others also of Bacolod City and other municipalities/cities in Negros Occidental, requesting the inclusion of provisions providing for religious instruction during regular school hours to be materially and financially supported by the government.

(Communication No. 371 — Constitutional Commission Of 1986)

To the Committee on Human Resources.

Letter from Mr. Vicente Roy L. Kayaban, Jr. of 1649 Concepcion Aguila St., San Beda Subdivision, San Miguel, Manila, submitting a paper, entitled: "Land Re-form: a Landowner's Introspection," and requesting that small landowners be accorded legislative seats: at least one for the agrarian sector and at least one for small apartment owners.

(Communication No. 372 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Letter from Mr. Laufred I. Hernandez for the students of the College of Public Administration, University of the Philippines, submitting recommendations on the right of civil servants to collective bargaining, prohibition of government resources for electioneering purposes, prohibition of nepotism and provisions for human resources development.

(Communication No. 373 — Constitutional Commission Of 1986)

To the Committee on Constitutional Commissions and Agencies.

Communication from Muslim and Christian leaders who attended a SOLIDARITY-sponsored seminar on Mindanao, urging a clear policy statement regarding Mindanao and Muslim affairs, among others.

(Communication No. 374 — Constitutional Commission of 1986)

To the Steering Committee.

COMMITTEE REPORT

Committee Report No. 34 on Proposed Resolution No. 534, as reported out by the Committee on Social Justice, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A SEPARATE ARTICLE ON
SOCIAL JUSTICE,

recommending its approval in substitution of Proposed Resolution Nos. 19, 20, 25, 37, 82, 91, 93, 100, 113, 126, 167, 171, 180, 181, 227, 253, 277, 279, 316, 320, 340, 342, 343, 366, 376, 379, 397, 398, 413, 419, 421, 425, 426, 429, 431, 479, 491, 504, 509, 513, 515 and 520.

Sponsored by Hon. Nieva, Gascon, Tadeo, Monsod, Aquino, Brocka, Suarez, Ople, Quesada, Bacani, Garcia, Lerum, Tan, Villacorta, Bennagen, Bengzon, Jr. and Rodrigo.

To the Steering Committee.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: The copies of the Article on Accountability of Public Officers have not yet been distributed, and, therefore, the voting on Second Reading on the said Article has to be deferred.

On the other hand, the Chairman and the members of the Committee on the Executive are ready to sponsor their Article on the Executive. So, I move that we consider Committee Report No. 26 on Proposed Resolution No. 517 as reported out by the Committee on the Executive.

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

MR. SARMIENTO: Madam President.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: May I be clarified, Madam President, on whether or not we have to discuss a pending incident not yet resolved by this body which is the matter of sectoral representation?

MR. RAMA: I have been informed, Madam President, by one of the protagonists of the party list and sectoral issue that they are not yet ready to present a compromise scheme. So, they are asking for some more time to strike a compromise agreement.

THE PRESIDENT: So, we will have that particular issue later in the day.

MR. RAMA: We will take it up later in the day.

MR. LERUM: Madam President.

THE PRESIDENT: Commissioner Lerum is recognized.

MR. LERUM: May we know the name of the protagonists who say that they are not ready, because we are ready?

MR. RAMA: My understanding is that Commissioners Monsod, Bernas and Villacorta are going to take up this matter.

MR. LERUM: Thank you, Madam President, for the information.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: May I ask that the Chairman of the Committee on the Executive and the members come forward and take their seats?

THE PRESIDENT: The Honorable Sumulong and the other members of the Committee on the Executive will please come forward.

Before we proceed further, the Chair wishes to acknowledge the presence of students from St. Scholastica's College and other schools and a group of women led by Deputy Foreign Minister Leticia Ramos Shahani, who are here to witness our proceedings this morning.

CONSIDERATION OF

PROPOSED RESOLUTION NO. 517

(Article on the Executive)

PERIOD OF SPONSORSHIP AND DEBATE

MR. RAMA: I move that we consider Committee Report No. 26 on Proposed Resolution No. 517 as reported out by the Committee on the Executive.

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

Consideration of Proposed Resolution No. 517 is now in order. With the permission of the body, the Secretary-General will read only the title of the proposed resolution without prejudice to inserting in the Record the whole text thereof.

THE SECRETARY-GENERAL. Proposed Resolution No. 517, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON THE EXECUTIVE.

(The following is the whole text of the substitute resolution per C.R. No. 26.)

COMMITTEE REPORT NO. 26

The Committee on the Executive to which were referred the following:

Proposed Resolution No. 9, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION LIMITATIONS ON THE EXERCISE OF THE AUTHORITY TO PROCLAIM MARTIAL LAW OR SUSPEND THE PRIVILEGE OF THE WRIT OF habeas corpus BY LIMITING ITS DURATION AND REQUIRING CONCURRENCE BY THE LEGISLATURE, EXPRESSLY VESTING UPON THE SUPREME COURT JURISDICTION TO INQUIRE INTO THE SUFFICIENCY OF THE BASIS OF SUCH PROCLAMATION OR SUSPENSION AND TO SET ASIDE THE SAME IF NO BASIS EXISTS, AND GRANTING THE LEGISLATURE THE AUTHORITY TO REVOKE OR EXTEND A PROCLAMATION OR SUSPENSION.

Introduced by Hon. Davide, Jr.

Note: The Committee adopted P.R. No. 9 in consolidation with P.R. Nos. 107 (Foz), 151 (Bengzon, Jr.), 152 (Romulo) and 158 (Azcuna) as its joint working draft and submitted a Report (designated as C.R. No. 5) dated June 24, 1986

Proposed Resolution No. 55, entitled:

RESOLUTION PROVIDING FURTHER LIMITATIONS ON THE POWER OF THE PRESIDENT TO GRANT PARDONS.

Introduced by Hon. Davide, Jr.

Note: This is covered by C.R. No. 6, dated June 25, 1986

Proposed Resolution No. 56, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION PROHIBITING THE PRESIDENT FROM EXTENDING APPOINTMENTS WITHIN SIX MONTHS IMMEDIATELY PRECEDING THE COMMENCEMENT OF THE TERM OF THE PRESIDENT.

Introduced by Hon. Davide, Jr.

Note: Covered by C.R. No. 8 dated June 27, 1986

Proposed Resolution No. 59, entitled:

RESOLUTION RESTRICTING FOREIGN BORROWINGS OR LOANS.

Introduced by Hon. de Castro.

Note: The Committee adopted P.R. Nos. 59 and 124 (Ople, de los Reyes and Maambong) as its joint working drafts, is covered by C.R. No. 12, July 3, 1986

Proposed Resolution No. 107, entitled:

RESOLUTION TO PROVIDE THAT IN A STATE OF MARTIAL LAW, THE CIVILIAN AUTHORITY SHALL CONTINUE TO BE SUPREME OVER THE MILITARY, THE BASIC RIGHTS OF THE PEOPLE SHALL REMAIN INVIOLEABLE, AND THE CIVILIAN COURTS SHALL CONTINUE TO FUNCTION AND EXERCISE THEIR JURISDICTION.

Introduced by Hon. Foz.

Note: Consolidated with P.R. No. 9

Proposed Resolution No. 118, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION REQUIRING THE APPROVAL OR CONSENT OF THE LEGISLATURE FOR THE EFFECTIVITY AND VALIDITY OF TREATIES, EXECUTIVE AGREEMENTS AND RECOGNITION OF STATES OR GOVERNMENTS.

Introduced by Hon. Davide, Jr.

Note: This is covered by C.R. No. 10

Proposed Resolution No. 124, entitled:

RESOLUTION REQUIRING CONCURRENCE OF THE CENTRAL MONETARY AUTHORITY AND DUE NOTICE TO THE LEGISLATURE BEFORE GOVERNMENT GUARANTEES ARE EXTENDED TO FOREIGN BORROWINGS.

Introduced by Hon. Ople, de los Reyes, Jr. and Maambong.

Note: Consolidated with P.R. No. 59

Proposed Resolution No. 128, entitled:

RESOLUTION PROHIBITING THE PRESIDENT, VICE PRESIDENT AND MEMBERS OF THE CABINET AND THEIR DEPUTIES FROM HOLDING ANY OTHER OFFICE AND FROM ENGAGING IN ACTIVITIES WHICH MAY GIVE RISE DIRECTLY OR INDIRECTLY TO CONFLICT OF INTEREST IN THE CONDUCT OF THEIR OFFICE, AND TO PROHIBIT THE PRACTICE OF NEPOTISM BY SAID OFFICIALS.

Introduced by Hon. Ople, de los Reyes, Jr. and Maambong.

Note: The Committee adopted P.R. No. 128 in consolidation with P.R. No. 183 (Nolledo) as its working draft; is covered by C.R. No. 9, June 27, 1986

Proposed Resolution No. 151, entitled:

RESOLUTION TO LIMIT THE POWER OF THE PRESIDENT TO DECLARE MARTIAL LAW OR

SUSPEND THE WRIT OF habeas corpus TO THIRTY DAYS ONLY UNLESS AUTHORIZED BY CONGRESS/NATIONAL ASSEMBLY FOR A LONGER PERIOD.

Introduced by Hon. Bengzon, Jr.

Note: Consolidated with P.R. No. 9

Proposed Resolution No. 152, entitled:

RESOLUTION TO PROVIDE LIMITS TO THE EXERCISE OF MARTIAL LAW POWERS BY THE EXECUTIVE.

Introduced by Hon. Romulo.

Note: Consolidated with P.R. No. 9

Proposed Resolution No. 156, entitled:

RESOLUTION PROPOSING A SIX-YEAR TERM OF THE PRESIDENT, PROHIBITING IMMEDIATE REELECTION, AND PROVIDING FOR A POSSIBLE MID-TERM ELECTION.

Introduced by Hon. Azcuna.

Note: The Committee considered this incorporated into C.R No. 13, July 7, 1986

Proposed Resolution No. 158, entitled:

RESOLUTION PROPOSING RESTRICTIONS ON THE POWER OF THE PRESIDENT TO SUSPEND THE PRIVILEGE OF THE WRIT OF habeas corpus OR TO DECLARE MARTIAL LAW BY PROVIDING FOR THE CONCURRENCE OF THE NATIONAL ASSEMBLY, REVIEW BY THE SUPREME COURT UPON A WRIT OF AMPARO, AND OTHER LIMITS.

Introduced by Hon. Azcuna.

Note: Consolidated with P.R. No. 9

Proposed Resolution No. 183, entitled:

RESOLUTION TO PROVIDE IN THE NEW CONSTITUTION THAT THE SPOUSE OF THE PRESIDENT OR ANY PERSON RELATED TO THE PRESIDENT WITHIN THE THIRD DEGREE OF CONSANGUINITY OR AFFINITY SHALL NOT BE APPOINTED TO THE CABINET.

Introduced by Hon. Nollado.

Note: Consolidated with P.R. No. 128

Proposed Resolution No. 197, entitled:

RESOLUTION INCORPORATING IN THE NEW CONSTITUTION A PROVISION REQUIRING THE CONCURRENCE OF AN INDEPENDENT COMMISSION ON APPOINTMENTS TO HIGH RANKING POSITIONS IN THE GOVERNMENT.

Introduced by Hon. Sarmiento.

Note: Covered by C.R. No. 14, July 7, 1986

Proposed Resolution No. 198, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION THAT THE

CANVASSING OF VOTES IN A PRESIDENTIAL ELECTION BY THE NATIONAL ASSEMBLY IS PURELY A MINISTERIAL DUTY.

Introduced by Hon. Natividad, Ople, Maambong and de los Reyes, Jr.

Note: Under Committee Report No. 13, July 7, 1986

Proposed Resolution No. 234, entitled:

RESOLUTION FOR THE INCLUSION IN THE ARTICLE ON THE EXECUTIVE DEPARTMENT A SPECIFIC PROVISION REDEFINING THE POWER OF THE CHIEF EXECUTIVE OVER LOCAL GOVERNMENTS.

Introduced by Hon. Regalado.

Note: Reported out under C .R. No. 11, July 3, 1986

Proposed Resolution No. 255, entitled:

RESOLUTION ADOPTING THE PRESIDENTIAL SYSTEM OF GOVERNMENT AND FOR THIS PURPOSE INCORPORATING IN THE DRAFT OF THE NEW CONSTITUTION THE PROVISIONS GOVERNING THE EXECUTIVE DEPARTMENT AS CONTAINED IN THE DRAFT CONSTITUTION APPROVED BY THE RECONVENED 1971 CONSTITUTIONAL CONVENTION WHICH WERE NOMENCLATURED THEREIN AS ARTICLE VIII WITH THE TITLE "EXECUTIVE DEPARTMENT."

Introduced by Hon. Calderon.

Note: Considered as covered by C.R. No. 13

Proposed Resolution No. 257, entitled:

RESOLUTION PROVIDING IN THE NEW CONSTITUTION FOR A PRESIDENTIAL FORM OF GOVERNMENT SPECIFYING THEREIN THE TERM, QUALIFICATIONS AND MANNER OF ELECTION OF THE CHIEF EXECUTIVE.

Introduced by Hon. Tingson.

Note: The Committee considered this as integrated into the substitute proposed resolution covered by C.R. No. 13

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.

Note: Considered incorporated in C .R. No. 13

Proposed Resolution No. 433, entitled:

RESOLUTION TO LIMIT THE TERM OF PRESIDENT TO SIX (6) YEARS WITHOUT REELECTION.

Introduced by Hon. Rama.

Note: Considered covered by C .R. No. 13

Proposed Resolution No. 67, entitled:

RESOLUTION TO DELETE FROM THE NEW CONSTITUTION THE PROVISION GRANTING

PRESIDENTIAL IMMUNITY FROM SUITS AND TO PROVIDE IN THE TRANSITORY PROVISIONS
THAT SUCH DELETION BE MADE RETROACTIVE.

Introduced by Hon. Nollado.

Note: Was referred to the Committee on Transitory Provisions,

has considered the same and has the honor to report them back to the Constitutional Commission with the recommendation that Proposed Resolution No. 517, prepared by the Committee, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON THE
EXECUTIVE DEPARTMENT,

be approved in substitution of Proposed Resolution Nos. 9, 55, 56, 59, 107, 118, 124, 128, 151, 152, 156, 158, 183, 197, 198, 234, 255, 257, 352, and 433, with Hon. Sumulong, Regalado, Alonto, Aquino, Bernas, Calderon, Concepcion, Davide, Jr., Foz, Jamir, Lerum, Maambong, Natividad, Rama, Sarmiento, de Castro, Ople, de los Reyes, Jr., Bengzon, Jr., Romulo, Azcuna, Nollado, Tingson and Guingona as authors thereof.

Each proposed resolution accepted by the Committee was not considered and amended on a line-by-line basis. Rather it adopted the basic concept or substance of the proposed resolution and embodied it in the attached draft of the Article on the Executive. Thus in this report we indicated in which section of the proposed Article on the Executive Department a particular proposed resolution is reflected:

Proposed Resolution

Section Embodied In

No. 09

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15

No. 107

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15

No. 151

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15

No. 152

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15

No. 158

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15

No. 55

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17

No. 56

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13

No. 59

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18

No. 124

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18

No. 118

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No. 128

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No. 183

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No. 156

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No. 198

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No. 255

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No. 257

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No. 352

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No. 433

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4

No. 197

-

16

No. 234

-

14

(Sgd.) Lorenzo M. Sumulong

Chairman

Committee on the Executive

(Sgd.) Florenz D. Regalado

Vice-Chairman

(Sgd.) Ahmad Domocao Alonto

(Sgd.) Felicitas S. Aquino

(Sgd.) Joaquin G. Bernas

Jose D. Calderon

(Sgd.) Roberto C. Concepcion

(Sgd.) Hilario G. Davide, Jr.

(Sgd.) Vicente B. Foz

(Sgd.) Alberto MK. Jamir

(Sgd.) Eulogio R. Lerum

(Sgd.) Regalado E. Maambong

(Sgd.) Teodulo C. Natividad

(Sgd.) Napoleon G. Rama

(Sgd.) Rene V. Sarmiento

PROPOSED RESOLUTION NO. 517

(SUBSTITUTE RESOLUTION)

Adjusted to Bicameral Legislature

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON THE EXECUTIVE

Be it resolved as it is hereby resolved, by the Constitutional Commission in session assembled, To incorporate in the new Constitution the following provisions on the Executive Department:

ARTICLE

EXECUTIVE DEPARTMENT

SECTION 1. The executive power shall be vested in a President of the Philippines.

SECTION 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and resident of the Philippines for at least ten years immediately preceding such election.

SECTION 3. There shall be a Vice-President who shall be elected with and in the same manner as the President and who shall have the same qualifications and term of office. He may be removed from office in the same manner as the President as provided in this Constitution.

The Vice-President may be appointed as a member of the Cabinet.

SECTION 4. The President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of _____ following the day of the election and shall end at noon of the same date six years thereafter. He shall be disqualified from immediate reelection.

The returns of every election for President and Vice-President duly certified by the board of canvassers of each province or city shall be transmitted to the seat of the National Government, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty (30) days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in joint public session, and upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the members of the Congress.

The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President. cdt

SECTION 5. If, at the time fixed for the beginning of his term, the President-elect shall have died, the Vice-President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President shall have failed to qualify, then the Vice-President shall act as President until a President shall have qualified. The Congress shall by law provide for the case where neither a President-elect nor a Vice-President-elect shall have been chosen or shall have qualified, or both shall have died at the time fixed for the beginning of their term, declaring who shall then act as President or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

SECTION 6. Before he enters on the execution of his office, the President or Acting President shall take the

following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or Acting President) of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the Nation. So help me God." (In case of affirmation, last sentence will be omitted)

SECTION 7. The President shall have an official residence. The President and Vice-President shall receive a salary to be fixed by law, which shall not be increased or decreased during their term of office. They shall not receive during their tenure any other emolument from the government or any other source. Unless the Congress shall provide otherwise, the President and the Vice- President shall receive an annual salary of _____ and _____ pesos, respectively.

SECTION 8. Whenever there is a vacancy in the office of the Vice-President during the term for which he was elected, the President shall nominate a Vice-President from among the members of the Senate and the House of Representatives who shall take office upon confirmation by a majority vote of all the members of both Houses of Congress.

SECTION 9. In case of permanent disability, death, removal from office or resignation of the President, the Vice-President shall become the President to serve the unexpired term. The Congress shall by law provide for the case of permanent disability, death, removal from office or resignation of both the President and Vice-President, declaring which officer shall then become Acting President or the manner in which one shall be selected.

The Congress shall by law provide for the case of death, permanent disability or resignation of the Acting President at the time the vacancy in the Office of the President occurs or subsequently thereafter, declaring who shall serve as President until the President and the Vice-President shall have been elected and qualified, subject to the same restrictions of powers and disqualifications as the Acting President.

SECTION 10. The Congress shall, at ten o'clock in the morning of the third day after the vacancy occurs, convene in accordance with its rules without need of a call and within seven days enact a law calling for a special election to elect a President and a Vice- President to be held not earlier than forty-five days nor later than sixty days from the time of such call. The bill calling such special election shall be deemed certified under paragraph ____, Section _____ Article VIII of this Constitution and shall become law upon its approval on third reading by the Congress. Appropriations for the special election shall be charged against any current appropriations and shall be exempt from the requirements of paragraph _____, Section _____ Article VIII of this Constitution. The convening of the Congress cannot be suspended nor the special election postponed. No special election shall be called if the vacancy occurs within seventy days before the date of the next presidential election.

SECTION 11. Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President.

Whenever a majority of all the members of the Cabinet transmit to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President of the Senate and to the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office

unless a majority of all the members of the Cabinet transmits within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon, the Congress shall decide the issue, convening within forty-eight hours for that purpose, if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if not in session, within twenty-one days after it is required to assemble, determines by a two-thirds vote of both Houses of Congress that the President is unable to discharge the powers and duties of his office, the Vice-President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

SECTION 12. An Acting President shall not declare martial law or suspend the privilege of the writ of habeas corpus without the concurrence of at least a majority of all the members of the Congress.

Appointments extended by an Acting President shall remain effective, unless revoked by the elected President within ninety days from his assumption or reassumption of office.

SECTION 13. An incumbent or Acting President shall not make appointments within two (2) months preceding the date of the next presidential election and thereafter until the expiration of the term of the former or the tenure of the latter, except temporary appointments to executive positions when continued vacancies would prejudice public service or endanger public safety.

SECTION 14. The President shall have control of all the executive departments, bureaus, and offices. He shall exercise general supervision over all local governments as may be provided by law, and shall take care that the laws be faithfully executed.

SECTION 15. The President shall be the commander-in-chief of all the armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, and, with the concurrence of at least a majority of all the members of the Congress, suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law. The Congress, by a vote of at least a majority of all its members in regular or special session, may revoke such proclamation or suspension, or extend the same if the invasion or rebellion shall persist and public safety requires it.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof and must promulgate its decision on the same within thirty (30) days from its filing.

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

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

SECTION 16. The President shall nominate and, with the consent of a Commission on Appointments, shall appoint the heads of the executive departments and bureaus, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain and all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may by law vest the appointment of inferior officers in the President alone, in the courts, or in the heads of departments.

SECTION 17. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves commutations, and pardons, and remit fines and forfeitures, after conviction. However, the power to grant executive clemency for violations of corrupt practices laws may be limited by legislation.

He shall also have the power to grant amnesty with the concurrence of a majority of all the members of the Congress.

SECTION 18. The President may contract or guarantee foreign and domestic loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board. The Monetary Board shall, within thirty (30) days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on applications for loans to be contracted or guaranteed by the government or government-owned and controlled corporations which would have the effect of increasing the foreign debt and containing other matters as may be provided by law.

SECTION 19. The President, Vice-President, members of the Cabinet, and chiefs bureaus or offices and their assistants shall not, during their term, hold any other office or employment, nor may they practice any profession; participate directly or indirectly in any business, or be financially interested directly in any contract with, or in any financial or special privilege granted by the government or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation, and shall strictly avoid conflict of interest in the conduct of their office.

