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Friday, August 22, 1986

OPENING OF SESSION

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

THE PRESIDENT: The session is called to order.

NATIONAL ANTHEM

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

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Honorable Christian S. Monsod.

Everybody remained standing for the Prayer.

PRAYER

MR. MONSOD Lord, allow me to draw from the wisdom of others.

It is said that only those who are willing to be fools for You truly give You glory. Only those who can accept humiliation can find humility. Only those who empty their cups fill them to the brim. So today we ask You to make us fools who accept being diluted among the many, who make no pretensions of erecting our own monuments, who do not use our superiority of language or knowledge for our personal advantage. Help us to forget ourselves and to love in more than words. Give us the grace not to succumb to the temptation of excitement that involves cost to others, that sacrifices persons for the advancement of a purpose.

Lord, we are here by Your divine plan. Sometimes we forget. How can we love 55 million faceless Filipinos if we cannot love 47 others among those in this Assembly? How can we tell our countrymen that this is a Constitution born of patience and trust and compassion if we cannot be all of that to those we work with?

Merciful Father, forgive me for all the unkind thoughts and all the unkind words I have said to my fellowmen. Forgive me for my lost opportunities to break down the walls of distrust that are rising among us. Now, more than ever, we need You to be with us. Let Your love dwell in us all, even when we disagree, and if there is silence-among us, let it be the silence of shared understanding, not the absence of sound but the absence of self.

Today is the first day of the rest of our lives. Help us to begin anew for Your greater glory. This we ask of You through Jesus Christ, Your Son our Lord, now and forever. Amen.

ROLL CALL

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

THE SECRETARY-GENERAL, reading:

Abubakar Present[*] Monsod Present

Alonto Present Natividad Present[*]

Aquino Present[*] Nieva Present

Azcuna Present Nolledo Present

Bacani Present[*] Ople Present[*]

Bengzon Present[*] Padilla Present

Bennagen Present[*] Quesada Present[*]

Bernas Present Rama Present

Rosario Braid Present Regalado Present

Brocka Absent Reyes de los Present

Calderon Present Rigos Present

Castro de Present Rodrigo Present

Colayco Present Romulo Present

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 Uka Present

Laurel Present[*] Villacorta Present[*]

Lerum Present[*] Villegas Present

Maambong Present[*]

The Secretariat is in receipt of the official advice of absence of the following Members: Commissioners Rosales and Treñas.

The President is present.

The roll call shows 31 Members responded to the call.

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

MR. CALDERON: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

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

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

APPROVAL OF JOURNAL

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

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

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

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

The Secretary-General will read the Reference of Business.

REFERENCE OF BUSINESS

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

COMMUNICATIONS

Letter from Mr. Sonny dela Cruz of 1912 S. Charlotte Avenue, San Gabriel, California 91776, U.S.A., submitting his proposed amendments to the 1935 Constitution with the hope to find some of these amendments included in the new Constitution.

(Communication No. 606 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from Mr. Romulo D. Plagata, Room 4, 2nd Floor, CVF Bldg., Gov. Lim Ave., Zamboanga City, pointing to the atrocious use of the term "Muslim Mindanao," saying that, except for Lanao del Sur and Sulu, Mindanao is predominantly inhabited by non-Muslims, particularly the Christians, suggesting therefore that a plebiscite should be conducted to let the people in the area determine the kind of government to govern them.

(Communication No. 607 — Constitutional Commission of 1986)

To the Committee on Local Governments.

Letter from Vicente D. Millora, President of the Integrated Bar of the Philippines, transmitting a resolution urging the Constitutional Commission to include no provision in the Constitution on the matter of United States military bases in the Philippines.

(Communication No. 608 — Constitutional Commission of 1986)

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

Letter from Mr. Wilfred D. Asis of the People's Consultative Conference on the New Philippine Constitution, Buenavista, Nasipit, Carmen, Agusan del Norte, submitting approved proposals and recommendations for consideration and inclusion in the new Constitution.

(Communication No. 609 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from Mr. Angel L. Lazaro III of LL Building, corner EDSA and Panay Avenue, Quezon City, recommending that the practice of the professions shall be strictly limited to citizens of the Philippines, except in cases where reciprocity between the Philippines and a foreign country exists.