The spouse and relatives by consanguinity or affinity within the third civil degree of the President shall not be appointed as minister, deputy minister or head of bureau or office.

SECTION 20. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate.

SECTION 21. The President shall submit within fifteen days of the opening of each regular session of the Congress a budget of receipts and expenditures, which shall be the basis of the general appropriations bill.

SECTION 22. The President shall address the Congress at the opening of its regular session. He may also appear before it at any other time.

MR. RAMA: I move that Commissioner Sumulong be recognized to sponsor the Article.

THE PRESIDENT: Commissioner Sumulong is recognized.

SPONSORSHIP SPEECH

OF COMMISSIONER SUMULONG

MR. SUMULONG: May we request the other members of the Committee on the Executive to come and sit with us?

Madam President, ladies and gentlemen of the Commission:

The Committee on the Executive has the honor to submit, for consideration and approval, Proposed Resolution No. 517, proposing to incorporate in the new Constitution an Article on the Executive. This Article on the Executive is based mainly on the many resolutions referred to our Committee for study and report. The members of the Committee have studied and discussed these resolutions which dealt with concrete instances of misuse and abuse of executive power during the Marcos regime especially after the declaration of martial law. The members of the Committee made an intensive and exhaustive study on the constitutional proposals contained in those resolutions intended to prevent a repetition of the misuse and abuse of executive power. At the same time, the members of the Committee were always on guard and careful in their intense desire to undo and correct the

misdeeds and mistakes of the Marcos regime, because we might impose safeguards and restrictions which may be unreasonable and unduly harsh and which might emasculate our future presidents in the exercise of executive power.

After giving a brief sketch of how our Committee worked, I shall now enumerate the salient constitutional changes or reforms that the members of the Committee, in collaboration with the authors of the many resolutions referred to us, have introduced in the Article on the Executive now submitted to the body for consideration.

The first constitutional change that I will mention is the canvassing of votes for President and Vice-President. In the 1973 Constitution, the provision on canvassing of votes for President and Vice-President is as follows:

The returns of every election for President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Speaker of the Batasang Pambansa, who shall, not later than thirty days after the day of the election, and in the presence of the Batasang Pambansa, open all the certificates, and the votes shall then be counted.

It will be remembered that many of the certificates of canvass received from each province and city by the Batasang Pambansa were objected to by the supporters of Aquino and Laurel. But based on this provision of the 1973 Constitution, after the certificates of canvass had been opened, the Speaker immediately announced the results of the canvass and proclaimed President Marcos and Mr. Tolentino as elected President and Vice-President, respectively.

In the Article on the Executive that is submitted for consideration, it is now provided that after the certificates of canvass had been opened, the counting and canvassing of the votes for President and Vice-President shall not immediately be made because, first, there should be a determination of the authenticity and due execution of the certificates of canvass before the votes may be canvassed. That appears in Section 4 of the Article. It is also provided in Section 4 that the Supreme Court, sitting en banc, shall be the sole judge of all election contests relating to the election, returns and qualifications of the President and Vice-President. The term of office of the President and the Vice-President is also in Section 4. We wish to call the attention of the Members that we have introduced some changes in this section so that it will conform with the decision reached by the Commission disqualifying the President from any reelection after a term of six years and allowing the Vice-President one reelection provided he shall serve for not more than 12 years. So that, subject to the Transitory Provisions in this Constitution, Section 4 of the Article should read as follows:

SECTION 4. The President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June following the day of the election and shall end at noon of the same date six years thereafter. He shall be disqualified from reelection.

We deleted the word "immediate." That is the change we made in Section 4.

The next constitutional change concerns the powers of the President as Commander-in-Chief of the Armed Forces. This appears in Section 15, page 6 of the Article and reads as follows:

The President shall be the commander-in-chief of all the armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, and, with the concurrence of at least a majority of all the members of the Congress, suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law. The Congress, by a vote of at least a majority of all its members in regular or special session, may revoke such proclamation or suspension, or extend the same if the invasion or rebellion shall persist and public safety requires it.

The next paragraphs read:

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof and must promulgate its decision on the same within thirty (30) days from its filing.

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

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

Thus, one will note that insurrection has been eliminated as a ground for declaring martial law or for suspending the writ of habeas corpus and the phrase "imminent danger thereof has also been deleted. So that under this Article, the grounds for declaring martial law or suspending the writ of habeas corpus are invasion and rebellion when public safety requires it.

It will also be noted that if martial law were to be declared, it has to receive the concurrence of a majority of the Members of the Congress in order for it to be effective, and it will only be for 60 days. This 60-day period may be shortened or extended by a majority vote of the Members of the Congress. And, whereas before the Supreme Court cannot review the grounds relied upon by the President in declaring martial law or in suspending the privilege of the writ of habeas corpus, the Supreme Court now has the power of review upon the filing of an appropriate petition by any citizen, and then the Supreme Court is required to promulgate its decision on the matter within 30 days from the filing of the petition.

It is also stated in this Article the meaning and effect of martial law. It is made clear that a state of martial law does not suspend the operation of the Constitution and it does not supplant the functioning of our civil courts or of our legislative assemblies. A state of martial law does not authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function. It will be remembered that when President Marcos proclaimed martial law on September 21, 1972, at the same time, he issued a general order, as I remember it, stating that our civil courts shall continue to exercise the jurisdiction and powers they have been exercising. But it was also stated there that our courts cannot take cognizance of cases where the validity of the acts performed by President Marcos is in question. In other words, when an order or letter of instructions or presidential decree is issued by President Marcos, that cannot be taken cognizance of by the civil courts but rather, it will be the military courts that will decide the matter.

Also, the declaration of martial law does not automatically suspend the privilege of the writ of habeas corpus, which was not the case when President Marcos declared martial law in September 1972. He issued an order, I think it was General Order No. 3, which allowed the arrest and detention of any person simply upon an order authorized by him and issued by the Minister of National Defense. So that many persons were arrested and detained without any warrant of arrest. Soldiers simply went to the houses of these persons and arrested them, which was completely not authorized because the declaration of martial law does not automatically suspend the privilege of the writ of habeas corpus.

I remember that when this matter was being discussed in the Committee, there was one resolution referred to the Committee which proposed that a state of martial law should last for only 30 days and, in order that a declaration of martial law may be effective, there should be a concurrence of not only a majority but a two-thirds vote of the legislature. We thought that to require a two-thirds concurrence might be quite difficult for the Chief Executive,

considering that the only grounds now for martial law are actual invasion and actual rebellion. And so, this creates a very dangerous situation in the country and the enemies of the State may try to prevent Members of the Congress to attend a session just to prevent a two-thirds concurrence in the declaration of martial law. That is the reason we required only a majority concurrence.

The next constitutional change concerns the appointing power of the President. In the 1935 Constitution, the power of the President to appoint heads of executive departments, bureaus, offices, and officers in the Armed Forces from the rank of colonel in the army to naval captain in the navy, and other government officials was subject to confirmation by the Commission on Appointments. So, there was a check and balance on the appointing power of the President. But in the 1973 Constitution, that requirement of confirmation by the Commission on Appointments was omitted. And so, from that time, President Marcos could appoint anybody without the necessity of obtaining the consent of a Commission on Appointments. His power to appoint became absolute. Because of that, there was no check or balance in the appointments he made especially in the judiciary and the executive departments.

In this Article, we are restoring that limitation, that the appointing power of the President should be made subject to consent and confirmation by the Commission on Appointments. Besides restoring the requirement of confirmation by the Commission on Appointments, we have introduced a provision, authored by Commissioner Davide and approved by the Committee, that the President shall not make appointments within two months preceding the date of the next presidential election. This is to avoid what is known as "midnight appointments."

An exception was placed on this provision to the effect that temporary appointments may be made to executive positions which, if left vacant, would prejudice the public service or endanger the public safety. This provision appears in Section 13, pages 5 and 6 of the Article.

The next constitutional change that I would like to bring to the body's attention is the power of the President to contract or guarantee domestic or foreign loans in behalf of the Republic of the Philippines. We studied this provision as it appears in the 1973 Constitution. In the 1973 Constitution, it is provided that the President may, contract or guarantee domestic or foreign loans in behalf of the Republic of the Philippines subject to such limitations as may be provided by law.

In view of the fact that our foreign debt has amounted to \$26 billion — it may reach up to \$36 billion including interests — we studied this provision in the 1973 Constitution, so that some limitations may be placed upon this power of the President. We consulted representatives of the Central Bank and the National Economic Development Authority on this matter. After studying this matter, we decided to provide in Section 18 that insofar as the power of the President to contract or guarantee foreign loans is concerned, it must receive the prior concurrence of the Monetary Board.

We placed this limitation because, as everyone knows, the Central Bank is the custodian of the foreign reserves of our country, and so, it is in the best position to determine whether an application for foreign loan initiated by the President is within the paying capacity of our country or not. That is the reason we require prior concurrence of the Monetary Board insofar as contracting and guaranteeing of foreign loans are concerned.

We also provided that the Monetary Board should submit complete quarterly reports of the decisions it has rendered on applications for loans to be contracted or guaranteed by the Republic of the Philippines so that Congress, after receiving these reports, can study the matter. If it believes that the borrowing is not justified by the amount of foreign reserves that we have, it can make the necessary investigation in aid of legislation, so that if any further legislation is necessary, it can do so.

Another constitutional change that we proposed is on the appointing power of the President insofar as his spouse, relatives and cronies are concerned. The first paragraph of Section 19 states the prohibitions:

The President, Vice-President, members of the Cabinet and chiefs of bureaus or offices and their assistants shall not, during their term, hold any other office or employment, nor may they practice any profession, participate directly or indirectly in any business, or be financially interested directly in any contract with, or in any financial or special privilege granted by the government or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation, and shall strictly avoid conflict of interest in the conduct of their office.

Regarding the spouse and relatives, the second paragraph reads as follows:

The spouse and relatives by consanguinity or affinity within the third civil degree of the President shall not be appointed as minister, deputy minister or head of bureau or office.

The other constitutional change is on the treaty-making power of the President. In the 1935 Constitution, it is clearly provided that the President may enter into treaties and other international agreements with the concurrence of a majority of the Congress. But in the 1973 Constitution, while there is a provision under the legislative department which says that the power of the President to enter into treaties and international agreements shall be subject to the ratification and concurrence of a majority of Congress, when one comes to the Article on the National Economy and Patrimony of the nation, there was inserted a paragraph to the effect that the President alone can enter into treaties and international agreements by simply stating that it is in the interest of the national welfare. Because of this provision, we have made it clear in this Article on the Executive that no treaty or international agreement entered into by the President shall be valid and/or effective without the concurrence of a majority of Congress. There are also new provisions here which were not covered in previous Constitutions regarding what should be done in case of vacancy in the Office of the Vice-President or what shall be done in case the President is no longer capable of exercising the powers and the duties of his office. And on that matter, I would like to yield this sponsorship to our Vice-Chairman, Commissioner Regalado, who has studied the provisions on that matter.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Thank you, Madam President.

Actually, we never had the situation where there was a vacancy in the Office of the Vice-President and it was felt, as I assumed, there was no necessity for that. But drawing from the experience of the United States, the Office of the Vice-President there had been vacant 18 times and that is where the purpose of mis-position becomes important. Although he is sometimes derisively called just a "spare tire," he assumes importance especially in the order of succession because just as it is in the Philippines, the order of succession is from the President to the Vice-President and, in the absence of both, then it is provided by law.

In the United States, as I said, the Office of the Vice-President has been vacant 18 times. Although there was an amendment to the American Constitution — that is the Twenty-Fifth Amendment which was ratified on February 10, 1967 — Section 2 regarding the vacancy in the Office of the Vice-President received very little attention at that time. The first time that it assumed significance was in the unanticipated set of circumstances created by the resignation of Vice-President Agnew, if the body will recall, to avoid federal criminal charges. And at the same time, President Nixon himself was under a cloud of suspicion generated by the Watergate affair. President Nixon nominated Gerald Ford, a Republican, who was then the minority leader in the House. But the Democratic Party controlled both chambers of Congress, and Congress, in keeping with the Constitution, limited its investigation only to questions of the fitness of Mr. Ford. During the interim, between Ford's nomination by Nixon and his

confirmation by Congress, there were constitutional questions raised: What would happen if President Nixon resigns or is removed from office? Who would now recommend to the Congress the acting President? That is the importance of this constitutional provision in case there is a vacancy in the Office of the Vice-President.

With respect to the question of incapacity of the President, of course, the concomitant question is: Who will determine whether or not he is capable of discharging the functions of his office? Just in the recent past, in we had the problem where our President disappeared from public view and there were speculations and rumors. Despite the contentions that he was incapable, he stayed on and insisted that he was capable of discharging the functions of his office, and the reason for his disappearance from public view for a number of weeks was that he was writing a book. So, again, we took into account Section 3 of the Twenty-Fifth Amendment to the United States Constitution, because it deals with that situation. And that is translated in Section 11 of our proposed draft Article, that whenever the President transmits to the National Assembly his written declaration that he is unable to discharge the powers and duties of his office, well and good, because he has transmitted it. But he may not be in a position to make a written declaration or he may not want to send a declaration or a recognition of his incapacity. Consequently, if he just agrees or admits that he is incapable of performing the duties of his office, then the powers and duties shall be discharged by the Vice-President as acting President. But if the President fails or refuses to do so, then the remedy is to have a majority of all the members of the Cabinet transmit to the National Assembly their written declaration that the President is unable to discharge the powers and duties of his office, in which case the Vice-President shall immediately assume the powers. However, if after that the President again transmits to Congress his written declaration that the "no inability" exists and he wants to resume the powers of his office, then a majority of all the members of the Cabinet shall transmit their written declaration within five days to Congress that the President is unable to discharge the powers and duties of his office. There is, therefore, a deadlock here — the President contending that he is capable and the majority of the members of the Cabinet saying that he is incapable. And the solution, under this Twenty-Fifth Amendment to the United States Constitution, is that thereupon Congress shall decide the conflicting contentions, convening within 48 hours for that purpose if not in session. And Congress shall, within 21 days after receipt of the written declaration of the Cabinet, or if not in session within 21 days after it is required to assemble, determine by a two-thirds vote of all the Members whether the President is in truth unable or is able to discharge the functions or his duties. In the United States, they have had that experience four times: 1) When President Garfield suffered a lingering death from an assassin's bullet; 2) when President Wilson had a physical breakdown during the closing years of his second term; 3) when there was concern about the health of President Roosevelt prior to his fatal attack; and 4) when President Eisenhower was temporarily disabled by a heart attack at first and later by a serious operation.

So far, we have not had such problems which could have precipitated a constitutional crisis, but it is best to anticipate that possibility and withdraw from the experience of those who had to go through that constitutional ordeal without a settled rule in the Constitution.

MR. SUMULONG: I will just bring to the attention of the body a last constitutional change concerning the pardoning power of the President. In the 1935 Constitution, it is clearly stated and provided that the pardoning power of the President may be exercised after conviction. But in the 1973 Constitution, as amended, the phrase "after conviction" was deleted, so that President Marcos was able to pardon accused persons even before they have been tried and convicted. That was a scandalous situation and that is the reason why we restore the phrase "after conviction" in- Section 17 of the Article now submitted for consideration. The provision reads:

Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction. However, the power to grant executive clemency for violations of corrupt practices laws may be limited by legislation.

He shall also have the power to grant amnesty with the concurrence of a majority of all the members of the Congress. cdt

With these explanations, the Committee will now welcome interpellations.

SUSPENSION OF SESSION

MR. RAMA: Madam President, we have very important and very beautiful ladies who are visiting us here, so I move that we suspend the session for a few minutes so we can meet them.

THE PRESIDENT: The Chair suspends the session for a brief time. The women have requested that they be allowed to present a scroll on women's rights through the honorable Deputy Foreign Minister Leticia Ramos-Shahani.

It was 10:47 a.m.

RESUMPTION OF SESSION

At 11:08 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

The Floor Leader is recognized.

MR. RAMA: May I ask the Chairman and the members of the Committee to take their seats at the committee table?

Madam President, may I ask that Commissioner Nollado be recognized?

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: Thank you, Madam President.

I would like to propound some questions to the Chairman and the members of the Committee on the Executive.

MR. SUMULONG: With pleasure.

MR. NOLLEDO: On page 1, line 12 of the report, the words "resident of the Philippines" should be understood to mean not actual residence but constructive residence or domicile as applied to Members of the Congress. Am I right, Madam President?

I would like to follow that up with another question. For example, Mr. Rafael Salas, who is now the Chairman of the Commission on Population Control of the United Nations, has been absent for more than 10 years from the Republic of the Philippines. When he comes back to the Philippines, may he run for the position of President?

MR. SUMULONG: The requirement of residence should be actual residence.

MR. NOLLEDO: Should it be actual residence?

MR. SUMULONG: Yes. If one has been abroad for 10 years and he comes back to the Philippines one year before he runs for the Office of the President, he is qualified.

MR. NOLLEDO: So, there is a distinction now on the meaning of residence with respect to Members of the legislature and the President. It seems to me that this should mean merely domicile. He may be temporarily absent from the Philippines in the exercise of his profession or in order to discharge certain duties in an agency like the UN but with the intention to come back to the Philippines. I think he should not be disqualified to run for President. Would the Chairman reconsider that statement? I would like to refer the question to Commissioner

Regalado, if the Chairman does not mind.

MR. REGALADO: Actually, this provision was taken from Section 3, Article VII of the 1935 Constitution. And I understand that from the records of the 1935 Constitutional Convention what they envisioned was actual physical residence in the Philippines, although it may be punctuated every now and then by occasional trips abroad, even, say, three months or four months. But the reason they made the distinction, if such a distinction really exists between the executive and the Members of the legislature, is that the legislature as a separate branch of the government is collective in nature; whereas, in the case of the executive department, only one person comprises the power of the executive.

MR. NOLLEDO: Suppose he was a political exile like Raul Manglapus who stayed in the United States by reason of the repressive regime in the country, he cannot run for President when he comes back to the Philippines after democracy has been restored.

MR. REGALADO: As I said, it may be punctuated by voluntary absence for a justifiable reason or because of compulsion to be temporarily absent from the Philippines. But what is envisioned here is that he was originally an actual resident of the Philippines and, therefore, it was his domicile. Then his trips or stay abroad was for justifiable causes but he is still considered a resident in the concept of domicile because there is the *animus revertendi*. But if his stay abroad was with the *animus manendi* to stay there, then that break of residence might be taken into account.

MR. NOLLEDO: So, I take it that this should mean domicile?

MR. REGALADO: Yes.

MR. NOLLEDO: Thank you.

MR. REGALADO: Commissioner Bernas would like to clarify that point.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: If the understanding is domicile, this can be broken if a person, let us say, establishes a permanent residence somewhere else. Perhaps, becoming a green-card holder of the United States could break this.

MR. NOLLEDO: Thank you very much.

The next question is with respect to line 19 of page 1. It will be remembered that when Diosdado Macapagal won as Vice-President with Carlos Garcia as the President, he was a jobless Vice-President. He used to roam around, shaking hands with the people and campaigning for President, and he won the next time he ran for the position of President. At that time, all professors of constitutional law deplored the constitutional void in the 1935 Constitution. Now, it seems to me that the void has not been cured perfectly well with the statement: "The Vice-President may be appointed as a member of the Cabinet." The words "may be" indicate that it is discretionary on the part of the President to appoint the Vice-President. So, it may turn out, in view of the multi-party system that we are adopting, that the Vice-President-effect may not belong to the party of the President and a constitutional void again may take place because one does not expect the President to appoint him as a member of the Cabinet; or even if they belong to the same party, there is indifference between the two, in which case, the President will have no interest in appointing the Vice-President as a member of the Cabinet. Will the Committee agree at the appropriate time that the words "may be" be changed to SHALL because we will have another jobless Vice-President? His position would amount to a useless appendage in the administrative hierarchy of the country. What does the Committee say about this, please?

MR. REGALADO: We used the permissive word "may" because it should be taken into account that when the

Vice-President runs for that office, he is not running with the intention or expectation or desire to be a member of the Cabinet. It would be embarrassing for the President to be compelled to appoint a Vice-President who refuses to serve in the Cabinet. That will also be an incursion into the appointing power of the President.

Commissioner Bernas will add some more.

FR. BERNAS: We still follow the principle that a Cabinet member should be of the President's bosom which is very important in the application of the doctrine of qualified political agency, which says that the acts of Cabinet members are presumed to be the acts of the President, so that it is necessary that whoever is appointed a member of the Cabinet should be somebody who is completely trusted by the President. So, he is the alter ego; but if the Vice-President happens to be very different from the President, we should not expect the President to appoint him member of the Cabinet.

MR. NOLLEDO: On page 2, lines 7 and 8, because of the use of the words "upon determination of the authenticity and due execution thereof" having reference to the certificates of canvass covering the positions of President and Vice-President, am I right if I say that the duty of the legislature, that is, the Congress in joint session assembled, is no longer ministerial in the canvass of the returns for the offices of the President and Vice-President?

MR. SUMULONG: I will refer the Gentleman to Commissioner Maambong, who is a member of the Committee and the one who discussed this very extensively during the committee meetings.

Will Commissioner Maambong answer that interpellation, please.

MR. MAAMBONG: I did not get the question quite well.

MR. NOLLEDO: I am referring to the use of the words "upon determination of the authenticity and due execution thereof" on lines 7 and 8, page 2, referring to the certificates of canvass of the President and Vice-President. Am I right if I say that because of the use of these words, the duty of the legislature to canvass is no longer ministerial?

MR. MAAMBONG: Madam President, the word "ministerial" has always been interpreted by the Supreme Court as applicable to the canvass made by the National Assembly, and the reason why we did not put the word "ministerial" in the Article is, it has been understood in the case of *Roxas vs. Lopez* and in other cases. When we used the words "authenticity" and "genuineness," the question refers to the problem of whether or not the ministerial function is already nonministerial. The answer is, it is still ministerial but when we say "authenticity and due execution," what it really means is that the National Assembly will look at the certificates of canvass and find out from the face of the document whether there are flaws in the execution and authenticity of the document. That is what it means.