(Communication No. 610 — Constitutional Commission of 1986)

To the Committee on Constitutional Commissions and Agencies.

Telegram from Provincial Governor Bantas W. Suanding, reiterating the stand of the Province of Benguet for administrative regionalization, not autonomous region.

(Communication No. 611 — Constitutional Commission of 1986)

To the Committee on Local Governments.

Letter from Mr. Felixberto M. Serrano, signed by his Confidential Secretary, Conchita Baby Bustamante, submitting for consideration by the Constitutional Commission the first part of his comments on the New Constitution covering the Preamble and the National Territory, saying that he would be greatly relieved from the agonies of his ailments if the Constitutional Commission could give a modest share of its attention to the consideration of the views expressed therein.

(Communication No. 612 — Constitutional Commission of 1986)

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

Letter from Mr. Hilarion A. Gusto of Grace Evangelical Mission, Inc., 2nd Street cor. 5th Avenue, East Grace Park, Caloocan City, Metro Manila, urging the Constitutional Commission to incorporate in the new Constitution a provision on the inviolability of the separation of Church and State as embodied in the 1973 Constitution.

(Communication No. 613 — Constitutional Commission of 1986)

To the Committee on General Provisions.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Romulo be recognized for a privilege motion.

THE PRESIDENT: Commissioner Romulo is recognized.

QUESTION OF PRIVILEGE OF COMMISSIONER ROMULO

MR. ROMULO: Madam President, I am constrained to rise on a question of privilege. A newspaper report appeared in yesterday's issue of Business Day under the byline of Mr. Tara A. Singh who wrongly accused Commissioner Villegas of changing Section 15 of the Article on National Economy and Patrimony by adjusting the two-thirds to one-third (2/3-1/3) ratio for public utilities to 60-40. It was then falsely alleged that Commissioner Monsod and myself were "eager to approve" the alleged surreptitious change made by Commissioner Villegas as Chairman of the Committee. Nothing could be farther from the truth.

Allow me, Madam President, to read Committee Report No. 34, copies of which all the Commissioners have. The first portion of Section 15 reads as follows:

No franchise certificate or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least two-thirds of whose voting stock or controlling interest is owned by such citizens.

Where is the alleged unauthorized revision? It is plain for all who wish to see that the ratio stipulated in Section 15 by the committee report remains at two-thirds although the Committee had previously announced that a proposed amendment was filed to reduce the ratio to 60-40. This is very different, however, Madam President, from saying that Commissioner Villegas covertly changed the ratio. The distortion of fact and sloppy reporting does not end there. Mr. Singh goes on to cite a so-called "parliamentary precedent which rarely revises a Committee's final report," implying thereby that the Commission, as a whole, seldom disagrees with a committee recommendation. Again, nothing could be farther from the truth.

The committee report on the definition of "national territory" was revised to drop the Sabah claim. The committee's recommendation for a unicameral legislature was changed to a bicameral one. The requirement for the President to seek the concurrence of Congress before he can declare martial law was again amended so that the President can declare martial law unilaterally for 60 days. These are basic, fundamental revisions made by the Commission on the floor contrary to those reported out by the committees concerned.

I deplore the distortion and misleading allegations in the news report, Madam President. It does no credit to a newspaper which has earned a reputation for professionalism and for accurate reporting. It is to be regretted that those who oppose us resort to the smear tactics of the McCarthy era and to the "big lie" employed so effectively by the communists.

The issue is straightforward. Some of us believe that foreign investments, as a supplement — and may I repeat that, as a supplement — are necessary for our economic progress because there is not enough domestic savings to create the industries and the jobs we so desperately need. Others do not subscribe to that view. Well and good. But in the discussion of this question, is there need to resort to smear tactics and character assassination? Are their arguments so devoid of merit? We have a saying in law which states:

If the facts are against you, argue the law; if the law is against you, argue the facts; if the facts and the law are against you, pound the table, shout like hell and abuse the other lawyer.

It seems to me, Madam President, that those who oppose our views are doing just that.