MR. NOLLEDO: Madam President, in the event that the legislature finds out that there are serious defects in the certificates of canvass — as when the seals are broken, there are a lot of erasures and then many of them are unsigned and, therefore, authenticity appears to be questionable — what will happen?

MR. MAAMBONG: The answer to that is in the phrase "in the manner provided by law." The Committee had to insert the phrase "in the manner provided by law" so that the legislature itself will find out and will make it very specific as to what flaws or deficiencies in the certificates of canvass can be taken cognizance of by the canvassing board of tellers, because as of now the guiding regulations that govern the National Assembly, as I mentioned in the Committee, are: the rules and regulations of the COMELEC, the Omnibus Election Code, the jurisprudence from the decisions of the Supreme Court. All these things taken together, the legislature is given a notice by using the phrase "in the manner provided by law," so that it will make a determination now of what are

the points which the board of tellers can take cognizance of, because it is not very clear right now under the laws and regulations, and as a matter of fact, that was one of the controversies which arose during the canvassing of the votes of President Aquino and former President Marcos in the last Batasan.

MR. NOLLEDO: Thank you, Madam President.

I would like to propound the next question to any member of the Committee, of course, including the Chairman.

I notice that in case of vacancy in the position of the President, as well as Vice-President, the Committee is leaving it to Congress to determine the manner of succession. Why do we not provide in the Constitution now that in case of vacancy in the offices of the President and Vice-President. Congress, in joint session assembled, may elect the person who will act as President until the President and Vice-President shall have qualified I do not see any valid reason for the Committee not to adopt that latter provision because there may be some constitutional chaos that may happen if there should be no one who will assume immediately the President and Vice-President in case of vacancy. Why do we not simplify matters?

MR. REGALADO: We will appreciate the formulation of an amendment to that. But the reason why we did so is that we felt that a constitutional provision specifically stating the order of succession after the Vice-President would make any future changes a little less flexible, because then we will have to have a plebiscite to amend the Constitution. In the United States, up to now, the order of succession after the Speaker is also provided by law, not by a constitutional provision.

MR. NOLLEDO: The next question is with respect to the incapacity of the President. It is said here that in case of conflict between the claim of the President that he is capacitated and the claim of the members of the Cabinet — I think the majority thereof — that he is incapacitated, it seems to me that the conflict shall be resolved by a majority vote of the legislature — the House of Representatives and the Senate. We all know that the members of the Cabinet are under the control of the President, as specified in Section 14 on page 6 of the committee report, and they are alter egos of the President. Does not the Commissioner foresee the possibility that should the members of the Cabinet, a majority thereof, decide to declare that the President is incapacitated, the President who is still temporarily discharging his duties or still discharging his duties may remove them and then change them with persons who are friendly to him? What is the safeguard against that possibility? Sometimes the President may sense that the members of the Cabinet are meeting secretly with intention to vote and declare that he is incapacitated. So, he can change them immediately, being alter egos of the President and under his control.

MR. REGALADO: The President has control over the ministers or the secretaries, as they may later be called, in the performance of their respective duties as ministers. When they meet here for that purpose, they are not in the discharge of their duties of their ministries but to respond to a political problem because of the incapacity of the President. If the President can do that and is capable of knowing about the cabalistic designs of his ministers, then that shows he is capacitated, not incapacitated. Secondly, the mere fact that they appear to be alter egos is for legal purposes; that is, that the act of the minister is the act of the President. That does not rule out the possibility of independent-minded and perceptive ministers.

In the Twenty-Fifth Amendment to the United States Constitution, the Vice-President was among those who should, together with the Cabinet members, participate in sending a written declaration of incapacity or capacity. However, the Committee decided to exclude participation on the part of the Vice-President because in law he would appear to be an interested party.

MR. NOLLEDO: On page 6, line 23, with emphasis on the word "revoke," I have a question which I think is very important: When the President suspends the privilege of the writ of habeas corpus or when he declares martial

law, must such declaration or suspension be simultaneously concurred in by the Congress? Or is there a possibility that in view of the existence of circumstances justifying the proclamation or suspension, the President may immediately suspend the privilege of the writ of habeas corpus or immediately declare martial law and submit the same to the Congress for concurrence? It seems to me that with the word "revoke," the report of the Committee implies that the President may immediately declare martial law or suspend the privilege of the writ of habeas corpus without the simultaneous concurrence of the legislature. Am I right?

MR. SUMULONG: The Committee refers that interpellation to Commissioner Concepcion.

MR. CONCEPCION: The draft of the proposals submitted by the Committee requires the concurrence of Congress.

MR. NOLLEDO: Therefore, the declaration of martial law shall take effect without the concurrence?

MR. CONCEPCION: No. It must be with the concurrence.

MR. NOLLEDO: With respect to the word "citizen" on line 27, page 6, I understand that a citizen need not be a taxpayer. Martial law may involve additional disbursement of public funds and it has been a uniform ruling of the Supreme Court, not only in the Philippines but in the United States, that only a taxpayer who is a citizen of the Philippines may question such act of the government official concerned. Must he be a taxpayer?

MR. CONCEPCION: The proposal of the Committee does not require the citizen to be a taxpayer.

MR. NOLLEDO: Thank you.

Lines 23, 24 and 25 are an entirely new provision, but let me begin from the latter part of line 23:

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

May we know the rationale behind this provision?

MR. SUMULONG: That interpellation is referred to Commissioner Davide.

MR. DAVIDE: Thank you.

This particular proposal was lifted from a resolution filed by this Member limiting the power of the President to grant executive clemency. Among the curtailments provided for in that resolution is that in cases of conviction for graft and corruption, no executive clemency can be extended to the offender without the favorable recommendation of the court which rendered the final decision. But it was the thinking of the Committee that in that respect we should rather leave it to the legislature to enact the necessary legislation, if there is a need to really curtail.

My own personal thinking when I submitted that resolution is that in case of graft and corruption, no executive clemency should be granted without the concurrence or favorable recommendation of the convicting court, the idea being that graft and corruption goes into the fabric of public service. Therefore, no person so convicted for a violation of the public trust or violation of election laws should be allowed or granted executive clemency without the favorable recommendation of the convicting court.

As mandated in the Article on the COMELEC, no pardon or parole can be granted to a person convicted for an election offense without the favorable recommendation of the COMELEC. So that is why the Committee merely left it to ordinary legislation.

MR. NOLLEDO: Thank you.

Madam President, I have one last question on page 7. Section 18, lines 31 to 32. It says here that the President may contract foreign loans with the concurrence of the Monetary Board of the Central Bank of the Philippines. It seems to me that the 1973 Constitution recognizes the Central Bank as the central monetary authority, but it does not consider the Central Bank as an independent body.

I think under the Central Bank Act, RA 265, as amended, the members of the Monetary Board are appointees of the President and most of whom — correct me if I am wrong — are alter egos of the President, like the Minister of Finance, the head of the Board of Investments and their alternates.

Can we not say that this will not preclude the possibility of considering the contracting of foreign loans as an exclusive presidential prerogative considering that the composition of the Monetary Board reflects membership under the control of the President?

MR. REGALADO: In response to that, it is not correct to state that the entire membership of the Monetary Board is composed of persons who appear to be close to or are alter egos of, the President. There are also representatives there of the private sectors. As a matter of fact, in the last hearing we had, there was a move on the part of businessmen to ask for more participation as members of the Monetary Board.

The reason we put the Monetary Board here is that it is the present central monetary authority. I understand that in another committee, they are planning to change its name to Central Monetary Authority or retain the name Monetary Board.

We were impaled on the horns of a dilemma. If we were to give the President unlimited power to contract foreign loans, then we may have a repeat performance of what we went through. On the other hand, if we were to be very strict with the President so much so that by the time the authorities here or the legislature give their consent, that foreign loan sought to be contracted is no longer available, or the purpose which it was intended to subserve is already academic. Instead, we put this as a medium arrangement, a middle ground, but with the participation also of the legislature in the sense that any action of the Monetary Board shall periodically be reported quarterly to the legislature. instead of requiring approval of the Congress which might defeat the purpose for contracting the foreign loan, at least a quarterly report should be submitted within 30 days from the beginning of each quarter to inform the legislature about the foreign loans that it has acted upon or still to be contracted. Then, the legislature now participates either to give its concurrence if it is for a meritorious purpose or to curtail by law the powers of the Monetary Board.

While it is not stated here — although it says here that the prior concurrence of the Monetary Board is required — it is, of course, implicit therein that the Monetary Board shall act as may be provided by law. In fact, right now the powers of the Monetary Board are provided by law.

MR. NOLLEDO: Thank you.

MR. SUMULONG: May we give the floor to Commissioner Villegas.

THE PRESIDENT: Commissioner Villegas is recognized.

MR. VILLEGAS. I will just volunteer an information about the Monetary Board or the central monetary authority. There is a provision in the committee report on the national economy stipulating that the Monetary Board should have majority membership from the private sector, and there is even the possibility that in the future, there will be no government official in the Monetary Board, very much like the Federal Reserve System in the United States.

So, definitely the thinking is that the Monetary Board should be released from any dependence on the executive,

on the President's men, so to speak.

However, in the last meeting Central Bank Governor Fernandez said that temporarily they want to have at least the Finance Minister as a member of the Monetary Board for coordination purposes. But definitely the thinking is that the Monetary Board should be completely independent of the executive.

MR. SUMULONG: Thank you for that information

MR. NOLLEDO: Madam President, I would like to commend the Committee for deleting Section 17, Article VII, one of the most immoral provisions of the 1973 Constitution, granting the President and his cronies immunity from suits.

Thank you, Madam President.

MR. REGALADO: Incidentally, my intention has been called by our committee secretary, that some of the Commissioners may be using the previous version of the committee report. I request the Commissioners to look at their copies. It is the one that has on the upper right hand corner, in parentheses, the words "Substitute Resolution," so that we will not be confused with the pages and the lines.

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

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you, Madam President.

I have a few observations and questions on Section 15, page 6.

I understand that during the hearing on the Article on the Legislative, the term "imminent danger thereof" was eliminated in the proviso authorizing the President to declare martial law or to suspend the writ of habeas corpus because of the alleged abuse of the previous regime. So the term now is "invasion or rebellion." When there is an actual rebellion or invasion, the President still cannot declare martial law nor suspend the writ of habeas corpus because he still has to go to Congress for its concurrence. Is that how I understand this Section 15?

MR. SUMULONG: The first lines of Section 15 read:

The President shall be the commander-in-chief of all the armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion.

So, even without a declaration of martial law, he can call out the Armed Forces to prevent or suppress invasion or rebellion.

MR. DE CASTRO: Correct, but that is related to the next sentence which reads:

In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, and, with the concurrence of at least a majority of all the members of the Congress, suspend the privilege of the writ of habeas corpus.

I am now putting myself either as Chief of Staff of the Armed Forces or as President of the Philippines. Of course, that is very far and very remote. But when I see that there is actual rebellion and people are already marching up the streets of Metro Manila or up the streets of San Pablo City in my province and the Armed Forces engage them in actual combat and then arrest, say, 50 of them and put them in jail, it will take time before we can go to judicial proceedings. Judicial proceedings at that moment may be a little remote because the Armed Forces are busy fighting.

To require the President to suspend the writ of habeas corpus with the concurrence of Congress will be very difficult because by that time, some people would have been arrested or jailed and some would have been killed because of actual shooting. Actually, the President in this case will suspend the writ of habeas corpus without the concurrence of a majority of the Members of the Congress. That is the situation I can see when we talk of actual invasion.

I questioned the members of the Committee on the Legislative why they deleted the term "imminent danger thereof." They said this is actual invasion; the enemies are actually landing on the shores of our coasts. They told me that if the ships are still in Tokyo en route to the Philippines, we cannot call that invasion because we do not know where they will land, although there is an imminent danger thereof.

If there is actual invasion in the Philippines, that is already a state of war. The possibility that we may capture prisoners, enemy agents and spies is not remote and we may put them in jail. However, to require a judicial action before they can be jailed will be very difficult for our Commander-in-Chief. We are clipping the powers of our Commander-in-Chief because of our experience with the previous regime. cdt

We should consider that our President is the Commander-in-Chief of the Armed Forces. He is responsible for everything that may happen in this country. We should not clip his powers.

Will the honorable Committee allow certain amendments to this when the proper time comes?

MR. REGALADO: Of course, we will welcome amendments.

MR. SUMULONG: Certainly, at the appropriate time.

MR. DE CASTRO: Thank you.

I am only most concerned with what is happening in our country today. There are strikes here and there; loyalties are rallying here; and there is shooting in the countryside. If these escalate into a worse situation as an actual rebellion, we have clipped the powers of the President to suspend the writ of habeas corpus or to declare martial law.

My next point is on page 7, line 14. When we say that the confirmation by the Commission on Appointments on appointees of the President must begin from the rank of colonel or captain in the navy, this provision is taken from the 1935 Constitution. During that time, a full colonel in the Armed Forces was a rare breed, more so a captain in the navy. I think there were only two generals then. But now, we have so many generals, colonels, major generals, rear admirals and so on. This is brought about by the increase of our Armed Forces to some 250,000. About 1.2 percent of these are the general officers. Our general officers up to brigadier generals are the front line generals. They are the ones fighting the war for us against insurgency. The major generals are normally the major service commanders of the Armed Forces, such as the commanding general of the army, flag officer of the navy, the commanding generals of the air force and the constabulary. But now, we are limiting the confirmation to colonels. They are the hardworking grades; these are the fighting grades up to brigadier general. May we not raise this a little, so that the confirmation will only be required beginning with the grade of major general, the service commanding general of the Armed Forces? This was recommended to me very strongly by General Ramos and Deputy Minister Iletto. I fully appreciate their stand on the matter considering that those with the rank of one-star general are the front line generals against insurgency. May the Committee relent when the proper time comes?

MR. REGALADO: In other words, Commissioner de Castro would go beyond the prescription in the 1973 Constitution which would require confirmation from the rank of brigadier general or commodore in the navy.

MR. DE CASTRO: No, from major general or rear admiral in the navy.

MR. REGALADO: We will consider that at the proper time and subject to the corresponding justification.

MR. DE CASTRO: I will do that.

MR. RAMA: Madam President, I am a member of the Committee on the Executive and I was the one who lowered the rank from general to colonel. The reason for this is that if we study history, both the recent and the older history, we will find out that most of the coup d' etats were staged by colonels.

MR. RAMA: Coming closer home, we would notice that the February revolution was staged mostly by the colonels in the Reform the Armed Forces Movement. I know because I interviewed most of them. They were the ones who executed the plan which culminated in the revolution.

I was thinking that the President should have a hand in appointing the colonels in order to help stop this political instability. So that is the reason for the insertion of that word.

MR. DE CASTRO: We should take note that the President appoints even the newly graduated cadets in the Philippine Military Academy as second lieutenants. So, the appointment in the military by the President is from the time one becomes a cadet up to the time he retires from the Armed Forces. So, the President does not only appoint generals; he appoints the lowest lieutenants in the Armed Forces.

Talking of the last February revolution and the RAM, I beg to disagree so far that the RAM is instrumental in the February revolution. I have always questioned the position of the RAM because there must not be another organization within the entire military organization as this will create divisiveness, as what has been noted now by the present Chief of Staff of the Armed Forces. In fact, during the February revolution, we, the retired generals of the Armed Forces, questioned the existence of the RAM. We have questioned its members one by one on many occasions about their business in the Armed Forces creating an organization within the organization.

This is the first time in the history of the armed forces anywhere in the world that an organization was created within the military organization.

I repeat that I beg to differ with the Commissioner's belief that the RAM is instrumental in the February revolution of 1986. History will show that it is not colonels but normally majors and captains who stage coup d' etats. We have not had any coup d' etat yet in our country.

MR. RAMA: I would like to tell the Commissioner that my statement about the role of the RAM in the last February revolution is based upon my interviews with the members of the RAM about their history, how they formed that organization, their objectives, et cetera, harking back to about three years ago. So, I came to the conclusion that they played a very big role in the 1986 revolution.

MR. DE CASTRO: I hate to say this but the leaders of the RAM are asking civic organizations to invite them so that they can project themselves in the country and put themselves in the newspapers. I know this because an organization in my town of Binan, Laguna invited me to interpellate a member of the RAM who was supposed to be their guest speaker. I asked them: "Why is the guest speaker a RAM member?" The answer was that the leadership of the RAM asked themselves to be invited. So I said I cannot question them because if I do, the truth will come out, and if I do not question them on the truth, I might as well not be there. So, I did not go there. But I know for a fact that the RAM induced this civic organization in my hometown to invite them as guest speakers so they can be projected in the newspapers.

Now, let us go back to our subject matter.

THE PRESIDENT: Any other question?

MR. DE CASTRO: One last matter is on the question of Commissioner Nollado about the Monetary Board, which was answered by Commissioner Regalado. To me, this will not be a check and balance in our presidential system of government. To me, the check and balance would be this way: the executive by the legislative; and the legislative and the executive by the judiciary.

When we talk of any foreign loan, this is not only thought of in one night, nor is it thought of in one week. It is a monetary plan or a business plan which says, for instance, that this year, I will have this amount. Since this is a plan and not a business proposition thought of in one night, then the Monetary Board and the executive should have more time in planning for foreign loans or for guaranteeing other loans. Why not let Congress approve foreign loans so as to have a truly effective check and balance in the presidential system?

Thank you, Madam President.

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

THE PRESIDENT: Commissioner Rama is recognized.

MR. RAMA: With the indulgence of the Committee of which I am a member, I would just like to point out that although it is concerned about the scandal that happened during the last administration, where the President would grant pardons or reprieves before conviction, I do not believe that the present draft of the Committee would fully solve that problem because even after conviction, a conviction can be appealed. Therefore, I think we should tighten up the phrase by saying "after FINAL conviction," so that we would not allow the President to exercise judicial powers in derogation of the judicial power vested in the judiciary. So, at the proper time, may we insert the word FINAL?

MR. REGALADO: It has always been the understanding that the word "conviction" means "final conviction" because an appealable conviction is not yet considered as such. At any rates we will appreciate it if Commissioner Rama can remind us to insert the word at the proper time for better clarity.

MR RAMA: Another point is regarding the Office of the Vice-president which is one of the most awkward offices in our government. as shown by the past experience. The Vice-President has been considered only as a spare tire. At one time, the Vice-President did nothing but campaign all over the country against the President and finally, defeated the President who did not give him any job, because in the Constitution, there was no constitutional function for the Vice-President. I do not know whether studies have been made by the Committee about the possible official function we can give to the Vice-President such as, perhaps, as ex-officio President of the Senate, so that he would have a definite constitutional function.

MR. REGALADO: We will consider that at the proper time. We are aware of the fact that in the United States, the Vice-President acts as the Senate President. We will consider that in conjunction also with the Committee on the Legislative because we might be intruding into the affairs of the legislature.

MR. RAMA: Another point is on the martial law power of the President. It says here that the President can declare martial law with the concurrence of Congress. It has been explained that there is no effect to such martial law declaration by the President until concurred in by Congress. Does not the Commissioner think that we should also try to contemplate the situation where Congress is not in session and there is an urgent need for the President to declare martial law? So on Section 15 between the words "Assembly" and "suspend," I propose to insert the words WHICH IS AUTOMATICALLY CONVENED IF NOT IN SESSION.

MR. REGALADO: I recall that during our deliberations, I invited the attention of the Committee to that draft

proposal of former President Macapagal and his group where they did propose the immediate convening by Congress without call by the President the moment this contingency arises. It is in the Macapagal proposal. So I think we can act on this at the proper time.

MR. RAMA: Thank you.

MR. REGALADO: Thank you.

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

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: On page 7, Section 18, line 30, I just want to know what is meant by "domestic loans."

MR. REGALADO: As already announced by the Chairman, we have deleted "domestic loans" there because when Governor Fernandez and Deputy Governor Singson appeared in the Committee chaired by Commissioner Villegas, they pointed out that they have no fiscal authority insofar as domestic loans are concerned. That is why the Committee *motu proprio* decided to cancel the words "and domestic."

MR. MONSOD: I am sorry I did not hear that. I submit.

On page 8, in the recent remarks made by the Commissioner on the intent of this article on the submission of a report by the Monetary Board to Congress, did the Commissioner say that the intent here is for Congress to review and pass on the merits of the loans?

MR. REGALADO: No, actually, this portion was taken from a bill which was introduced in the past Batasan but was overtaken by its abolition. The purpose here is actually just to inform Congress, and we will note that what it should submit to Congress is a complete report of its decisions on applications for loans to be contracted or guaranteed by the government.

MR. MONSOD: That is my question. Is the Commissioner saying that the Monetary Board is obligated to submit a report to Congress or the National Assembly before the loans become effective? Does it refer to loans to be contracted or guaranteed?

MR. REGALADO: Yes, because it will be within thirty days from the end of every quarter of the calendar year that such a report shall be submitted so that Congress may also make representations with the corresponding monetary officials. But actually, it does not require congressional approval for contracting of foreign loans because to do so would make the whole procedure tedious and cumbersome. At least, Congress knows what is going on, since it consists of the representatives of the people who ultimately will have to pay such loans.

MR. MONSOD: Yes. My only concern is that this provision, as it now reads, seems to say that the loans do not become effective unless they are first reported to Congress. And we are talking here about quarterly reports.

MR. REGALADO: Yes.

MR. MONSOD: Should this not be a report on the loans contracted or guaranteed rather than on loans to be contracted or guaranteed?

MR. REGALADO: What was envisioned in that bill introduced in the past Batasan was that Congress would be aware of the loans to be contracted because I assume that before that, this matter about contracting loans has long been on the drawing boards. Hence the Monetary Board already knows in its programming just, more or less when the government is going to contract the loan. If the President, however, decides to go right ahead, Congress cannot stop him from contracting that loan, although it is the more desirable feature that Congress be informed in

advance.