Madam President, let me repeat what I said in the caucus the other day. I yield to no one in my devotion to the national interest and certainly I apologize to no one for my political and economic views. I vote as my conscience dictates, and not as pressure groups, vested interests or lobbyists would wish me to, no matter how they may ridicule and vilify me in public. Such underhanded tactics will not deter me from my chosen path. Indeed, it only reinforces my determination to do what I believe is right for the common good. The object of this deplorable and sneaky tactics is to silence those who disagree with them by intimidation and black propaganda.

So in closing, Madam President, let me quote from an eminent jurist:

If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought, not free thought for those who agree with us, but freedom for the thought that we hate.

I pray this Commission will not forsake that principle.

Thank you, Madam President.

MR. RAMA: Madam President, may I ask that Commissioner Davide be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Madam President, may I move that a copy of the privilege speech of Commissioner Romulo be transcribed by the Secretariat and a copy of it be immediately forwarded by the Secretary-General to the editor of the Business Day for the latter to make the necessary rectification.

THE PRESIDENT: Is there any objection?

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz desires to be recognized.

MR. FOZ: I would like to amend the motion of Commissioner Davide to include not only the editor but also the publisher of the newspaper concerned.

MR. DAVIDE: Accepted, Madam President.

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

CONSIDERATION OF PROPOSED RESOLUTION NO. 496

(Article on the National Economy and Patrimony)

Continuation

PERIOD OF AMENDMENTS

MR. RAMA: Madam President, I move that we continue the consideration of the Article on the National Economy and Patrimony.

THE PRESIDENT: Is there any objection that we proceed to continue the consideration of the Article on the National Economy and Patrimony? (Silence) The Chair hears none; the motion is approved.

The body will continue the consideration of Committee Report No. 24 on the National Economy and Patrimony. The Chair requests the honorable Chairman and members of the committee to please occupy the front table.

SUSPENSION OF SESSION

THE PRESIDENT: We suspend the session for a few minutes.

It was 10:07 a.m.

RESUMPTION OF SESSION

At 10:14 a.m., the session was resumed.

THE PRESIDENT The session is resumed.

The Floor Leader is recognized.

MR. RAMA: Madam President, I ask that Commissioner Nollado be recognized first.

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: Thank you, Madam President.

I would like to propound some questions to the chairman and members of the committee. I have here a copy of the approved provisions on the Article on the National Economy and Patrimony. On page 2, the first two lines are

with respect to the Filipino and foreign equity and I said: "At least sixty percent of whose capital or controlling interest is owned by such citizens."

I notice that this provision was amended by Commissioner Davide by changing "voting stocks" to "CAPITAL," but I still notice that there appears the term "controlling interest" which seems to refer to associations other than corporations and it is merely 50 percent plus one percent which is less than 60 percent. Besides, the wordings may indicate that the 60 percent may be based not only on capital but also on controlling interest; it could mean 60 percent or 51 percent.

Before I propound the final question, I would like to make a comment in relation to Section 15 since they are related to each other. I notice that in Section 15, there still appears the phrase "voting stock or controlling interest." The term "voting stocks" as the basis of the Filipino equity means that if 60 percent of the voting stocks should belong to Filipinos, foreigners may own more than 40 percent of the capital as long as the 40 percent or the excess thereof will cover nonvoting stock. This is aside from the fact that under the Corporation Code, even nonvoting shares can vote on certain instances. Control over investments may cover aspects of management and participation in the fruits of production or exploitation.

So, I hope the committee will consider favorably my recommendation that instead of using "controlling interests," we just use "CAPITAL" uniformly in cases where foreign equity is permitted by law, because the purpose is to really help the Filipinos in the exploitation of natural resources and in the operation of public utilities. I know the committee, at its own instance, can make the amendment.

What does the committee say?

MR. VILLEGAS: We completely agree with the Commissioner's views. Actually, it was really an oversight. We did decide on the word "CAPITAL." I think it was the opinion of the majority that the phrase "controlling interest" is ambiguous.

So, we do accept the Commissioner's proposal to eliminate the phrase "or controlling interest" in all the provisions that talk about foreign participation.

MR. NOLLEDO: Not only in Section 3, but also with respect to Section 15.

Thank you very much.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: In view of the manifestation of the committee, I would like to be clarified on the use of the word "CAPITAL."

MR. VILLEGAS: Yes, that was the word used in the 1973 and the 1935 Constitutions.

MR. MAAMBONG: Let us delimit ourselves to that word "CAPITAL." In the Corporation Law, if I remember correctly, we have three types of capital: the authorized capital stock, the subscribed capital stock and the paid-up capital stock.

The authorized capital stock could be interpreted as the capital of the corporation itself because that is the totality of the investment of the corporation as stated in the articles of incorporation. When we refer to 60 percent, are we referring to the authorized capital stock or the paid-up capital stock since the determinant as to who owns the corporation, as far as equity is concerned, is the subscription of the person?

I think we should delimit ourselves also to what we mean by 60 percent. Are we referring to the authorized capital stock or to the subscribed capital stock, because the determination, as I said, on the controlling interest of a corporation is based on the subscribed capital stock? I would like a reply on that.

MR. VILLEGAS: Commissioner Suarez, a member of the committee, would like to answer that.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

We stated this because there might be a misunderstanding regarding the interpretation of the term "CAPITAL" as now used as the basis for the percentage of foreign investments in appropriate instances and the interpretation attributed to the word is that it should be based on the paid-up capital. We eliminated the use of the phrase "voting stock or controlling interest" because that is only used in connection with the matter of voting. As a matter of fact, in the declaration of dividends for private corporations, it is usually based on the paid-up capitalization.

So, what is really the dominant factor to be considered in matters of determining the 60-40 percentage should really be the paid-up capital of the corporation.

MR. MAAMBONG: I would like to get clarification on this. If I remember my corporation law correctly, we usually use a determinant in order to find out what the ratio of ownership is, not really on the paid-up capital stock but on the subscribed capital stock.

For example, if the whole authorized capital stock of the corporation is P1 million, if the subscription is 60 percent of P1 million which is P600,000, then that is supposed to be the determinant whether there is a sharing of 60 percent of Filipinos or not. It is not really on the paid-up capital because once a person subscribes to a capital stock then whether that capital stock is paid up or not, does not really matter, as far as the books of the corporation are concerned. The subscribed capital stock is supposed to be owned by the person who makes the subscription. There are so many laws on how to collect the delinquency and so on.

In view of the Commissioner's answer, I would like to know whether he is determined to put on the record that in order to determine the 60-40 percent sharing, we have to determine whether we will use a determinant which is the subscribed capital stock or the paid-up capital stock.

MR. SUAREZ: We are principally concerned about the interpretation which would be attached to it; that is, it should be limited to authorized capital stock, not to subscribed capital stock.

I will give the Commissioner an illustration of what he is explaining to the Commission.

MR. MAAMBONG: Yes, thank you.

MR. SUAREZ: Let us say the authorized capital stock is P1 million. Under the present rules in the Securities and Exchange Commission, at least 25 percent of that amount must be subscribed and at least 25 percent of this subscribed capital must be paid up.

Now, let us discuss the basis of 60-40. To illustrate the matter further, let us say that 60 percent of the subscriptions would be allocated to Filipinos and 40 percent of the subscribed capital would be held by foreigners. Then we come to the paid-up capitalization. Under the present rules in the Securities and Exchange Commission, a foreign corporation is supposed to subscribe to 40-percent share which must be fully paid up.

On the other hand, the 60 percent allocated to Filipinos need not be paid up. However, at least 25 percent of the subscription must be paid up for purposes of complying with the Corporation Law. We can illustrate the matter further by saying that the compliance of 25 percent paid-up of the subscribed capital would be fulfilled by the full

payment of the 40 percent by the foreigners.

So, we have a situation where the Filipino percentage of 60 may not even comply with the 25-percent requirement because of the totality due to the full payment of the 40-percent of the foreign investors, the payment of 25 percent paid-up on the subscription would have been considered fulfilled. That is exactly what we are trying to avoid.