MR. MONSOD: It is clear that the intent of this provision is for information purposes only.

MR. REGALADO: Yes, for information purposes only.

MR. MONSOD: Thank you.

I just want to refer to page 6. This may occur in other sections. When this provision was first drafted by the Committee, was it before or after this body had decided on a bicameral legislature? Is it the intent now that it is only the Lower House that will concur in the suspension of the writ of habeas corpus as provided for in Section 15?

MR. REGALADO: I regret that when the substitute resolution was printed, obviously, the Secretariat overlooked the change from "National Assembly" to "Congress," although we had told them that all references to the words "National Assembly" there should be changed to "Congress" because we have already shifted to bicameralism. Unfortunately, as it came out, the words "National Assembly" still remain. We, therefore, request all Commissioners to please indicate in their copies that any reference to "National Assembly" in all the provisions on the executive department be changed to "Congress."

MR. MONSOD: Section 15 has been raised earlier, but I just want to clarify that even for the first declaration of martial law which has a time fuse of 60 days, the President would need to get the concurrence of the two Houses as a precondition for the effectivity of martial law.

MR. REGALADO: That is right, and the majority vote of all the Members of Congress.

MR. MONSOD: . . . and of the Senate.

MR. REGALADO: Of courses the concurrence of both the House of Representatives and the Senate is needed. We just simply used "Congress."

MR. MONSOD: Would the Committee consider proposals along these lines that would not be too restrictive on the President under these circumstances? It seems that this provision is too restrictive as far as the ability of the President to act during the first 60 days is concerned.

MR. REGALADO: We will entertain that at the proper time, although this has been discussed by us because in the event of a rebellion or an invasion which may not be of such a magnitude as to require the suspension of the privilege of the writ of habeas corpus or the declaration of martial law, the first sentence takes care of it. The President, as Commander-in-Chief, can right away order all the Armed Forces to suppress the lawless violence, invasion or insurrection.

Where, however, the matter has deteriorated to the point, and the situation has been so aggravated, that the President may have to declare martial law or suspend the privilege of the writ of habeas corpus, that is where the second clause comes in. And during that intervening period, I assume that the Members of Congress are also aware of the situation and will seek to convene precisely to meet the situation as a second option now. The initial problem of actual invasion or insurrection, or rather, rebellion is taken care of by the first sentence. That does not require concurrence of Congress. The President as Commander-in-Chief, can right away order the entire Armed Forces to meet the situation.

MR. MONSOD: Thank you.

MR. COLAYCO: Madam President, may I be allowed a question on the same point?

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: Thank you very much.

Line 18 of the same section says: "with the concurrence of at least a majority of all the members of the Congress." Is the Commissioner referring to the numerical majority of 250 plus 24, or to the majority of both Houses?

MR. SUMULONG: Majority of both Houses.

MR. COLAYCO: Both Houses. I asked so because if we retain this phrase, and all the members of the Lower House will vote solidly, even if the Senate votes against it, the votes of the Lower House will be carried. So, it would be a majority of both Houses.

MR. SUMULONG: I think that would give the intent in a clearer form — "both Houses."

MR. COLAYCO: Thank you.

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

THE PRESIDENT: Commissioner Tan is recognized.

SR. TAN: I just have a couple of clarificatory questions.

On page 7, Section 15, line 9 reads: "for offenses inherent in or directly connected with invasion." What particular offenses are included in this phrase? Is subversion, for example, excluded or implied?

MR. REGALADO: Actually, the offenses involved in case of an invasion are those found in Title 1, Book II of the Revised Penal Code; that is, crimes against national security and the law of nations. Among them are treason, espionage, communication in wartime with the hostile country and giving of information. They are all enumerated there.

We now go to subversion. Subversion is the peacetime counterpart of the treason law because in peacetime, there is no crime of treason. The crime of treason in peacetime is incubated. If the prohibited acts take place in wartime, that is treason. We will notice that even the penalties are virtually the same for treason and for subversion; that is, prison mayor to death. Only, treason cannot be committed in peacetime.

SR. TAN: So, subversion is included?

MR. REGALADO: Subversion, if committed in wartime, is actually treason.

SR. TAN: But it is not the definition we used to hear during martial law.

MR. REGALADO: That was Mr. Marcos' definition. I am giving the Commissioner the legal definition.

SR. TAN: Yes. Thank you.

The other question is also on the same section. Would martial law automatically give the President the power of legislation through decrees?

MR. SUMULONG: We will ask Commissioner Concepcion to answer.

MR. CONCEPCION: It is stated in Section 15:

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts . . .

The Commissioner's question is whether martial law decreases or increases the power of the President?

SR. TAN: Decreases?

MR. CONCEPCION: Not necessarily.

SR. TAN: So, what specific power is necessary before the President can proclaim martial law?

MR. CONCEPCION: In general, in case of invasion, the President would have all the powers of a general in the army.

MR. SUMULONG: We ask Commissioner Bernas to answer.

FR. BERNAS: That same question was asked during the meetings of the Committee: What precisely does martial law add to the power of the President to call on the armed forces? The first and second lines in this provision state:

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies . . .

The provision is put there, precisely, to reverse the doctrine of the Supreme Court. I think it is the case *Aquino vs. COMELEC* where the Supreme Court said that in times of martial law, the President automatically has legislative power. So these two clauses denied that. A state of martial law does not suspend the operation of the Constitution; therefore, it does not suspend the principle of separation of powers.

The question now is: During martial law, can the President issue decrees? The answer we gave to that question in the Committee was: During martial law, the President may have the powers of a commanding general in a theatre of war. In actual war when there is fighting in an area, the President as the commanding general has the authority to issue orders which have the effect of law but strictly in a theatre of war, not in the situation we had during the period of martial law. In other words, there is an effort here to return to the traditional concept of martial law as it was developed especially in American jurisprudence, where martial law has reference to the theatre of war.

SR. TAN: Thank you.

That clarifies my questions. I still have a little doubt on Section 18 which was already mentioned by Commissioners de Castro and Monsod. I notice the omission of the congressional approval for foreign loans. My dilemma is on the reason for requiring congressional approval for treaties, while for foreign loans, we do not have any, as if to say these are not equally crucial. Is the concurrence of the Monetary Board sufficient?

MR. REGALADO: I have already given my answer to the same question and Commissioner Villegas has also clarified the participation of the Monetary Board and its membership. The purposes of not requiring congressional concurrence are: First, it would take some time before such concurrence may be obtained and there might be an urgent need for the loan or, thereafter, if concurrence is finally obtained, the offered loan may no longer be available; second, it was thought that if the congressional concurrence is required, an obstructionist Congress could prevent the President from contracting foreign loans which may be urgently needed especially in case of a national calamity which requires immediate action.

SR. TAN: Thank you.

MR. DE CASTRO: Madam President, point of clarification.

THE PRESIDENT: The Acting Floor Leader wants to say something.

SUSPENSION OF SESSION

MR. ROMULO: Madam President, in view of the time, I ask for a suspension of the session.

THE PRESIDENT: The session is suspended and we will resume at two-thirty in the afternoon.

It was 12:19 p.m.

RESUMPTION OF SESSION

At 2:41 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. SARMIENTO: Madam President, this Member is now the Acting Floor Leader.

I request that Commissioner Quesada be recognized.

THE PRESIDENT: Commissioner Quesada is recognized.

MR. SUMULONG: May I request the members of the Committee on the Executive to come forward and join us here.

May I inform the Members of the Commission that the latest copy which we will use has just been distributed and on the first page, right upper hand corner, we will read the following as stated: "Substitute Resolution-Adjusted to Bicameral Legislature." So this will be the copy which will guide our discussions from now on.

Thank you.

MS. QUESADA: Madam President, honorable members of the Committee on the Executive, I would like to raise three points for clarification. The first one is on page 6, line 8 which reads:

He shall exercise general supervision over all local governments as may be provided by law, and shall take care that the laws be faithfully executed.

MR. REGALADO: Is that on page 6?

MS. QUESADA: Page 6, Section 14, line 8.

MR. REGALADO: That is line 23 here. The Commissioner will please look at her copy. Is that the one which bears on the upper right hand corner the title: "Substitute Resolution-Adjusted to Bicameral Legislature"?

MS. QUESADA: I am sorry, I do not have the amended copy, but this has something to do with the local governments.

MR. MAAMBONG: In what section?

MS. QUESADA: Sorry, I have a different copy.

MR. MAAMBONG: Can we go by section so that we will not get lost?

MS. QUESADA: Is it going to be by section now?

MR. SUMULONG: Yes. by section.

MR. MAAMBONG: The Commissioner must refer to the correct section so that we will not get lost.

MS. QUESADA: This is Section 14 already. I do not have any question as regards the other sections. I just would like to seek clarification about Section 14 but I do not know where it is found in the amended copy.

MR. REGALADO: That is on page 6; Section 14 starts from line 21.

MS. QUESADA: My question: Would this particular section now define the specific areas for general supervision

by the Office of the President over local governments?

MR. REGALADO: May I answer that, please?

MS. QUESADA: It says here "as may be provided by law," but I was wondering how it would dovetail with the autonomy that we are now trying to give local governments.

MR. REGALADO: The entire Section 4 is an exact copy of the 1935 Constitution, Section 10 (1) thereof. The phrase "general supervision over all local governments" is used to distinguish it from "control" over executive departments, bureaus and offices. Since 1935, the phrase "exercise general supervision" has already had a settled meaning. The powers of the President over local governments are defined by law as to whether he can cause the investigation of a lower official of a local government or his suspension but always subject to law, either a special law or the Administrative Code. If the Commissioner's question is with respect to autonomous governments and the degree of general supervision thereover, that will have to be provided by law because, as we will note, under the 1973 Constitution the autonomous regions are not considered political or geographical divisions. It is only now that we are considering them here. Since I am also a member of the Committee on Local Governments, I informed the members thereof that the extent of the general supervision of the President over this type of local government, meaning the autonomous region, shall have to be provided for by the incoming legislature.

MS. QUESADA: I am not really referring to the autonomous regions but I am talking about the clamor now of local governments to have more autonomy and more decentralization of powers. It is perceived that the cause of local autonomy will suffer some setbacks by adopting this particular clause. Many of the present ills of our local government system are attributed to presidential intervention in purely local affairs. This provision will, therefore, strengthen its hold on local governments.

MR. REGALADO: That was so under the previous regime because we will note that the last phrase there says: "and shall take care that the laws be faithfully executed." At that time the laws were promulgated as prepared by one man, so there was a little emasculation of local autonomy. We hope that our incoming legislature will do away with those very restrictive decrees.

Commissioner Bernas will also add some comments.

FR. BERNAS: This phrase "as may be provided by law" will have to be adjusted to whatever we approve on the Article on Local Governments. If the local governments allow very little leeway for the law to say anything about them, then the law will be very little.

MS. QUESADA: Thank you.

The second point I would like to raise will be on an issue that was earlier presented by Commissioner Tan which has something to do with the President contracting or guaranteeing foreign and domestic loans on behalf of the Republic of the Philippines with the prior concurrence alone of the Monetary Board without having to go through Congress. I wonder if the Committee would still be amenable to amendments on how we could put a check to this particular right of the President.

MR. REGALADO: I have given the answer to Commissioner Tan and another one who asked me this morning. But, of course, we will entertain amendments at the proper time.

MS. QUESADA: So the Committee is not entirely closed on the subject?

MR. REGALADO: It is not closed. Incidentally, the Commissioner is requested to please take note that the Committee has caused the deletion of the phrase "and domestic" on line 14, so this refers only to foreign loans now.

MS. QUESADA: I am really interested in foreign loans that we are contracting, so maybe at the proper time, we will try to propose some amendments.

The third point is on page 9. Section 20 line 7 which reads:

No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate.

I would like to ask some clarification on the coverage or the scope of these treaties or international agreements.

MR. REGALADO: The phrase "international agreement" here was used by the Committee because, formerly, the provision spoke only of treaties. However, treaties alone are not the only vehicles for international accord. Later, there developed in the United States things like executive agreements which did not require the concurrence of the U.S. Congress, although in the Philippines, our President entered into an executive agreement with the United States on the Bell Trade Act but with prior approval of Congress.

There are other agreements in other countries which are called "administrative agreements" instead of "executive agreements." This kind is the one existing between the United States and Japan. The reason for that is simple; they could not call it an executive agreement because at the time the agreement was signed, Emperor Hirohito had been virtually divested of powers because it was General MacArthur who was running the show. So, they called it an administrative agreement, which actually was not strictly an executive agreement.

There are also things like multilateral treaties or international conventions — like the Convention on the Law of the Sea that we have been discussing. So it was felt that all these international agreements, since they deal with our external relations, should also require the concurrence of the Senate.

MS. QUESADA: So, this would include conventions like that adopted by the International Labor Organization (ILO).

MR. REGALADO: The Convention on the Law of the Sea, the Universal Copyright Convention — those are things that we took into account.

MS. QUESADA: So, it would have to be concurred in by Congress. I had to seek this clarification because in the past regime, there was this organization trying to work out with the Members of the Assembly to ratify a treaty or a convention that had been adopted by ILO in which the Philippines was a signatory. But in the long run, we found out that it needed only the President to ratify that ILO Convention. I am speaking of ILO Convention 149 which had something to do with the conditions of life and work of nursing and other health personnel. So, this should now be covered not merely by a presidential act but with the concurrence of Congress.

MR. REGALADO: Under the former regime, there was no counterpart provision of concurrence by Congress with respect to international agreements. There was also none in the 1935 Constitution and the truth is many of us did not know what were the international agreements being concluded by the President on his own authority.

MS. QUESADA: Thank you, Madam President.

MR. SARMIENTO: Madam President, may I respectfully request that Commissioner Foz be recognized.

THE PRESIDENT: Commissioner Foz is recognized.

MR FOZ: I have a few questions on Section 4 regarding the certificates of canvass.

Lines 15 and 16, page 2, state: ". . . upon determination of the authenticity and due execution of the certificates of canvass." I really do not know if this was touched upon by Commissioner Nollado but just the same, let me ask

the question.

How does the Congress — the Senate and the House of Representatives — in joint public session determine the authenticity and due execution of the certificates of canvass?

A corollary question, will it require the testimony or affirmation of the very persons who executed the certificates?

MR. REGALADO: May we refer this to Commissioner Maambong who introduced a resolution to that effect and which was adopted by the Committee.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: We explained early this morning, in answer to the query of Commissioner Nollado, that under the present laws, the authenticity and due execution are determined by the rules and regulations promulgated by the Commission on Elections by the exact provisions of the Omnibus Election Code and by the rulings and decisions of the Supreme Court. But the Gentleman will notice in the formulation of the present section that we inserted the words "IN THE MANNER PROVIDED BY LAW" because in the last canvassing of votes of the President and Vice-President before the Batasang Pambansa, there were so many objections as to the manner of determination of due execution and authenticity. So, in future canvassings we will expect that the national legislature will promulgate or enact a law where they will set out in formal terms the guide lines to be followed by the board of tellers of the Congress in the canvass of votes of the President and the Vice-President. But as I have mentioned earlier, as of this moment we are guided by the rules and regulations of the COMELEC, by the provisions of the Omnibus Election Code and by the rulings of the Supreme Court.

MR. FOZ: Under existing provisions of law and the rules of the old Batasan. how is it determined?

MR. MAAMBONG: There are so many corollary factors in the determination of the due execution and genuineness of the document. The first thing that the board of canvassers or the board of tellers — if we call it that — will look at is the certificate of canvass coming from the different provincial board of canvassers, city board of canvassers, or in the case of Metro Manila, the district board of canvassers. The first step taken is to look at the document itself to find out if it is regular on its face, whether it is signed, for example, by the members of the city, provincial or district board of canvassers, whether the thumbmarks are there, and more importantly, whether the words and figures are clearly indicated. With these, the board of tellers will start tabulating the votes. But the problem, as I said, is that there are corollary factors like whether or not the envelope in which the certificate of canvass was contained is the genuine envelope furnished by the COMELEC, whether the COMELEC paper seal is affixed on the envelope, whether the certificate of canvass has the COMELEC paper seal. These are corollary issues, and in resolving these issues, the board of canvassers were guided by the resolutions and regulations of the COMELEC, the exact provisions of the Omnibus Election Code and the rulings of the Supreme Court. Just to give an example, in one ruling of the Supreme Court where election returns transmitted to the board of canvassers were contained in jute sacks and not in the proper boxes, the Supreme Court said that these are mere formalities; if the election returns do not contain irregularities on their face, they may be considered in the canvassing of votes.

MR. FOZ: Is the question of whether signatures appearing on the certificates are genuine or not also considered?

MR. MAAMBONG: It is considered, in the sense that in the actual canvassing of votes, the opposition party has a copy of the certificate of canvass being used by the Speaker and the board of canvassers with the signature appearing on the copy of the opposition party and the ruling party, then the Speaker and the board of tellers can determine whether there is a deviation in the signatures in the three copies. That is how it is done.

MR. FOZ: Thank you, Madam President.

May I go to the next question? This is about the declaration of martial law or the suspension of the privilege of the writ of habeas corpus on page 7, on the second to the last paragraph of Section 15. Is it possible to delete the clause "where civil courts are able to function"? In the earlier portion of the same sentence, it says, "nor supplant the functioning of the civil courts . . ." I was just thinking that if this provision states the effects of the declaration of martial law — one of which is that it does not supplant the functioning of the civil courts — I cannot see how civil courts would be unable to function even in a state of martial law.

MR. SUMULONG: May we refer that interpellation to Commissioner Bernas?

FR. BERNAS: This phrase was precisely put here because we have clarified the meaning of martial law; meaning, limiting it to martial law as it has existed in the jurisprudence in international law, that it is a law for the theater of war. In a theater of war, civil courts are unable to function. If in the actual theater of war civil courts, in fact, are unable to function, then the military commander is authorized to give jurisdiction even over civilians to military courts precisely because the civil courts are closed in that area. But in the general area where the civil courts are opened then in no case can the military courts be given jurisdiction over civilians. This is in reference to a theater of war where the civil courts, in fact, are unable to function.

MR. FOZ: It is a state of things brought about by the realities of the situation in that specified critical area.

FR. BERNAS: That is correct.

MR. FOZ: And it is not something that is brought about by a declaration of the Commander-in-Chief.

FR. BERNAS: It is not brought about by a declaration of the Commander-in-Chief. The understanding here is that the phrase "nor authorize the conferment of jurisdiction on military courts and agencies over civilians" has reference to the practice under the Marcos regime where military courts were given jurisdiction over civilians. We say here that we will never allow that except in areas where civil courts are, in fact, unable to function and it becomes necessary for some kind of court to function.

MR. FOZ: Thank you, Madam President.

The last question on Section 19, page 8 of the revised draft has to do with the disqualification or disability imposed on the President, the Vice-President, members of the Cabinet and chiefs of bureaus or offices and their assistants. First of all, the term "assistants," to whom does it refer?

MR. REGALADO: Our understanding of that would be with respect to members of the Cabinet, then the deputy minister. With respect to chiefs of bureaus, then it would be the assistant bureau director. With respect to other governmental offices, then the one next in line to the head of that office. The word "assistants" does not refer to one particular head of an office; it refers to the assistants of those different heads of offices.

MR. FOZ: So, one assistant for each of those enumerated.

MR. REGALADO: Yes, that is right.

MR. FOZ: This provision would put a mere chief of an office or a mere director of a bureau and his assistants on the same level as members of the Cabinet and their assistants, the President and the Vice-president, and would prohibit them from doing so many things as enumerated here. The philosophy of this provision, I understand, is to avoid conflict of interest. What are the other purposes?

MR. REGALADO: They are all enumerated there.

MR. FOZ: Prohibiting them from having any financial interest in any transaction with the government and from practicing any profession.

MR. REGALADO: Yes, like the prohibition against the practice of a profession.

MR. FOZ: In other words, I think we can sum up the purpose in conflict of interest.

MR. REGALADO: Not necessarily, because practicing a profession does not necessarily conflict with their financial interest.

MR. FOZ: Would it be that the reason is to enable them to devote all their time or most of their time to their offices?

MR. REGALADO: The most desirable trait of any public officer is to give full attention and devotion to his duties.

MR. FOZ: Has the Committee not considered also the reality that a director of a bureau or a chief of an office and his assistants do not receive sufficient remuneration and, therefore, should not be unduly prevented from engaging in certain activities that would enable them to meet the rising cost of living? What I am trying to say is that maybe their inclusion in such a provision — prohibiting them from engaging, for instance, in the practice of their profession which would not after all conflict with the functions of their office — and thus, being placed on the same level as the President, Vice-President and members of the Cabinet and their assistants would be quite harsh. After all, they are not vested with vast powers. So, the evil sought to be prevented in the case of the President, the Vice-President and members of the Cabinet is perhaps not present. So, in their case, the provisions of the Anti-Graft Law would be sufficient to make sure that there is no conflict of interest whatsoever in the discharge of their duties and in whatever activities they may engage in on the side, private in nature but completely legal and moral, which would sustain themselves and their family.

MR. REGALADO: In the first place, we have stated that the purpose here is not only conflict of interest but to enable them to give full-time attention to their duties. It is assumed that when they sought appointment to this office, they were aware that there are limitations in the Constitution.

The mere fact that bureau directors are not on the level of the President is not a correct stratification because whether one is a bureau director, a deputy or a minister, the same devotion to duty is required.

If we say that we have to be realistic considering the rising cost of living, aside from the low salaries they are receiving, this can be remedied by increasing their compensation if the government can afford it or by their engaging in other activities not contrary to these specific disqualifications. Some of them teach to augment their income; that is why we pointed out to Commissioner de Castro that teaching is not a practice of a profession. In other words, they can engage in any other revenue-producing, income-producing activity legitimate in nature provided it does not conflict with the objective sought in this section.

MR. FOZ: But as the provision is worded there is practically no other activity from which they would derive additional income because the provision prohibits one to "practice any profession, participate directly or indirectly in any business." I cannot see any other activity from which a lowly chief of office getting, let us say, P1,500 a month with a family of five can possibly derive income that would sustain himself and his family.

MR. REGALADO: This does not preclude the members of their families from engaging in business. It is a personal disqualification to insure full-time attention to duties.

MR. FOZ: What will happen here is that there will be circumventions of the prohibition in view of realities.

MR. REGALADO: It is not circumvention because it is not prohibited.

MR. FOZ: Yes, but there will be circumvention somewhere because the prohibition will be against the harsh realities of modern living now. It is very difficult to comply with . . .

MR. REGALADO: If it is just a question of circumvention, we live in a world of men and not of angels.

MR. FOZ: The provision has a clause which states: "hold any other office or employment." Does this refer to a private office or a public office?

MR. REGALADO: There is a law prohibiting holding two public offices at the same time; but primarily, this is directed against the holding of a private office.

MR. FOZ: Does the Committee recall of any existing Provision of law or of the Constitution which prohibits an employee from holding another government office?

MR. REGALADO: There is the rule on incompatibility of duties of public officers.

MR. FOZ: But if there is no incompatibility, a government official or employee can hold another government office.

MR. REGALADO: There are certain prohibited offices; the prohibitions entail that they cannot hold two offices at the same time.

MR. FOZ: The last question is on the last page, page 9, about the spouse and relatives of the President. It says:

The spouse and relatives by consanguinity or affinity within the third civil degree of the President shall not be appointed as minister, deputy minister or head of bureau or office.

A relative by consanguinity or affinity within the third civil degree would include a first cousin, am I correct?

MR. REGALADO: No, Madam President, that would be within the fourth civil degree.

MR. FOZ: So, who among the relatives, for instance, would come within the third civil degree?

MR. REGALADO: The brother, the sister, and the niece or the nephew, according to the rules of civil law.

MR. FOZ: The Committee thinks, therefore, that this is sufficient prohibition insofar as preventing the President from appointing his relatives to government offices, is that correct?

MR. REGALADO: Yes, Madam President. Actually I was for following the standard rule against nepotism up to the fourth civil degree, which the Gentleman will notice is a standard norm in most statute books. However, the Committee overruled me by limiting it to the third civil degree.

MR. FOZ: So, the Committee thinks that if it is within the fourth civil degree, it would be a harsh prohibition.

MR. REGALADO: Because there might be a first cousin who is competent and acceptable to the people.

MR. FOZ: But in the same manner, a brother of the President might also be as competent.

MR. REGALADO: We have to draw a line somewhere. Why is it that the age of majority is 21 years and not 20 or 22?

MR. FOZ: Would the Committee consider an amendment to this provision. that would include government-owned or controlled corporations and their subsidiaries?

MR. REGALADO: That is on line 32 of page 8 up to the first word of line 1 on page 9. We will entertain any

proposed amendment with its justification.

MR. FOZ: Thank you, Madam President.

MR. SARMIENTO: Madam President, may I ask that Commissioner Rodrigo be recognized.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Madam President, I have a few questions.

My first question has reference to Section 8 on page 3, starting with line 28, which reads:

Whenever there is a vacancy in the office of the Vice-President during the term for which he was elected, the President shall nominate a Vice-President from among the members of the Senate and the House of Representatives who shall take office upon confirmation by a majority vote of all the members of both Houses of Congress.

My question is, in view of the fact that the Vice-President is elected by the whole country, is it not logical that the nomination or choice of his successor be limited to the Members of the Senate who are also elected nationally?

MR. REGALADO: We took this from the Twenty-Fifth Amendment of the Constitution of the United States which, as I have mentioned this morning, was ratified on February 10, 1967. It was stated in the Twenty-Fifth Amendment that the Senate and the House of Representatives should have a "say." For that matter, President Nixon appointed Gerald Ford upon the recommendation of the House. Ford was then the Republican leader in the House of Representatives.

So, we felt that the President should be given the freedom of choice not only of the legislators whom he may wish to appoint and regardless of the House to which he belongs.

MR. RODRIGO: Of course, the Committee realizes that there is a difference between the Senate of the United States and the Senate proposed in our Constitution.

MR. REGALADO: That is true, Madam President.

MR. RODRIGO: Our Senators are elected by the whole country like the Vice-President, while in the United States, two Senators are elected by every state.

MR. REGALADO: We will entertain amendments at the proper time.

MR. RODRIGO: Thank you.

My next question has reference to Section 11, line 12, which states:

Whenever a majority of all the members of the Cabinet transmit to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office . . .

In the first paragraph, the Vice-President takes over. In the second paragraph, after the President transmits his message, the President takes over unless a majority of all the members of the Cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the

President is unable to discharge the powers and duties of his office.

What happens then?

MR. REGALADO: Then the next sentence says: "Thereupon, the Congress shall decide the issue."

MR. RODRIGO: Yes, but while Congress is deciding the issue, who takes over? Does the President continue or does the Vice-President take over?

MR. REGALADO: The President continues; he reassumes . . .

MR. RODRIGO: No, not "reassume" because at this stage, he is already the one holding office. Before this, the first stage is when majority of the Cabinet members send their message to the Senate President and to the Speaker.

MR. REGALADO: That is right.

MR. RODRIGO: After that, the Vice-President takes over. Then, the second stage is: the President sends a message. He says, "No, I am all right. I jog every morning."

MR. REGALADO: He shall resume the powers and duties of the office.

MR. RODRIGO: So, he assumes the powers. Then the Cabinet again sends a message, "No, he is sick."

MR. REGALADO: In the meantime, the President continues. In other words, he shall resume powers and duties and shall continue to do so unless a majority of the Cabinet members transmit a written declaration and until Congress decides on the issue.

MR. RODRIGO: Why is it then that at the end of the paragraph on pages 5 and 6, it is stated. and I quote:

If the Congress . . within twenty-one days after it is required to assemble, determines by two-thirds vote of both Houses of Congress that the President is unable to discharge the powers and duties of his office, the Vice-President shall continue to discharge the same as Acting President . . .

This means that the Vice-President is the one in office. Then the provision continues: ". . . otherwise the President shall resume the powers and duties of his office." This means he was not the one holding the office.

MR. REGALADO: That can be replaced with the word "continue." The Vice-President shall then discharge the same as acting President. That is the purpose.

MR. RODRIGO: What is the intention of the Committee? Let us go over it again. The first step is when the Cabinet sends the message.

MR. REGALADO: No, the very first step is when the President himself informs . . .

MR. RODRIGO: Yes, that is the first step. There is no controversy there. Then the Cabinet sends the message; the Vice-President takes over. The President sends the message and he takes over. The Cabinet again sends the message. Does the President continue?

MR. REGALADO: When the Cabinet sends the message, the President in the meantime shall continue while Congress decides the issue.

MR. RODRIGO: So, that is the intention?

MR. REGALADO: Yes, Madam President. If the Congress decides in favor of the Vice-President, then the Vice-President shall take over to discharge the duties.

MR. RODRIGO: On page 5, lines 21 to 23. it is stated:

. . . unless a majority of all the members of the Cabinet transmits within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration . . .

If the five days elapsed, what happens? Can the Cabinet still send the message?

MR. REGALADO: If the Cabinet members do not question the certification of the President that he is no longer unable, that means they agree with him.

MR. RODRIGO: But let us say that it takes the Cabinet six days to find out if the President is telling the truth or not, so on the sixth day they transmit their message.

MR. REGALADO: They should act within the period. In the Twenty-Fifth Amendment to the United States Constitution, it is four days. I suggested five days because we do not have the same transportation and communication facilities.

MR. RODRIGO: Does this mean to say that after the lapse of five days, the Cabinet may no longer send the message?

MR. REGALADO: In other words, the Cabinet impliedly acquiesces with the President's declaration.

MR. RODRIGO: Let us say the Cabinet not only implies but agrees that the President is capable. The five days lapsed. Then after 15 days the President gets seriously ill; may the Cabinet again send a message?

MR. REGALADO: Then we start the process all over again.

MR. RODRIGO: Even after the lapse of five days?

MR. REGALADO: Yes, because this is a new supervening and subsequent fact.

MR. RODRIGO: Why place the five-day limit? That can be confusing. Let us say on the seventh day, there was a relapse. So, the five-day period had already elapsed. May the Cabinet still send a message so the Vice-President can take over?

MR. REGALADO: The process starts all over again because there was that supervening fact that the President was capable. So, why should we deprive him of his office?

MR. RODRIGO: In spite of the fact that the five-day period had lapsed?

MR. REGALADO: Yes, because that was the five-day period within which they should have objected to the President's declaration.

MR. RODRIGO: Yes.

MR. REGALADO: And since they did not object thereto, they agreed that he was already capable, as in fact he was capable. So, in the meantime, they could not deprive him of the power to discharge the functions of his duties. But when on the seventh or eighth day the President gets sick, in other words he is really unable to discharge his duties, then finding that he is unable to discharge his duties they can again ask for the declaration and transmit it to the Speaker and the Senate President.

MR. RODRIGO: And nobody can say that they cannot send the declaration anymore because five days have lapsed.

MR. REGALADO: No, it is not so.

MR. RODRIGO: Is it necessary to provide this period of five days which can lead to confusion?

FR. BERNAS: If they give the declaration within the five-day period, then their message is not automatically effective: it has to be reviewed by the Congress.

MR. RODRIGO: Yes.

FR. BERNAS: But if they give it after the five-day period because there is a new ailment, then we start the process again and the Vice-President can take over right away.

MR. RODRIGO: So, if the Cabinet want the Vice- President to take over immediately, they might as well allow the five days to lapse and start all over again on the seventh day. That can be done.

FR. BERNAS: It can be done, as we can see although we hope this will not happen.

MR. RODRIGO: Thank you.

MR. SARMIENTO: Madam President, may I ask that Commissioner Bacani be recognized.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: I have a few questions for the Committee, Madam President. The first one is on Section 4, page 2, lines 5 and 6. We have here a substitute resolution which was already adopted. I am wondering whether the Committee took account of the approved amendment that there should be no reelection whatsoever.

MR. REGALADO: Is the Commissioner referring to. . .

BISHOP BACANI: "He shall be disqualified from immediate reelection."

MR. REGALADO: This morning the Committee announced that that provision should be considered deleted because of the proceedings the other day in the Legislative Committee.

BISHOP BACANI: Thank you.

MR. REGALADO: The word "immediate" should be deleted because that was placed before we decided on its elimination the other day.

BISHOP BACANI: Thank you very much.

Let us go to Section 15, page 7, lines 4 to 8. The provision states:

The Congress, by a vote of at least a majority of all its members in regular or special session, may revoke such proclamation or suspension, or extend the same if the invasion or rebellion shall persist and public safety requires it.

So, it will be the Senate which extends the suspension of the writ, while it is the President who declares it with the concurrence of the Congress. Suppose the President does not agree with the extension, what happens?

MR. REGALADO: Incidentally, we should first go to the basic premise on line 2. This morning Commissioner Colayco pointed out what appeared to be an oversight. The lines should read: ". . . with the concurrence of at least a majority of all the members of EACH HOUSE OF CONGRESS." That is the way it should be worded.

BISHOP BACANI: Yes. My question is. suppose they decide to extend the suspension of the writ?

MR. REGALADO: Commissioner Bernas would like to answer that.

FR. BERNAS: It has no effect because the imposition of martial law means presidential assumption of

extraordinary powers. So, if he does not want to assume the extraordinary powers, it has no effect.

BISHOP BACANI: Thank you very much.

Finally, Section 19 on page 9, lines 3 to 6, states:

The spouse and relatives by consanguinity or affinity within the third civil degree of the President shall not be appointed as minister, deputy minister or head of bureau or office.

I remember that the Article on the Civil Service Commission provides for exceptions in the case of policy determining, highly technical or primarily confidential positions. Does the Gentleman not want to provide here for the same exceptions with respect to the President so that the President will have more leeway?

MR. REGALADO: We feel that the powers of the Civil Service Commission would not be at par with the powers vested in the President. We would like to be a little bit more strict because of the vast cornucopia of powers of the President.

BISHOP BACANI: But suppose it is only the head of an office, would the Gentleman accept a greater leniency in that regard?

MR. REGALADO: In the first place, as Commissioner Bernas has just noted, we cannot conceive of the position of minister, deputy minister, or head of a bureau or office that is primarily confidential. The very nature of the position shows that it is not primarily confidential.

BISHOP BACANI: Thank you.

MR. SARMIENTO: Madam President, may I ask that Commissioner Villacorta be recognized?

THE PRESIDENT: Commissioner Villacorta is recognized.

MR. VILLACORTA: Madam President, may I ask the Committee some questions?

The first sentence of Section 5, page 2, provides:

If, at the time fixed for the beginning of his term, the President-elect shall have died, the Vice-President-elect shall become President.

My question refers to the situation in which the President-elect is incapacitated and cannot assume office at the time fixed for the beginning of his term. Shall the Vice-President-elect merely assume office until the President-elect is able to assume office and qualify, or will the Vice-President-elect become President? In the latter case, would it be possible to amend this section by inserting on line 27 after the word "died" and before the comma (,) the words OR INCAPACITATED TO ASSUME OFFICE?

MR. REGALADO: That presupposes that the President-elect shall have died which, in a manner of speaking, is a permanent incapacity and, therefore, the Vice-President-elect shall become President. But if the President-elect is merely temporarily incapacitated, that is without prejudice to his recovery, of course, then the Vice-President may, in the meantime, act as President.

MR. VILLACORTA: Yes, but a President-elect can be permanently incapacitated without having died.

MR. MAAMBONG: Regarding the incapacity of the President, I think we should make it clear considering that the provision the Gentleman is referring to is Section 5.

MR. VILLACORTA: That is right.

MR. MAAMBONG: Section 5 should be read together with Section 9. But just for the sake of clarity, there are several points to consider when it comes to election. The first point of reference, of course, is the election by the people. The second point of reference would be the canvass of the votes and proclamation. The third point of reference would be the qualification wherein the person who has been proclaimed takes his oath. And the fourth point of reference will be the beginning of the term which is the assumption of office.

If the Gentleman will go over the provision of Section 5 and Section 9, whenever the President is permanently disabled, either before he is proclaimed or even after he has qualified and has begun his term of office, if it is a permanent disability or death, the rule of thumb is always that the Vice-President becomes President. So, in all these cases, whether he has been proclaimed, he has taken his oath, or he has actually assumed office, as long as the incapacity is permanent or it is outright death, the Vice-President becomes President. The only instance where the Vice-President shall act as President is in the case where the President is not elected; he is elected but not proclaimed; he is proclaimed but he fails to qualify, or he qualifies but did not assume office. In all these instances, the Vice-President shall only act as President for the simple reason that there is always the possibility that the President who has been elected but has not yet been proclaimed might be proclaimed; or if he has been proclaimed but has not yet qualified, might qualify; or if he has qualified but has not yet assumed office, will assume office. So, in these instances, naturally, the Vice-President will act as President.

I hope that is clear, Madam President.

MR. REGALADO: Perhaps at the proper time, we may consider a possible amendment to line 27 wherein the President died or has been definitively established to be permanently incapacitated.

MR. VILLACORTA: So, perhaps we could present that as an amendment, Madam President.

MR. MAAMBONG: Incidentally, there is the possibility that we will realign the sections — Sections 5 and 9 — so that we will not be confused. The Gentleman will notice that I mention Section 9 in relation to Section 5. These sections should be sequential in the sense that Section 9 should actually follow Section 5. We will do that later on.

MR. REGALADO: That is what happens when we try to beat the deadline, like newspapermen.

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

I am not sure whether Commissioner Suarez has expressed his point. On page 2, the fourth paragraph of Section 4 provides:

The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.

May I seek clarification as to whether or not the matter of determining the outcome of the contests relating to the election returns and qualifications of the President or Vice-President is purely a political matter and, therefore, should not be left entirely to the judiciary. Will the above-quoted provision not impinge on the doctrine of separation of powers between the executive and the judicial departments of the government?

MR. REGALADO: No, I really do not feel that would be a problem. This is a new provision incidentally. It was not in the 1935 Constitution nor in the 1973 Constitution.

MR. VILLACORTA: That is right.

MR. REGALADO: We feel that it will not be an intrusion into the separation of powers guaranteed to the judiciary because this is strictly an adversarial and judicial proceeding.

MR. VILLACORTA: May I know the rationale of the Committee because this supersedes Republic Act 7950

which provides for the Presidential Electoral Tribunal?

FR. BERNAS: Precisely, this is necessary. Election contests are, by their nature, judicial. Therefore, they are cognizable only by courts. If, for instance, we did not have a constitutional provision on an electoral tribunal for the Senate or an electoral tribunal for the House, normally, as composed, that cannot be given jurisdiction over contests.

So, the background of this is really the case of Roxas vs. Lopez. The Gentleman will remember that in that election, Lopez was declared winner. He filed a protest before the Supreme Court because there was a republic act which created the Supreme Court as the Presidential Electoral Tribunal. The question in this case was whether new powers could be given the Supreme Court by law. In effect, the conflict was actually whether there was an attempt to create two Supreme Courts and the answer of the Supreme Court was: "No, this did not involve the creation of two Supreme Courts, but precisely we are giving new jurisdiction to the Supreme Court, as it is allowed by the Constitution. Congress may allocate various jurisdictions."

Before the passage of that republic act, in case there was any contest between two presidential candidates or two vice-presidential candidates, no one had jurisdiction over it. So, it became necessary to create a Presidential Electoral Tribunal. What we have done is to constitutionalize what was statutory but it is not an infringement on the separation of powers because the power being given to the Supreme Court here is a judicial power.

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

On page 6, Section 14 says: "The President shall have control of all the executive departments, bureaus and offices." I know this was the wording in both the 1935 and the 1973 Constitutions. In the 1973 Constitution, there were two conflicting provisions. Article IX, Section 9 says that the Prime Minister shall have supervision over all ministries, while Article VII, Section 10 says that the President shall have control of the ministries. My question has to do with the word "control." Our experience in the past was that the then President had absolute control over the actions and decisions of people in the executive department's bureaus and offices. Even their extra-official actions were infringed upon by the then President. I wonder if the Committee would consider using another term because "control" smacks of tyrannical control. Could we use a softer term or a more objective term such as ADMINISTER or SUPERVISE? "The President shall ADMINISTER all the executive departments."

FR. BERNAS: Madam President, this is based on the principle that under a presidential form of government, there is only one executive and it is the President. And the power of control in jurisprudence is acquired very definitely. It means the authority of a superior to substitute his judgment for the judgment of an inferior. It has reference only to the exercise of judgment. It has nothing to do with discipline but just the exercise of discretion. The discretion of the superior who has power of control can always be substituted for that exercise of jurisdiction of the inferior. This is to be distinguished from the power of general supervision which is nothing more than the power to see to it that the inferior follows the law. The power of general supervision does not allow the superior to substitute his judgment. Just to give an example, there is a power of general supervision over local governments. Let us suppose now that the local legislative body passes a law. The President does not like it. Can he substitute his judgment for the judgment of the local government? No. All he can do is say: "Well, you did not do it according to law and you have to do something about it." But if everything was done according to law, he cannot substitute his judgment for that of the inferior. But in the case of those covered by the first sentence they all belong to the executive department and under the principle that there is only one executive, this executive has the final say on the exercise of judgment.

MR. VILLACORTA: Thank you, Madam President.

Just two more short questions. Section IS, lines 26 to 28, states:

The President shall be the commander-in-chief of all the armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces . . .

I wonder if it would be better to transfer the phrase "whenever it becomes necessary" after the phrase "armed forces," so that it would read: "The President shall be the commander-in-chief of all the armed forces of the Philippines and HE MAY CALL OUT SUCH ARMED FORCES WHENEVER IT BECOMES NECESSARY to prevent or suppress lawless violence, invasion or rebellion." My point here is that the calling out of the Armed Forces will be limited only to the necessity of preventing or suppressing lawless violence, invasion or rebellion. As it is situated now, the phrase "whenever it becomes necessary" becomes too discretionary on the part of the President. And we know that in the past, it had been abused because the perception and judgment as to necessity was completely left to the discretion of the President. Whereas if it is placed in the manner that I am suggesting, the necessity would only pertain to suppression and prevention of lawless violence, invasion or rebellion. May I know the reaction of the Committee to that observation?

MR. REGALADO: We feel that substantially there would be no difference because that is the qualificative basis for his calling out the Armed Forces. It is, of course, a matter of style and it does not violate the rules on syntax, but the idea is still there. These are taken from the provisions of the 1935 Constitution, Section 10 (2) and also the 1973 Constitution, as amended, under Section 11 thereof.

MR. VILLACORTA: I see. Therefore, the Committee does not see any difference wherever the phrase "whenever it becomes necessary" is placed.

FR. BERNAS: It will not make any difference. I may add that there is a graduated power of the President as Commander-in-Chief. First, he can call out such Armed Forces as may be necessary to suppress lawless violence; then he can suspend the privilege of the writ of habeas corpus; then he can impose martial law. This is a graduated sequence.

When he judges that it is necessary to impose martial law or suspend the privilege of the writ of habeas corpus, his judgment is subject to review. We are making it subject to review by the Supreme Court and subject to concurrence by the National Assembly. But when he exercises this lesser power of calling on the Armed Forces, when he says it is necessary, it is my opinion that his judgment cannot be reviewed by anybody.

MR. VILLACORTA: I see. Thank you, Madam President.

One last question, Madam President. On page 9, Section 19, lines 3 to 4 states: "The spouse and relatives by consanguinity or affinity within the third civil degree of the President . . ." Could we add OR THE VICE-PRESIDENT since the Vice-President could take over the position of the President? Should we not apply this prohibition to the Vice-President?

MR. REGALADO: We considered that in the Committee and we felt that it should not apply to the Vice-President because he has no appointing power unless of course, he is acting as President. But then, there are safeguards insofar as an acting President, in the person of the Vice-President, is concerned.

MR. VILLACORTA: It is true that the Vice-President has no appointing power, but does the Gentleman not think that the President should be prevented from appointing relatives of his or her Vice-President as minister, deputy minister or as bureau head?

MR. REGALADO: We could possibly consider that but I think it would be extending the ban a little too far, and depriving the country of services of people who by the accident of relationship, happen to be within the restricted

ambit.

MR. VILLACORTA: I was just anticipating the possibility that this Vice-President might be President one day, and the same argument that the Gentleman posited in defense of this prohibition as applied to the President should probably also apply to the Vice-President who could be a President. Nonetheless, thank you very much.

MR. REGALADO: We will consider that at the proper time, but we will try to find a remedy to quell the Gentleman's apprehensions.

MR. SARMIENTO: Madam President, may I ask that Commissioner Garcia be recognized.

THE PRESIDENT: Before the Chair does that, we wish to acknowledge the presence in the gallery of high school students from Maryknoll, and also the students of a political science class of the University of the Philippines.

Commissioner Garcia is recognized.

MR. GARCIA: Thank you, Madam President.

I would simply like to make two brief comments regarding Sections 18 and 20. I think we have here two instances where we can democratize the exercise of political power by the President with regard to the responsibility of the President to contract or guarantee foreign loans on behalf of the Republic, and also the right of the President to make effective international agreements or treaties. Has the Committee considered the possibility of creating a mechanism for popular consultations with regard to this specific power to contract foreign loans and also make effective international agreements? Our experience in the past shows that, for example, in the friendship and amity treaty with Japan which included foreign loans, the social costs were passed on to the greater number when the IMF required austerity measures. So, very often, when the social costs are passed on to the majority, they do not have a way of responding to this order of priorities; they would consider that those loans are not to their benefit. But if a system of popular consultation were instituted, it would in fact help to democratize the power of the President in this regard. I would like to ask the Gentleman whether it has been discussed in the Committee.

MR. REGALADO: It has not been discussed but we will entertain a proposal, a configuration of that system of popular consultation.

MR. GARCIA: Yes. With regard to Sections 18 and 20, I was thinking of providing a direct and regular mechanism of popular consultation so that the people can have an input in the decision-making regarding these two very critical issues of foreign loans and international agreements.

MR. REGALADO: How would it be done? Would it be nationwide in the nature of a referendum?

MR. GARCIA: I thought the presidential visits to Cagayan de Oro or Davao were significant in that the President was actually face to face with the people, listening to their different ideas. Secondly, after a wide consultation, perhaps some kind of referendum could also be instituted. So, I think some thought could be given to this.

MR. REGALADO: Yes, we are open to suggestions. But we cannot conceive of a mechanism whereby this can be institutionalized. For instance, we may, over a period of one year, have to seek five foreign loans which were earlier intended to be taken in one sitting. We could have a referendum or something.

MR. GARCIA: I was thinking of a general direction. The direct experience I had which led me to think along this line was the public consultation in Legaspi where the fishermen spoke against the treaty of friendship with Japan. I remember also in Capiz where the fishermen told us that trawlers were coming in and they felt that if they had a say regarding the friendship treaty, these rights of fishermen regarding aquatic reforms could have benefited them largely.

MR. REGALADO: I am completely sympathetic to the objective because after all it would be the people who will ultimately have to pay for these loans. But does the Gentleman not think that if the matter were brought directly to the attention of the Cabinet minister concerned, that could also eventually end in the Office of the President, properly articulated with the proper in-depth research and the corresponding statistical support?

MR. GARCIA: Yes, I think that would be a very good contribution. But I would still feel that if we could institutionalize a mechanism of popular consultation, it would genuinely democratize the exercise of political power by the Chief Executive. I think it will provide a built-in mechanism to ensure that presidential prerogatives are constantly within the constraints of public good.

FR. BERNAS: Correct me if I am wrong, the friendship treaty. I guess, was under President Marcos during the martial law period.

MR. GARCIA: Exactly.

FR. BERNAS: And it was entered into without the safeguards we have here.

MR. GARCIA: Yes, that is it.

FR. BERNAS: Let us consider that a treaty is an international agreement and shall not be valid and effective unless concurred in by at least two-thirds of all the members of the legislature. That by itself is a safeguard. This may be modified since the House of Representatives is the more popular body, and one way of institutionalizing it is to give a role to the House of Representatives which is more directly in touch with the people.

MR. GARCIA: I think that would be a good safeguard. But still I would subscribe for a far more direct mechanism of popular consultation which I think is built-in in the Office of the President. We will make the President keep in touch far more regularly and directly. The other point I wanted to make is regarding the Monetary Board. It was mentioned by Commissioner Villegas in his earlier remark regarding this question of contracting foreign loans that the Monetary Board will be more and more in the hands of the private sector with the participation of private interest. I consider important for the Monetary Board the character of independence as well as a social character in order to safeguard public interest. I was wondering whether the Committee on the National Economy and Patrimony, when they were suggesting private interest to be part of the Monetary Board, had in mind who would compose the Board, together with presidential appointments like the Minister of Finance and the Central Bank Governor.

MR. REGALADO: We can ask Commissioner Villegas to explain to us the present membership.

THE PRESIDENT: Commissioner Villegas is recognized.

MR. VILLEGAS: Madam President, the situation can still be worked out by the legislature so we are leaving it up to the legislature. But when we talk about private interest, they could be either full-time members of the Board taken from the private sector and the private sector can mean the business sector, labor sector, private foundations — so anything non-governmental. It could be from private volunteer organizations. During the transition, the members from the private sector could be the majority chosen from any one of these sectors referred to and qualified as private. But eventually the ideal situation would be for all of them to really be full-time members of the Board, and the moment they are full-time, they become government officials. That is going to be a problem that the legislature will have to work on. As I said, in countries like the United States, the Federal Reserve System is completely independent of the President and the executive branch, but they are full-time officials of the government. So that is also one way of keeping its independence — to have a board made up of full-time members chosen in a way that will be designated by the legislature.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: May I ask one question of Commissioner Villegas.

THE PRESIDENT: Commissioner Garcia has still the floor.

MR. DE CASTRO: Thank you.

THE PRESIDENT: Commissioner Garcia may proceed.

MR. GARCIA: My concern in asking the question is simply this, that I did not wish to confine private interest to banking interests alone.

MR. VILLEGAS: Yes, it is very clear.

MR. GARCIA: In other words, when we say that it is private, I see the importance of the independent character of the board, but at the same time it must have its social character and, finally, its public dimension, so that if we can insure that it can be opened to the diverse social sectors of our society, especially those who compose the majority, then I believe that that will protect the interest we wish to see protected.

MR. VILLEGAS: Yes, it always has to be stressed that the word "private" is not synonymous with business. Private is anything non-governmental.

MR. GARCIA: Thank you very much.

THE PRESIDENT: Is Commissioner Garcia through with the Committee or does he still have other questions?

MR. GARCIA: Madam President, I am not really pleased with the way it was presented.

THE PRESIDENT: Please continue the interpellation.

MR. GARCIA: With regard to foreign loans, I hope we can be assured that the Monetary Board will exercise enough independence, and be guardians of public interests so that no longer will we have governments that will contract loans regardless of social costs. The costs that are imposed, especially upon negotiation with the IMF for austerity measures that have to be shouldered by the great majority, will not benefit that social sector. So, I am looking for mechanisms that will protect that social group. That is simply the concern I wanted to express before the Committee.

Thank you very much.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Will the honorable Commissioner Villegas answer just one question?

MR. VILLEGAS: Gladly, Madam President.

MR. DE CASTRO: Thank you.

Who appoints the members of the private sector to the Monetary Board?

MR. VILLEGAS: We have not identified the mechanism; we will leave it up to the legislature.

MR. DE CASTRO: Does the Gentleman mean that the Congress will be the one to appoint them?

MR. VILLEGAS: No, Congress will pass a law specifying how they will be appointed. We did not want to go into the mechanics of the appointment.

MR. DE CASTRO: This is precisely my intent, Madam President, and I have a resolution providing that foreign loans should bear the concurrence of Congress so that there will be a check and balance on this matter.

THE PRESIDENT: Yes, that question can be asked of the Committee when the time of Commissioner de Castro comes up.

Are there other speakers in the list?

MR. SARMIENTO: Madam President, we have six more interpellators; thereafter we will close the period of interpellations.

THE PRESIDENT: May we have the next speaker.

MR. SARMIENTO: Madam President, may I ask that Commissioner de los Reyes be recognized.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: Madam President, may I ask some questions of the Committee.

One of the significant changes in Section 15 is that phrase "imminent danger thereof" was deleted, including the word "insurrection." I can understand the reason for the deletion of "insurrection" since the word is of Spanish origin and no longer applies, but I would like to be clarified as to the reason for the deletion of the phrase "or imminent danger thereof" in justifying the imposition of martial law and the suspension of the privilege of the writ of habeas corpus.

MR. REGALADO: The Committee considered that, and the Gentleman will recall that in the 1935 Constitution the phrase "imminent danger thereof" did not appear in the Bill of Rights. However, the framers of the 1973 Constitution wanted to have a strong President and they added the phrase "imminent danger thereof" in the provisions on the Commander-in Chief which in turn was taken, I think, from the Philippine Bill of 1902 which granted that power to the then military governor. I suppose they considered the insurrectos a serious threat to their attempt to colonize the Philippines, but recent events have shown that the phrase "imminent danger thereof" is fraught with possibilities of abuse. Where the President states that there is an imminent danger of rebellion, it appears that he would have to rely on his word on that because he could always say that this is the military intelligence report. The military intelligence report consists of generally classified documents which, even with the Supreme Court trying to look into their factual basis under the present proposed Constitution, can still be thwarted because the Supreme Court cannot just disregard a so-called classified, highly reliable intelligence report coming from different intelligence agencies which for all we know could easily be contrived in the hands of a scheming President. So, in choosing between two evils, we felt that this was the lesser evil — the elimination of the phrase "imminent danger thereof."

FR. BERNAS: Let me just add that when we only have imminent danger, the matter can be handled by the first sentence: "The President . . . may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion." So we feel that that is sufficient for handling imminent danger.

MR. DE LOS REYES: So actually, if a President feels that there is imminent danger of invasion or rebellion, instead of imposing martial law or suspending the writ of habeas corpus, he must necessarily have to call the Armed Forces of the Philippines as their Commander-in-Chief. Is that the idea?

MR. REGALADO: That does not require any concurrence by the legislature nor is it subject to judicial review.

MR. DE LOS REYES: But is not the suspension of the privilege of the writ of habeas corpus and the imposition of martial law more of the preparatory steps before the President should call the Armed Forces of the Philippines as Commander-in-Chief? In other words, before calling the Armed Forces of the Philippines should he not take the preparatory step of suspending the privilege of the writ of habeas corpus or imposing martial law?

MR. REGALADO: As a matter of fact, the former President outlined the steps and we have put them here as follows: (1) When it is only imminent danger, although, of course, he did not use that term, he can already call out the Armed Forces just to prevent or suppress violence; (2) if the situation has worsened and there is a need for stronger measures, then aside from merely calling out the Armed Forces he goes into the suspension of the privilege of the writ; (3) but if both measures calling out the Armed Forces and the suspension of the privilege of the writ still prove unavailing in the face of developments and exacerbated situation, this time he goes to the ultimate which would be martial law.

MR. DE LOS REYES: As I see it now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee mean that there should be actual shooting or actual attack on the legislature or Malacañang, for example? Let us take for example a contemporary event — this Manila Hotel incident everybody knows what happened. Would the Committee consider that an actual act of rebellion?

MR. REGALADO: If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, that presupposes an actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135. I am not trying to pose as an expert about this rebellion that took place in the Manila Hotel, because what I know about it is what I only read in the papers. I do not know whether we can consider that there was really an armed public uprising. Frankly, I have my doubts on that because we were not privy to the investigations conducted there.

Commissioner Bernas would like to add something.

FR. BERNAS: Besides, it is not enough that there is actual rebellion. Even if we will suppose for instance that the Manila Hotel incident was an actual rebellion, that by itself would not justify the imposition of martial law or the suspension of the privilege of the writ because the Constitution further says: "when the public safety requires it." So, even if there is a rebellion but the rebellion can be handled and public safety can be protected without imposing martial law or suspending the privilege of the writ, the President need not. Therefore, even if we consider that a rebellion, clearly, it was something which did not call for imposition of martial law.

MR. DE LOS REYES: I ask that question because I think modern rebellion can be carried out nowadays in a more sophisticated manner because of the advance of technology, mass media and others. Let us consider this for example: There is an obvious synchronized or orchestrated strike in all industrial firms, then there is a strike of drivers so that employees and students cannot attend school nor go to their places of work, practically paralyzing the government. Then in some remote barrios, there are ambushes by so-called subversives, so that the scene is that there is an orchestrated attempt to destabilize the government and ultimately supplant the constitutional government.

Would the Committee call that an actual rebellion, or is it an imminent rebellion?

MR. REGALADO: At the early stages where there was just an attempt to paralyze the government or some sporadic incidents in other areas but without armed public uprising, that would only amount to sedition under Article 138, or it can only be considered a tumultuous disturbance.

MR. DE LOS REYES: The public uprisings are not concentrated in one place which used to be the concept of rebellion before.

MR. REGALADO: No.

MR. DE LOS REYES: But the public uprisings consist of isolated attacks in several places — for example in one camp here; another in the province of Quezon; and then in another camp in Laguna; no attack in Malacañang — but there is complete paralysis of the industry in the whole country. If we place these things together the impression is clear — that there is an attempt to destabilize the government in order to supplant it with a new government.

MR. REGALADO: It becomes a matter of factual appreciation and evaluation. The magnitude is to be taken into account when we talk about tumultuous disturbance, to sedition, then graduating to rebellion. All these things are variances of magnitude and scope. So, the President determines, based on the circumstances, if there is presence of a rebellion.

MR. DE LOS REYES: With the concurrence of Congress.

MR. REGALADO: And another is, if there is publicity involved, not only the isolated situations. If they conclude that there is really an armed public uprising although not all over the country, not only to destabilize but to overthrow the government, that would already be considered within the ambit of rebellion. If the President considers it, it is not yet necessary to suspend the privilege of the writ. It is not necessary to declare martial law because he can still resort to the lesser remedy of just calling out the Armed Forces for the purpose of preventing or suppressing lawlessness or rebellion.

MR. DE LOS REYES: And then here is the qualifying phrase: "with the concurrence of at least a majority of all the Members of the National Assembly." I suppose the Members of the National Assembly would hold session in the place where they should hold it, like the Batasang Pambansa. But it could be a very real possibility that the Batasang Pambansa will be blocked by all these demonstrators. If they will not allow any of the Members of the Congress to go to the Batasan, how can we secure the concurrence of Congress?

MR. REGALADO: Let me point out that the Committee has already corrected this. Line 2 should now read: "the members of EACH HOUSE of the Congress "

With respect to the statement of the Gentleman regarding the Batasan being blockaded by people, I am reminded of a question asked of me by Justice Concepcion when I was in the fourth year political law review. He said, "You are talking about Congress. where is Congress?" So I said. "The legislative building over there." "Suppose," he said, "that is destroyed by fire, earthquake or any other calamity, where is Congress"? Then I realized that when I thought I knew, I did not really know because the Congress as projected here is any place wherein the Members of the House of Representatives and the Senate lawfully congregate, assemble, deliberate and hold sessions, whether it is in the Batasan building or under a grove of mango trees.

MR. DE LOS REYES: Anywhere, in other words. I would like to direct this last question to Commissioner Maambong.

Commissioner Maambong stated earlier that it is still the ministerial duty of the National Assembly to canvass the votes and examine the certificate of canvass. In other words, the National Assembly has no alternative but to proceed with the certificate of canvass without necessarily being bound by the alleged authenticity of the canvass. Is that correct?

MR. MAAMBONG: That is correct. That is what I said.

MR. DE LOS REYES: The Commissioner also said "upon determination of the authenticity and due execution thereof in the manner provided by law." The phrase "manner provided by law" does not only refer to statutory

law, but to jurisprudence; in other words, stare decisis or decisions of the Supreme Court on the matter. Is that correct?

MR. MAAMBONG: That is correct.

MR. DE LOS REYES: Thank you.

Although I have other points, I will just limit my points to these two and reserve other matters during the presentation of amendments.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: May I just ask one follow-up question with respect to the interpellation of Commissioner de los Reyes?

THE PRESIDENT: The Gentleman may proceed.

MR. MONSOD: If I heard Commissioner de los Reyes right, he mentioned that it is a ministerial right of Congress to canvass the presidential elections, and if I also heard him right, he said that Congress has no choice but to go ahead regardless of the authenticity of the canvassing results. Is that correct?

MR. DE LOS REYES: No. I said, "without being bound." This means that the Congress still has the power to determine the genuineness and authenticity of the certificates, but the duty to canvass is there. The Congress should canvass, but with respect to the determination of the genuineness and authenticity of the certificates of canvass based on existing laws and jurisprudence. I just clarified whether it is limited to statutory laws or to the decisions of the Supreme Court or what constitutes genuine and authentic certificates.

MR. MONSOD: Madam President, if a prudent examination will show that canvassing results are not authentic, not duly executed, and do not reflect the votes because the canvassing results do not have the attached statement of votes of each polling place, what is the responsibility of the Congress?

MR. MAAMBONG: May I respond to that? In the present law that we have, we have only one copy of the certificate of canvass. According to the Omnibus Election Code and the law which mandated the holding of the special presidential election, attached to this copy of the certificate of canvass is the statement of votes. That is a legal requirement. When the board of tellers goes over the certificate of canvass and the words, figures, signatures and thumbmarks are clearly written, the question probably, Madam President, is, what will they do if there is no attachment of statement of votes? The answer to that is: The board of tellers would have to suspend the canvass and inform the Commission on Elections to produce before the body their copy of the certificate of canvass wherein the statement of votes is also attached. The board of tellers could also inform the opposition party to produce their copy of the certificate of canvass and the statement of votes attached to the same, and also inform the majority party. That would be the proper sequence of procedure, Madam President.

MR. MONSOD: Suppose the numbers in the certificate of canvass do not coincide with the attachments which are really the votes per polling place?

MR. MAAMBONG: If the figures which are the total figures appearing in the certificate of canvass will not tally with the figures that would pose quite a problem. That is precisely the reason why in the present configuration of the provision, we placed there "determination of the authenticity and due execution thereof in the manner provided by law" because to my knowledge, there is no law which gives a guideline in such a circumstance. As a matter of fact, in the actual canvass of votes of the President in the last presidential election, we did not encounter

that kind of problem. And there is no such equivalent provision in the Omnibus Election Code or in the Special Election Law for the President.

MR. MONSOD: Were there instances where the certificates of canvass after examination were shown not to have been authentic on their faces or had irregularities and the Assembly still read those certificates of canvass? I am asking now if there were instances like those, Madam President.

MR. MAAMBONG: That is a very valid question. The usual objection was that not all the members of the board of canvassers, whether by the province or city or district, signed some certificates of canvass. But that is remedied by the provision of the Omnibus Election Code which says that in case one or two members of the board of canvassers did not sign, but a majority of the membership thereof signed, then that particular certificate of canvass can be used in the tabulation. But that was the decision because there was a law. But the problem is when there is such a circumstance and there is no law covering it. That is the reason we placed here "in the manner provided by law" so that we can more or less anticipate problems of this nature.

MR. MONSOD: Commissioner de los Reyes also mentioned that in the absence of a law, jurisprudence would be taken into account. Does that in any way mean that the practice in the last Batasan canvassing of the presidential election would have any binding effect on the future?

MR. MAAMBONG: The practice adopted by the Batasang Pambansa in the last presidential election, specifically that conducted by the board of tellers composed of the members of the opposition and of the ruling party then, could not be considered to my mind, as jurisprudence. We are talking of decisions of the Supreme Court just like the decision of the Supreme Court which I mentioned earlier where the certificate of canvass or the election returns brought forward to the canvassing authority were not in the ballot box as provided by law but were instead in a jute sack. The Supreme Court said that if the election returns itself are regular on its face in spite of the fact that these were not placed in the ballot box, then the canvassing authority may proceed with the canvass.

MR. MONSOD: That would not be considered a good precedent either.

MR. MAAMBONG: As parallel authority perhaps, Madam President.

MR. MONSOD: Thank you.

MR. REGALADO: In that connection, may I add that what Commissioner de los Reyes was referring to were the decisions of the appellate courts which under the Civil Code form part of the legal system of the Philippines; although, of course, the doctrine of stare decisis does not mean blind adherence to precedents. If not applicable in the contemporaneous situation or they are not in pari materia, the distinctions could always be made.

SUSPENSION OF SESSION

MR. SARMIENTO: Madam President, we now have copies of the Article on Accountability of Public Officers, as amended.

May I move for the suspension of the session for at least three minutes for us to study this Article.

THE PRESIDENT: Are there still other interpellators?

MR. SARMIENTO: There are five more interpellators, Madam President.

THE PRESIDENT: The session is suspended.

It was 4:27 p.m.

RESUMPTION OF SESSION

At 4:57 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. SARMIENTO: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. SARMIENTO: The Commissioners have carefully studied the Article on Accountability of Public Officers; I move that we put it to a vote on Second Reading.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

RECONSIDERATION OF PROPOSED RESOLUTION NO. 456

(Article on Accountability of Public Officers)

Continuation

PERIOD OF AMENDMENTS

MS. AQUINO: Thank you. Madam President.

I am constrained to seek a reconsideration of the voting on Section 14 which included the judiciary in the prohibition of the availments of loans and guarantees from government-owned or controlled banks. There is an overwhelming reaction against the approval of the inclusion of the judiciary, without distinction, among the groups prohibited from availing of the loans and guarantees of government-owned or controlled banks.

Madam President, I am actually taking up the cudgels for the senior citizens of the Commission who, for one reason or another, have appointed me and designated me to seek reconsideration of this section. They may be a little timid about it, but just the same, I share their sentiment on this matter.

THE PRESIDENT: Is there any objection to the motion to reconsider, as submitted by Commissioner Aquino? (Silence) The Chair hears none; the motion is approved.

What is the particular amendment of Commissioner Aquino?

MS. AQUINO: The amendment would be on line 17 of the same section. After the comma (,) after the word "Congress," insert MEMBERS OF THE SUPREME COURT, delete "and" before "Members of the Constitutional Commissions," and insert AND before the words "the Ombudsman." The amended section will now read: "No loan, guaranty or other form of financial accommodation for any business purpose may be granted directly or indirectly by any government-owned or controlled bank or financial institution to the President, Vice-President, Members of the Cabinet, Members of Congress, MEMBERS OF THE SUPREME COURT, Members OF the Constitutional Commissions, AND the Ombudsman or to any firm or entity in which he has controlling interest, during his tenure."

THE PRESIDENT: What does the Committee Chairman on Accountability of Public Officers say?

MR. MONSOD: Madam President, the Committee has discussed this and the Committee accepts the proposed amendment.

THE PRESIDENT: Is there any objection to the proposed amendment inserting the words " MEMBERS OF THE SUPREME COURT" and eliminating the word "Judiciary"? (Silence) The Chair hears none; the amendment is approved.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: In the copy that is being circulated to the Members, there are some typographical and styling amendments that need to be made. We will just refer those to the Committee on Style. However, there is one phrase which, I think, was inadvertently omitted on page 5, line 21 which says: "and shall notify the complainants of the action taken."

THE PRESIDENT: Yes.

MR. MONSOD: Madam President. the amendment of Commissioner Suarez and which was accepted by the Committee is to insert between "shall" and "notify" the phrase "IN APPROPRIATE CASES."

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. MONSOD: We will leave it to the Committee on Style whether to put it before or after the word "notify," Madam President.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: I would just like to move for a reconsideration of the approval of Section 3 (3). My reconsideration will not at all affect the substance, but it is only in keeping with the exact formulation of the Rules of the House of Representatives of the United States regarding impeachment.

I am proposing, Madam President, without doing damage to any of this provision, that on page 2, Section 3 (3), from lines 17 to 18, we delete the words which read: "to initiate impeachment proceedings" and the comma (,) and insert on line 19 after the word "resolution" the phrase WITH THE ARTICLES, and then capitalize the letter "i" in "impeachment" and replace the word "by" with OF, so that the whole section will now read: "A vote of at least one-third of all the Members of the House shall be necessary either to affirm a resolution WITH THE ARTICLES of Impeachment OF the Committee or to override its contrary resolution. The vote of each Member shall be recorded."

I already mentioned earlier yesterday that the initiation, as far as the House of Representatives of the United States is concerned, really starts from the filing of the verified complaint and every resolution to impeach always carries with it the Articles of Impeachment. As a matter of fact, the words "Articles of Impeachment" are mentioned on line 25 in the case of the direct filing of a verified complaint of one-third of all the Members of the House. I will mention again, Madam President, that my amendment will not vary the substance in any way. It is only in keeping with the uniform procedure of the House of Representatives of the United States Congress.

Thank you. Madam President.

THE PRESIDENT: May we hear from Commissioners Davide and Regalado because I understand they are co-authors of this section.

MR. MONSOD: Madam President may we have one minute to confer with Commissioner Regalado?

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended.

It was 5:04 p.m.

RESUMPTION OF SESSION

At 5:06 p.m., the session is resumed.

THE PRESIDENT: The session is resumed.

Commissioner Maambong is recognized.

MR. MAAMBONG: Madam President, I have conferred with the principal proponent of this provision on impeachment, Commissioner Regalado, in collaboration with the Chairman of the Committee on Accountability of Public Officers, and they have no objection to the amendment. I will just make it of record, Madam President, that with regard to the last phrase of line 20 which says: "to override its contrary resolution," whenever the body will override the resolution of impeachment of the Committee, it is understood that the body itself will prepare the Article of Impeachment. That is the only clarification which Commissioner Regalado and the Chairman of the Committee wanted me to put on record.

Thank you. Madam President.

THE PRESIDENT: Let us first submit to the body the motion of Commissioner Maambong to reconsider the approval of Section 3 (3).

Is there any objection? (Silence) The Chair hears none; the motion is approved.

The proposed amendment which has been submitted by Commissioner Maambong was clarified and has been accepted by the Committee on Accountability of Public Officers.

MR. MAAMBONG: Madam President, may I read again the whole section?

THE PRESIDENT: Please proceed.

MR. MAAMBONG: As amended, the whole Section 3 (3) will read: "A vote of at least one-third of all the Members of the House shall be necessary either to affirm a resolution WITH THE ARTICLES of Impeachment OF the Committee or to override its contrary resolution. The vote of each Member shall be recorded."

THE PRESIDENT: Is there any objection to this proposed amendment? (Silence) The Chair hear none; the amendment is approved.

MR. SARMIENTO: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. SARMIENTO: May I ask that Commissioner Tingson be recognized.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Madam President. some of us have exercised self-abnegation in making speeches because of time constraint. I have written a speech on why the Sandiganbayan and the Tanodbayan should not be abolished. May I just submit it for insertion in the Record? [*]

THE PRESIDENT: Thank you.

MR. SARMIENTO: May I ask that Commissioner Bennagen be the last speaker before we vote on Second Reading?

THE PRESIDENT: Commissioner Bennagen is recognized.

MR. BENNAGEN: Thank you, Madam President.

I do not know whether this is in order, but for the sake of the record, I want to read part of the debates that would have been included in yesterday's proceedings were it not for the fact that the amendment I shall now refer to was really a consolidated amendment of Commissioners Jamir, Sarmiento, Natividad and myself. I feel very strongly about this because we of the Philippine Social Science Council have been so deeply involved in the effort to link up the Council with the efforts to arrive at a modicum of ethics and efficiency in the public service. For sometime, we were involved in efforts to address ourselves to government, but our experiences proved that government, particularly the last Batasang Pambansa, was unresponsive to the efforts of the social science council. To illustrate, in 1984, we launched a public forum series, trying to set up some kind of working relationship between the Philippine Social Science Council and the Batasang Pambansa through a monthly forum. In the first forum, we had something like eight Members of the Batasang Pambansa; however, we finally ended up with only one participant from the Batasang Pambansa. Because of this rather traumatic experience, we thought that we should direct our efforts to the people's organizations themselves. For this reason, we set up the Resources for the People's Program to allow social scientists to work directly with the people's organizations as well as advocates of people's organizations.

It is one of our main concerns that those in the public service should indeed maintain high standards of ethics and efficiency. For this reason, I just want to point out in relation to Section 12 (7), which has something to do with efforts to determine and make recommendations for the observance of high standards of ethics and efficiency, the root causes of inefficiency, red tape, mismanagement, frauds and corruption in the government that most of the provisions that have to do with the functions of the Tanodbayan or Ombudsman are reactive and corrective in character. We thought that these provisions should allow for anticipation and, therefore, should be preventive of bureaucratic corruption. Nonetheless, the provisions, I think, fail to underscore the fact that we cannot isolate bureaucratic corruption from the larger problems of society. Let us quote, for instance, from a study of bureaucratic corruption in Asia, which says:

The major lacuna in the anticorruption policies adopted by all of these countries is that they seem to view the problem of governmental corruption in very myopic terms — in isolation from other forms of white-collar crime. Underlying most anticorruption policies, there is the assumption that the problem of corruption in government has very little to do with the other forms of white-collar criminality. This in fact accounts for a sizable part of the ineffectiveness of their anticorruption policies or strategies. As a matter of fact, corruption in public bureaucracy and government — as will be shown below — constitutes a part of the wider area of white-collar crimes. White-collar crime in every sense is real crime. It has been overlooked and underplayed far too long.

For the record, let me just read the definition of white-collar crimes by the United States Department of Justice:

Those classes of non-violent illegal activities which principally involve traditional notions of deceit, deception, concealment, manipulation, breach of trust, subterfuge or illegal circumvention.

The point is that we really should not isolate efforts at combating bureaucratic corruption from the larger crimes that take place in the larger society. I think that it should be part of the duties of the Ombudsman to anticipate and make necessary corrections with respect to bureaucratic corruption.

Thank you, Madam President.

APPROVAL OF PROPOSED RESOLUTION NO. 456 ON SECOND READING

(Article on Accountability of Public Officers)

MR. SARMIENTO: Madam President, may I move that we vote on Proposed Resolution No. 456, as amended, on Second Reading.

THE PRESIDENT. Those who are in favor of Proposed Resolution No. 456, as amended, please raise their hand. (Several Members raised their hand.)

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

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

The results show 35 votes in favor, one against and one abstention.

Proposed Resolution No. 456, as amended, is approved on Second Reading.

CONSIDERATION OF PROPOSED RESOLUTION NO. 517

(Article on the Executive)

Continuation

PERIOD OF SPONSORSHIP AND DEBATE

MR. SARMIENTO: Madam President. may we proceed to the period of interpellations of Proposed Resolution No. 517?

I ask that Commissioner Bennagen be recognized.

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

We will continue the period of interpellations on the Article on the Executive.

Commissioner Bennagen is recognized.

MR. BENNAGEN: I have two rather simple questions which, although simple, rest on the proposition that as worded, they constitute very concrete ways of constituting and reconstituting thought and reality. I refer to Section 16 on page 8, the first line of which originates on page 7:

The Congress may by law vest the appointment of inferior officers in the President alone, in the courts, or in the heads of department.

I remember that during the discussion on the judiciary, the reference to inferior courts was changed to "lower courts." I wonder if by the same reason the use of "inferior" shall also be used at some future time, or I think it can be done even now. I do not think the Congress shall be appointing inferior officers in terms of a certain kind of quality of persons, but rather in terms of ranks, unless that is the intent of the provision.

MR. REGALADO: That was taken from Section 10 (3), Article VII of the 1935 Constitution, and partly from Section 12 of the 1973 Constitution which used the word "inferior." Does Commissioner Bennagen have a proposal for a more felicitous term?

MR. BENNAGEN: Maybe in due time when the time for amendment comes.

FR. BERNAS: Let me just add that the term "inferior" means lower in rank than the officers mentioned above.

MR. BENNAGEN: So, it means lower in rank. My next question refers to Section 19 which reads:

The President, Vice-President, members of the cabinet, and chiefs of bureaus or offices and their assistants shall not, during their term, hold any other office or employment, nor may they practice any profession, participate. . .

I asked one time the question as to the meaning of "shall" in the Constitution, whether "shall" is mandatory or directory. The answer was, sometimes it is directory, sometimes it is mandatory. It would seem that in the context

of the overall provision, the tendency may be to use it in its directory sense because of the use of "may" in the next sentence. In the deliberation of the Committee, is the meaning of "shall directory or mandatory?"

MR. REGALADO: Under the rules of statutory construction, when we use the word "shall" alone there may be instances when it may be considered "may," but when this is used in a negative — "shall not" — then that is mandatory.

MR. BENNAGEN: We take it to mean, therefore, that "may" in the second sentence is also mandatory?

MR. REGALADO: Yes, it is mandatory.

MR. BENNAGEN: Thank you.

MR. SARMIENTO: Madam President, we have four more interpellators. May I ask that Commissioner Rosario Braid be recognized.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Madam President and honorable sponsors, my comment is on Section 18, page 8, which has to do with the powers of the President to contract foreign loans. I quite concur with my fellow Commissioners that perhaps we should have a more specific provision not necessarily in the Article on the Executive, and that the Committee on the National Economy and Patrimony come up with specific criteria and mechanisms that would ensure the broadening of the membership of this Monetary Board to include those in the social sector and would ensure the Board's independence.

My second comment has to do with Section 17, the last sentence of the first paragraph which does not appear in the previous Constitutions. Is there a reason for including it in the section? What is its rationale?

MR. REGALADO: May we know what last sentence the Commissioner is referring to.

MS. ROSARIO BRAID: The last sentence of the first paragraph of Section 17 which reads:

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

MR. REGALADO: Actually this is an addition to the already existing limitations to the pardoning power of the President. The Commissioner will notice that we took into account those crimes which are of such magnitude as to affect not only the political but also the economic life of the country, as, for instance, violations of election laws. In convictions of electoral offenses, the President cannot grant pardons and so forth without the favorable recommendation of the Commission on Elections because such violations affect and go into the very political system. These frauds we are referring to here, which also shall be subject to legislation insofar as the pardoning power of the President is concerned, are violations of corrupt practices laws which go into the very economic life of the country, considering the massive frauds that we have experienced and which we are trying to remedy.

MS. ROSARIO BRAID: Thank you.

FR. BERNAS: May I add something. Actually, this last sentence is a compromise because the original proposal was that violations of the Anti-Graft Law should not be pardoned without the recommendation of the convicting court, whereas others felt that the pardoning power of the President should not be further limited. So, as a compromise, this provision was put in. Let us leave to the legislature the matter of whether or not it would want to limit it.

MS. ROSARIO BRAID: Thank you.

My third comment is on the question of style. In the light of the recognition of women's equal rights, would the Committee consider recommending to the Committee on Style the rewriting of some phrases of the Article to minimize the use of the masculine gender when referring to public officials? I made a few changes not only in this Article but also in the Article on the Accountability of Public Officers, and I find that we could substitute the third person without making it less readable. If this could be done where it is possible, we would like to strongly recommend the rewriting of it.

MR. REGALADO: We can assure Commissioner Rosario Braid that no Commissioner here is a misogynist. We have nothing against the fair sex. However, under the rules of statutory construction, "he" may mean "she" or "she" may mean "he," although we would consider it a little awkward if we use the word "she" and "her" to include "he" and "him." It would be, I think, a complete reversal of the order of things.

MS. ROSARIO BRAID: No, we will not refer to "she" or "he" but we could say the "President" or the "aforementioned official" or we may omit the reference altogether.

MR. REGALADO: We will ask Commissioner Rodrigo, the defender of the fair sex and Chairman of the Committee on Style, to look for a felicitous substitute for that.

MS. ROSARIO BRAID: Lastly, on page 3, which refers to the salary of the executive, lines 24 to 27 may be deleted perhaps because we may not want to specify the salary on account of the fluctuating value of the peso.

MR. REGALADO: For the information of Commissioner Rosario Braid, there was a proposal from Commissioner Monsod to follow what they did in the salaries of the judiciary so that we could adopt that formulation for the salaries of the executive as well as of the legislative departments

MS. ROSARIO BRAID: Thank you.

MR. SARMIENTO: Madam President, may I ask that the honorable Commissioner Suarez be recognized.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

May I go over this Article and let me begin with page 2, Section 4, line 5. I do not know if this point had already been clarified but the term "National Assembly" is being used. In conducting the canvass of presidential and vice-presidential elections, is our understanding correct that this will be done jointly by the House of Representatives and the Senate in joint session assembled?

MR. REGALADO: May we ask for the page, section and line number.

MR. SUAREZ: This is on page 2, line 5, Section 4.

MR. REGALADO: Page 2. I think Commissioner Suarez might be using the original resolution. Does the copy of the Commissioner have on the upper right hand corner this parenthetical phrase "Adjusted to Bicameral Legislature"?

MR. SUAREZ: No, what I have is the one with the parenthetical phrase "Substitute Resolution."

MR. REGALADO: There is a subsequent one.

Will the Secretariat kindly furnish Commissioner Suarez a copy of the latest adjustment.

MR. SUAREZ: Thank you.

Under the latest draft, it says:

. . . open all the certificates in the presence of the Senate and the House of Representatives in joint public session.

Is "joint public session" equivalent to "in joint session assembled" that was used under the 1935 Constitution?

MR. REGALADO: That is right. It was emphasized that it should be in joint public session.

MR. SUAREZ: Thank you. Let me proceed to line 23, page 2, wherein it is provided, and I quote:

The Supreme Court, sitting en banc shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-president.

Are we not giving enormous work to the Supreme Court especially when it is directed to sit en banc as the sole judge of all presidential and vice-presidential election contests?

MR. SUMULONG: That question will be referred to Commissioner Concepcion.

MR. CONCEPCION: This function was discharged by the Supreme Court twice and the Supreme Court was able to dispose of each case in a period of one year as provided by law. Of course, that was probably during the late 1960s and early 1970s. I do not know how the present Supreme Court would react to such circumstances, but there is also the question of who else would hear the election protests.

MR. SUAREZ: We are asking this question because between lines 23 to 25, there are no rules provided for the hearings and there is no time limit or duration for the election contest to be decided by the Supreme Court. Also, we will have to consider the historical background that when RA 1793, which organized the Presidential Electoral Tribunal, was promulgated on June 21, 1957, at least three famous election contests were presented and two of them ended up in withdrawal by the protestants out of sheer frustration because of the delay in the resolution of the cases. I am referring to the electoral protest that was lodged by former President Carlos P. Garcia against our "kabalen" former President Diosdado Macapagal in 1961 and the vice-presidential election contest filed by the late Senator Gerardo Roxas against Vice-President Fernando Lopez in 1965.

MR. CONCEPCION: I cannot answer for what the protestants had in mind. But when that protest of Senator Roxas was withdrawn, the results were already available. Senator Roxas did not want to have a decision adverse to him. The votes were being counted already, and he did not get what he expected so rather than have a decision adverse to his protest, he withdrew the case.

MR. SUAREZ: Also, there is the case of the late Senator Sergio Osmeña filed against President Marcos in 1969.

MR. CONCEPCION: The same thing happened. These withdrawals took place when the results were already about to be announced.

MR. SUAREZ: I see. So the Commissioner would not have any objection to vesting in the Supreme Court this matter of resolving presidential and vice-presidential contests?

MR. CONCEPCION: Personally, I would not have any objection.

MR. SUAREZ: Thank you.

Would the Commissioner not consider that violative of the doctrine of separation of powers?

MR. CONCEPCION: I think Commissioner Bernas explained that this is a contest between two parties. This is a judicial power.

MR. SUAREZ: We know, but practically the Committee is giving to the judiciary the right to declare who will be

the President of our country, which to me is a political action.

MR. CONCEPCION: There are legal rights which are enforceable under the law, and these are essentially justiciable questions.

MR. SUAREZ: If the election contest proved to be long, burdensome and tedious, practically all the time of the Supreme Court sitting en banc would be occupied with it considering that they will be going over millions and millions of ballots or election returns, Madam President.

MR. CONCEPCION: The time consumed or to be consumed in this contest for President is dependent upon the key number of teams of revisors. I have no experience insofar as contests in other offices are concerned.

MR. SUAREZ: Although there is a requirement here that the Supreme Court is mandated to sit en banc?

MR. CONCEPCION: Yes.

MR. SUAREZ: I see.

MR. CONCEPCION: The steps involved in this contest are: First, the ballot boxes are opened before teams of three, generally, a representative each of the court, of the protestant and of the "protestee." It is all a question of how many teams are organized. Of course, that can be expensive, but it would be expensive whatever court one would choose. There were times that the Supreme Court, with sometimes 50 teams at the same time working, would classify the objections, the kind of problems, and the court would only go over the objected votes on which the parties could not agree. So it is not as awesome as it would appear insofar as the Court is concerned. What is awesome is the cost of the revision of the ballots because each party would have to appoint one representative for every team, and that may take quite a big amount.

MR. SUAREZ: If we draw from the Commissioner's experience which he is sharing with us, what would be the reasonable period for the election contest to be decided?

MR. CONCEPCION: Insofar as the Supreme Court is concerned, the Supreme Court always manages to dispose of the case in one year.

MR. SUAREZ: In one year. Thank you for the clarification.

May I now go to page 4, Section 9, lines 17 and 18. Let me just read it so the Committee will understand me.

MR. MAAMBONG: Will the Commissioner refer by section.

MR. SUAREZ: Yes, I thought I was working on the amended draft. Section 11, lines 10 to 11, states: "such powers and duties shall be discharged by the Vice-President as Acting President." It is not Section 9, Madam President.

MR. MAAMBONG: Section 11.

MR. REGALADO: Where are we now?

MR. SUAREZ: Section 11, second paragraph states: "Whenever a majority of all the members of the Cabinet transmit to the President." This is different again, is it not?

MR. REGALADO: Page 5, Section 11.

MR. MAAMBONG: Yes.

MR. SUAREZ. No, I have it on Section 9 of my copy. Section 9, page 4, lines 11 to 18 states:

The Congress shall by law provide permanent disability or resignation of the Acting President at the time the vacancy in the Office of the President occurs or subsequently thereafter, declaring who shall serve as President until the President and the Vice-President shall have been elected and qualified, subject to the same restrictions of powers and disqualifications as the Acting President.

My clarificatory question, Madam President, is this: Is it necessary for the one declared as Acting President to be a Member of Congress or could he or she, if I may be clear on that point, be drawn even from the private nonpolitical sector?

MR. REGALADO: Will Commissioner Suarez please repeat the question. Is he referring to page 4, lines 11 to 18?

MR. SUAREZ: It is the whole Section 9 which reads:

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

There is no problem in this provision, but the next sentence reads:

The Congress shall by law provide for the case of permanent disability, death, removal from office or resignation of both the President and Vice President, declaring which officer shall then become Acting President or the manner in which one shall be selected.

My question is: Is it necessary to draw this officer from the ranks of the Members of Congress or is it theoretically possible that even a nonpublic official can be appointed by Congress as Acting President of our country?

MR. REGALADO: The contemplation here, in line with the other relevant provisions of this Article, was that he shall be chosen from the elected representatives of the people.

MR. SUAREZ: Does the Commissioner not agree with me that that is not clear in this particular section?

MR. REGALADO: We will entertain an amendment at the proper time to make this particular section very clear.

MR. SUAREZ: So it is clear that the intention of the Committee in proposing this provision is to the effect that the Acting President should come from the Members of Congress.

MR. REGALADO: That is right, from the Members of Congress.

MR. SUAREZ: Thank you.

May we now go to Section 11, page 5. This refers to the President's written declaration of inability to discharge the powers and duties of the Office of the President. Can this written declaration be done for and in behalf of the President if, for example, the President is in no position to sign his name, like if he suffers an accident and both of his arms get to be amputated?

MR. REGALADO: We have not had a situation like that even in the jurisdiction from which we borrowed this provision, but we feel that in that remote situation that the Commissioner has cited in that the President cannot make a written declaration, I suppose an alternative would be considered wherein he can so expressly manifest in an authentic manner what should be contained in a written declaration. The purpose of a written declaration is to establish authenticity.

MR. SUAREZ: But the phrase "written declaration" precludes any other kind of declaration. I am thinking in terms of what happened to President Wilson. Really, the physical disability of that Gentleman was never made clear to the historians. But suppose a situation will happen in our country where the President may suffer a coma

and gets to be unconscious, which is practically a total inability to discharge the powers and duties of his office, how can he submit a written declaration of inability to perform the duties and functions of his office?

FR. BERNAS: It is not the President who will make a written declaration that he is disabled.

MR. SUAREZ: That applies to the second paragraph.

FR. BERNAS: What line?

MR. SUAREZ: I am referring to the first line of Section 11, not to the second situation contemplated under the second paragraph of Section 11, Madam President.

FR. BERNAS: Is it the line which states: "Whenever a majority of all the members of the Cabinet . . . "?

MR. SUAREZ: No, it is the line which reads: "Whenever the President transmits . . ."

FR. BERNAS: Yes.

MR. SUAREZ: So how can we expect a President who is in coma to transmit to the National Assembly his written declaration admitting that he is unable to discharge his duties?

FR. BERNAS: No, I am referring to the written declaration that there is no inability. If the Commissioner takes a look at line 20 which states: "his written declaration that no inability . . ."

MR. SUAREZ: ". . . that he is unable to discharge."

FR. BERNAS: I do not know if we are using the same text, Madam President. Section 11 , line 18, states: "Thereafter, when the President transmits to the President of . . ."

MR. SUAREZ: Yes, lines 5 to 11.

FR. BERNAS: I believe we are using different texts.

MR. SUAREZ: I am confused. Section 11, lines 5 to

FR. BERNAS: Yes, the Commissioner has a point there. When the President cannot do it, then what is applicable is the second paragraph.

MR. SUAREZ: That means it is then incumbent, after a certain period of time, for the members of the Cabinet to transmit to the President of the Senate their written declaration that the President is unable to discharge his functions.

FR. BERNAS: Yes, Madam President.

MR. SUAREZ: And they will not have to wait for the written declaration coming from the President who is in coma?

FR. BERNAS: Precisely, because he will never be able to make the written declaration.

MR. SUAREZ: That is why we really have to interpret the first sentence of Section 11, first paragraph with the second paragraph.

FR. BERNAS: Yes.

MR. REGALADO: With the indulgence of Commissioner Suarez, what it means is that the second paragraph comes into play whenever the President, although capable of making a written declaration, refuses to do so or although he is willing to make that written declaration, he is incapable of doing so, then the initiative shall be

taken by the majority of the members of the Cabinet.

MR. SUAREZ: That changes the complexion of the answer of the Honorable Bernas insofar as the first paragraph of Section 11 is concerned, Madam President.

MR. REGALADO: Under Section 11, Commissioner Bernas was correct in that if the President is capable of making the written declaration himself, he may do so; but if he is really incapable or in coma, as the Commissioner said, I think Commissioner Bernas' answer was that it can be done.

MR. SUAREZ: Under paragraph 2? But we are precluding that under the second paragraph.

FR. BERNAS: Yes. The situation the Commissioner contemplates under the first paragraph is that of a person whose only defect is that both his hands were amputated.

MR. SUAREZ: Or he is completely or totally unconscious.

FR. BERNAS: If he is totally unconscious, then what is applicable is the second paragraph.

MR. SUAREZ: But I heard Commissioner Regalado say that it is only when the President who is capable of making a written declaration but refuses to submit one that the second paragraph would apply.

FR. BERNAS: No.

MR. SUAREZ: Which is the correct interpretation then?

MR. REGALADO: I said, whenever the President is capable but refuses to do so, and when he wants to do so but is incapable of doing so. It covers both situations.

MR. SUAREZ: I am still a little confused but, nonetheless, maybe the interpretation that we would like the Committee to give governing Section 11 has a quite clear meaning. Let us clear up any confusion regarding this matter.

FR. BERNAS: I think what is meant here is that there are times when a President may be completely reasonable; he knows he is incapable so he signs a written declaration. And then we may have a situation of a President who goes out of his mind, and everybody thinks he is really out of his mind; he, therefore, refuses to sign a written declaration that he is incapable. In such a case, the Cabinet members can say that he is incapable under the second paragraph.

MR. SUAREZ: And no time limit is provided within which the President should transmit that written declaration?

FR. BERNAS: There is no time limit.

MR. SUAREZ: We may have a Wilson situation in our hands one of these days.

FR. BERNAS: Precisely, the second paragraph is to take care of a Wilson situation.

MR. SUAREZ: I see.

MR. REGALADO: The Wilson situation was in 1917. Precisely, this Twenty-Fifth Amendment to the American Constitution was adopted on February 10, 1967 to prevent a recurrence of such a situation. Besides, it was not only the Wilson matter. As I have already mentioned here, they have had five situations in the United States, including those of President Garfield, President Wilson, President Roosevelt and President Eisenhower.

MR. SUAREZ: Let me go to Section 19. I do not know if in the latest draft this has already been amended because what was stated here was only "directly," and probably the Commissioner would have noticed that in the

matter of special or financial privilege, it should also include "indirectly."

I wonder if the Committee had already taken note of the phrase in Section 19, line 29 which states: "financially interested directly in any contract . . ." Did the Committee deliberately omit the phrase "or indirectly," which refers to financial or special privilege?

MR. REGALADO: We will entertain an amendment to that. We took that from Section 11(2) of the 1935 Constitution. But I suppose the Committee will entertain a perfecting amendment at the proper time.

MR. SUAREZ: Thank you.

The last question is with reference to the Committee's omitting in the draft proposal the immunity suit provision for the President. I agree with Commissioner Nollado that the Committee did very well in striking out this second sentence, at the very least, of the original provision on immunity from suit under the 1973 Constitution. But would the Committee members not agree to a restoration of at least the first sentence that the President shall be immune from suit during his tenure, considering that if we do not provide him that kind of an immunity he might be spending all of his time facing litigations, as the President-in-exile in Hawaii is now facing litigations almost daily?

FR. BERNAS: The reason for the omission is that we consider it understood in present jurisprudence that during his tenure he is immune from suit.

MR. SUAREZ: So, there is no need to express it here.

FR. BERNAS: There is no need. It was that way before. The only innovation made by the 1973 Constitution was to make that explicit and to add other things.

MR. SUAREZ: On that understanding, I will not press for any more query, Madam President.

I thank the Commissioner for the clarification.

MR. SARMIENTO: Madam President, may I ask that the honorable Commissioner Tingson be recognized.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Madam President and Committee members, I am very interested in the Office of the Vice-President.

From the 1935 Constitution up to the 1973 Constitution, even in the United States Constitution, the vice-presidency has been a solitary, ineffectual, half-heartedly wanted kind of an office that is looked down on as worse than a spare tire in its category, so much so that a former Vice-President of the United States said: "Don't run for that office; it is not worth a spit."

I was hoping that the new Constitution now emerging in our midst and through our humble hands would do something about this position, which, although it is similar to a lady-in-waiting, nevertheless, is so important because as we have said it time and time again, trite as it is, "he is only a heartbeat away."

I am a little bit disappointed because Section 3 provides that he will be elected in the same manner as the President; that he must have the same qualifications and term of office; and that he may be removed from office in the same manner as the President, but then in the next sentence, it says: "The Vice-President may be appointed as a member of the Cabinet." It is not even mandatory but only directory.

Also, we mention in Section 5 that he shall become President when the President-elect shall have died, which is a good consolation. But on page 8, Section 19, to make matters even worse — if I may use the phrase "adding insult

to injury to his dignity" — he shall not even be allowed during his term of office to hold any other office or employment, nor may he practice any profession, etc.

I am just wondering why we did not, in a sense, upgrade the category of the Vice-President and make him, say, a Vice-President truly in waiting to take over the presidency so that he will be, as a result, a knowledgeable, effective kind of a leader. We know that in our history, there was more than one Vice-President elevated to the presidency, and one of them was not given any kind of job whatsoever; fortunately, the Filipino people saw to it that that was rectified so he got elected to the presidency later on.

Could we not do something by way of making it definite that the Vice-President, even as we have enumerated the functions of the President in his responsibilities, shall be — I do not know if Commissioner Monsod would laugh at this — the Ombudsman and the champion of the people so that by being in that category, he will become a knowledgeable, effective kind of a leader when he becomes President? I am just wondering about that.

FR. BERNAS: Similar points were raised this morning by the Honorable Rodrigo, and our answer was that we certainly would entertain amendments which would attempt to give an important position to the Vice-President. However, with respect to lines 19 and 20, which say: "The Vice-President may be appointed as a member of the Cabinet," we said that it is necessary not to make this mandatory because of the nature of the presidential system.

In the presidential system, a member of the Cabinet is necessarily in the bosom of the President, and under the principle of qualified political agency, an act of a Cabinet member is an act of the President, unless specifically repudiated by him. So that necessarily, therefore, any member of the Cabinet must be somebody whom the President absolutely trusts. We cannot impose Cabinet members on him. So we give him the liberty to make the Vice-President a Cabinet member or not.

So while we would not yield on forcing the President to take him as a Cabinet member, he would entertain other positions for him, perhaps, as President of the Senate.

MR. TINGSON: Madam President, that is another consuelo de bobo because if we make him the presiding officer of the Senate, we even take away the privilege of voting because he only votes when there is a tie.

FR. BERNAS: It is just an example, Madam President, and if the Commissioner can think of a preeminent position for the Vice-President, we will entertain it.

MR. TINGSON: Yes, I already sent a note to Commissioner Rodrigo this morning regarding this matter. Being my seatmate, he was the one who told me what the technicalities were, so I told him to kindly support me in my proposed amendment about which I am very much concerned, which is to make the position of the Vice-President more dignified, more respectable and more meaningful. And I think Commissioner Rodrigo is in sympathy with it now that the Commissioner mentioned that he asked questions about it.

So I would be very happy if the Committee would entertain an amendment regarding the position of the Vice-President at the proper time.

Thank you very much.

MR. SARMIENTO: May I ask, Madam President, that the honorable Chancellor and Commissioner Guingona be recognized.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Thank you, Madam President.

In reply to the interpellation of Commissioner Suarez regarding the first paragraph of Section 9, the Committee

said that the officer who shall be declared Acting President will be chosen from among the Members of Congress; am I correct?

FR. BERNAS: That was the answer given.

MR. GUINGONA: Thank you.

FR. BERNAS: And we also said that that does not come out very clearly in the text so that, therefore, we will entertain amendments to clarify it.

MR. GUINGONA: Thank you.

With regard to the second paragraph, I suppose the same answer will hold regarding the person declared by Congress to become the Acting President.

When we say that the Congress shall declare which officer shall become the Acting President, I presume that we are talking of Congress in joint session assembled, which means that in practically all cases, it will be a Member of the House who will be selected because of its sheer number of Members.

FR. BERNAS: Section 9, second paragraph says that Congress shall by law provide for it.

MR. GUINGONA: So it will have to be by law, if both Houses will have to concur?

FR. BERNAS: Yes.

MR. GUINGONA: Thank you, Madam President.

Is the word "shall" in Section 10 mandatory or directory?

FR. BERNAS: It is mandatory.

MR. GUINGONA: It is mandatory.

I see that Congress now is required, under this Constitution, to call a special election in case of a vacancy as specified in Section 9, but the last sentence of Section 10 says:

No special election shall be called if the vacancy occurs within seventy days before the date of the next presidential election.

I presume we are contemplating here a situation where there would be someone serving as President under Section 9. I was wondering whether or not the Committee would agree with me that 70 days before the next presidential election might seem too short because under this section, the Constitution requires that the special election shall be held not earlier than 45 days nor later than 60 days. Assuming that 60 days elapses from the time that Congress shall call the special election, there will only be roughly 10 days before the date of the next presidential election. We should consider the expense because I presume that the person who shall be elected in the special election would only serve for the unexpired term of maybe a month or two. I wonder if, at the appropriate time, the honorable members of the Committee would be willing to consider lengthening the period of 70 days.

MR. MAAMBONG: The Commissioner has a very good point there, and if I recall correctly, the parallel provision to this mentions something like a period of 18 months. So, we would certainly entertain amendments considering the Commissioner's computation that it would be only around 10 days left before the next election.

I thank the Commissioner for that reminder.

MR. GUINGONA: I also thank the Commissioner; thank you, Madam President.

MR. SARMIENTO: Madam President, we have the last two interpellators, and I hope there will be no more interpellators after them. I ask that the honorable Commissioner Jamir be recognized.

THE PRESIDENT: Commissioner Jamir is recognized.

MR. JAMIR: This is not exactly an interpellation, Madam President, but merely a clarification. I refer to Section 4, lines 20 to 22, page 2, where two or more candidates for President obtained equal and the highest number of votes, which says:

. . . one of them shall forthwith be chosen by the vote of a majority of all the members of the Congress.

May I know whether the two Houses of Congress will be sitting together in joint session or separately.

MR. REGALADO: The antecedent to that in the matter of the canvass already speaks of a joint public session as we will note on lines 14 to 15. So in case there is a tie, that very same joint public session will so determine.

MR. JAMIR: Thank you. My last clarificatory question is with reference to Section 6, page 3 of the draft Article regarding the oath to be taken by the President or Acting President, where there is no mention of the Vice-President. Is he going to take the same oath as provided here or not?

MR. REGALADO: There is no mention of the Vice-President in this section because he may already be the President himself in case of death or permanent incapacity of the elected President, in which case he takes the oath as President.

MR. JAMIR: No, but when the President and the Vice-President take their oath together upon inception to office, what oath shall the Vice-President take?

MR. REGALADO: Actually, in the previous Constitutions there were no such provisions. It was assumed that he would take the same oath as the President since after all, he is just "a heartbeat away" as has been mentioned here. I think in actual practice, they take the same oath.

MR. JAMIR: What made me doubt was the phrase here "President or Acting President." It seems that he will take his oath only when he becomes the Acting President.

MR. REGALADO: No, we added the phrase "Acting President" because there are actually three situations where there can be an Acting President. But we have not provided for any oath, I think, in the 1935 or the 1973 Constitution insofar as the Vice-President is concerned, it being assumed that he would also take the same oath as the President but in his capacity as Vice-President.

MR. JAMIR: Will there be any harm if instead of putting there "or Acting President," we put "President and Vice-President"?

MR. REGALADO: Perhaps, we can include under Section 6, line 9 the Vice-President. I do not think there will be any harm if we now specify that he should take the same oath.

MR. JAMIR: When the time for the period of amendments comes, we will introduce an amendment.

Thank you.

MR. SARMIENTO: Madam President, I ask that the honorable Vice-President, Commissioner Padilla, be recognized as the last interpellator.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Thank you, Madam President.

I agree with most of the changes introduced by the Committee as explained by its distinguished Chairman.

I would like to go back to Section 15, on the commander-in-chief provision of the Constitution on the Armed Forces.

I realize that without the restrictions or limitations that were inserted, this provision is basically a copy of both the 1935 and the 1973 Constitutions. The first sentence speaks of calling the Armed Forces to prevent or suppress lawless violence, although it mentions also invasion or rebellion and, I would feel, also lawless violence or public disorder. The second sentence joins together the suspension of the privilege of the writ of habeas corpus and the proclamation of martial law, partly or wholly, throughout the Philippine Archipelago.

In the following paragraphs of that Section 15, the Committee correctly distinguished between a state of the declaration of martial law and the suspension of the privilege of the writ of habeas corpus. Will the Committee consider dividing the second sentence of the first paragraph of Section 15 to the suspension of the privilege of the writ of habeas corpus and to the declaration or proclamation of martial law, since the Committee correctly distinguished between a state of the suspension of the writ of habeas corpus and the state of the proclamation of martial law because according to the Committee itself, there is a substantial difference between the two situations?

MR. REGALADO: I think the Committee will appreciate an amendment at the proper time.

MR. PADILLA: Thank you.

The way it now appears, the President as the Commander-in-Chief of all the Armed Forces cannot immediately suspend the writ or proclaim martial law. I agree with the period mentioned of 60 days, but it requires the concurrence of at least a majority of all the Members of the Congress.

Should we not allow the President to suspend the privilege of the writ of habeas corpus or even proclaim martial law without requiring a prior, or beforehand, the concurrence of the majority of the Members of Congress? If we wait for the congressional concurrence, the suspension of the writ or the proclamation of martial law may be unduly delayed. Will the Committee consider an amendment to the effect that the President may suspend the privilege of the writ of habeas corpus or even proclaim martial law, but the period shall be limited unless there be subsequent concurrence of the Congress since the Committee itself provides that the Congress may revoke, reduce or even extend the period of 60 days? The point is for the insipieny of the suspension or the proclamation, it must not be preaccompanied by the concurrence of a majority of the Members of the Congress.

MR. REGALADO: If the Commissioner will propose an amendment at the proper time, I think we can even subject it to the reactions of the body.

MR. PADILLA: Yes, thank you very much. And probably because of some substantial difference between the state of the suspension of the privilege of the writ of habeas corpus and the state of the proclamation of martial law, perhaps we can also make some distinctions as to the grounds for each of these two situations.

MR. REGALADO: Yes.

MR. PADILLA: Thank you.

On Section 17, I am referring to the Substitute Resolution No. 517, as adjusted to the bicameral legislature, page 8, lines 8 and 9, which mentions violations of corrupt practices laws. This might refer exclusively to the so-called Tolentino version, RA 3019.

MR. REGALADO: Republic Acts 3019 and 1379.

MR. PADILLA: Republic Acts 3019 and 3017. Should we not expand the phrase "corrupt practices laws" to say "anti-graft and corruption laws," and that would include RA 1379, Articles of the Revised Penal Code under Title VII entitled "Crimes Committed by Public Officers" and other laws that are existing or enacted?

MR. REGALADO: Madam President, the Commissioner will notice that we have just put it as a generic phraseology "violations of corrupt practices laws," whether the Anti-Graft and Corrupt Practices Act, RA 3019 or the law on the forfeiture of illegally acquired wealth, RA 1379 or those under Title VII, Book II of the Revised Penal Code, which covers bribery, malversation, among others.

MR. PADILLA: Yes.

MR. REGALADO: They are all covered here because they are corrupt practices laws, aside from those that the future Congress may still enact.

MR. PADILLA: That is correct. That is why the mere expression of corrupt practices laws, although stated in the plural, might make specific reference to that special law.

MR. REGALADO: No, Madam President. We will put it on record that that was not the intention.

MR. PADILLA: Section 9, lines 11 to 12, mentions "death, permanent disability or resignation . . ." but it makes no mention of "removal" which is one of the four cases to create a vacancy in the Office of the President or perhaps also in the Office of the Vice-President.

MR. REGALADO: Madam President, line 11 et sequentiae refers to death, disability or resignation of the Acting President because there are only three situations wherein there can be an Acting President.

MR. PADILLA: So it purposely did not include "removal" because he is just a temporary Acting President.

MR. REGALADO: Yes.

MR. PADILLA: Madam President, my last point is on Section 5, which, I notice, covers the beginning of the term. In fact, the word "beginning" in that section is mentioned three times. Can we not simplify this provision so as not to make it too long?

MR. REGALADO: Yes, we can as a matter of style. We can simplify that. Actually, we just took that from Section 6, Article VII of the 1935 Constitution and from the same section and article of the 1973 Constitution, but we can improve on the phraseology.

MR. PADILLA: Thank you, Madam President.

MR. SARMIENTO: Madam President, so that one colleague would have a good night's rest tonight, may I ask that the Gentleman from Pampanga, Commissioner Suarez, be recognized for one quick clarificatory question.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

This is very simple but very vital. May I call the sponsor's attention to page 7, Section 15, line 22, which mentions the phrase "judicially charged." Do I take it that this does not refer to cases pending before the fiscal's office or before the prosecution department of the Ministry of Justice? I am very concerned about this because it means the interpretation of the suspension of the privilege of the writ of habeas corpus.

MR. SUMULONG: Commissioner Concepcion will answer that question.

MR. CONCEPCION: May I know what section it is.

MR. SUAREZ: It is Section 15, page 7, line 22. When the Committee employed the phrase "judicially charged," does that mean it is referring specifically and categorically to a criminal charge filed in court and not to a pending investigation, preliminary or otherwise custodial, before the office of the fiscal or the prosecutor's office of the Ministry of Justice?

MR. CONCEPCION: That is correct.

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

MR. CONCEPCION: I might add that the purpose is that as soon as a person is apprehended, he must be turned over to a court for such actions as may be necessary.

MR. SUAREZ: Just for purposes of the record, suppose Juan de la Cruz is charged before the fiscal's office for rebellion or for offenses inherent in or directly connected with invasion, does not the suspension of the privilege of the writ of habeas corpus apply to him yet?

MR. CONCEPCION: It does not.

MR. SUAREZ: Thank you.

MR. SARMIENTO: Madam President, I move that we close the period of sponsorship and debate and that we proceed to the period of amendments.

THE PRESIDENT: Is the body ready to proceed to the period of amendments?

MR. SARMIENTO: Madam President, may I divide my motion?

First, I move that we close the period of sponsorship and debate.

THE PRESIDENT: Is there any objection that we close the period of sponsorship and debate on this Proposed Resolution No. 517? (Silence) The Chair hears none; the motion is approved.

MR. SARMIENTO: Madam President, I move that we now proceed to the period of amendments.

THE PRESIDENT: Is there any objection that we proceed to the period of amendments?

ADJOURNMENT OF SESSION

MR. SARMIENTO: On the basis of popular clamor, Madam President, I move that we adjourn until tomorrow at nine-thirty in the morning.

THE PRESIDENT: The session is adjourned until tomorrow at nine-thirty in the morning

It was 6:26 p.m.

[*] Appeared after the roll call.

[*] See appendix.

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