MR. MAAMBONG: I appreciate very much the explanation but I wonder if the committee would subscribe to that view because I will stick to my thinking that in the computation of the 60-40 ratio, the basis should be on the subscription. If the subscription is being done by 60 percent Filipinos, whether it is paid-up or not and the subscription is accepted by the corporation, I think that is the proper determinant. If we base the 60-40 on the paid-up capital stock, we have a problem here where the 40 percent is fully paid up and the 60 percent is not fully paid up — this may be contrary to the provisions of the Constitution. So I would like to ask for the proper advisement from the Committee as to what should be the proper interpretation because this will cause havoc on the interpretation of our Corporation Law.

MR. ROMULO: Madam President.

THE PRESIDENT: Commissioner Romulo is recognized.

MR. ROMULO: We go by the established rule which I believe is uniformly held. It is based on the subscribed capital. I know only of one possible exception and that is where the bylaws prohibit the subscriber from voting. But that is a very rare provision in bylaws. Otherwise, my information and belief is that it is based on the subscribed capital.

MR. MAAMBONG: Is it, therefore, the understanding of this Member that the Commissioner is somewhat revising the answer of Commissioner Suarez to that extent?

MR. ROMULO: No, I do not think we contradict each other. He is talking really of the instance where the subscriber is a nonresident and, therefore, must fully pay. That is how I understand his position.

MR. MAAMBONG: My understanding is that in the computation of the 60-40 sharing under the present formulation, the determinant is the paid-up capital stock to which I disagree.

MR. ROMULO: At least, from my point of view, it is the subscribed capital stock.

MR. MAAMBONG: Then that is clarified.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: May I ask that Commissioner Tingson be recognized to propose an amendment to Section 4.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Madam President, this amendment to Section 4 would call for an additional sentence to the section. The said amendment is cosigned by Commissioners Ople, Davide, Rigos, Treñas, Rodrigo, de los Reyes, Uka, Aquino, Natividad, Rosales, Rama, Quesada, Tan, Gascon, Tadeo, Rosario Braid, Garcia, Abubakar and Bacani.

THE PRESIDENT: Will the Commissioner state the line where the amendment would be placed?

MR. TINGSON: It would be an additional sentence after the last line, line 17 of Section 4 on page 3.

THE PRESIDENT: The Commissioner will please proceed.

MR. TINGSON: The additional sentence would be: "FOR A PERIOD OF TEN YEARS IMMEDIATELY FOLLOWING THE RATIFICATION OF THIS CONSTITUTION, LOGGING FOR EXPORT SHALL BE PROHIBITED IN ENDANGERED FORESTS AND WATERSHED AREAS." I have presented this amendment to the committee, and I understand that they have studied and considered it. May I read it again, Madam President.

THE PRESIDENT: The Commissioner may proceed.

MR. TINGSON: "FOR A PERIOD OF TEN YEARS IMMEDIATELY FOLLOWING THE RATIFICATION OF THIS CONSTITUTION, LOGGING FOR EXPORT SHALL BE PROHIBITED IN ENDANGERED FORESTS AND WATERSHED AREAS."

MR. VILLEGAS: First of all, the committee accepts in principle the tenor of the Commissioner's amendment. This is just a minor change. We think it could be more appropriately placed in Section 5 where we are mandating Congress to fix forest lands and national parks.

MR. TINGSON: The Commissioner would prefer that this be taken up in Section 5?

MR. VILLEGAS: Yes, in Section 5.

MR. TINGSON: Rather than in Section 4?

MR. VILLEGAS: It should be in Section 5.

MR. TINGSON: Madam President, may I then request that I take up Section 4 so I will not take the time of those who may have amendments in Section 4.

MR. VILLEGAS: But we can already give the Commissioner a minor change in his phraseology which is as follows: "CONGRESS SHALL PROVIDE, FOR SUCH PERIOD AS IT MAY DETERMINE, PROHIBITION AGAINST LOGGING IN ENDANGERED FORESTS AND IN WATERSHED AREAS."

First of all, we think that it would be more appropriate to allow Congress, whom we are mandating, to study what is the more prudent period, rather than for us to determine the period itself. It could be longer; it could be 15 years or 20 years.

Secondly, we think logging should be prohibited, whether it is for domestic use or for export. If there are endangered forests, then these must really be protected from any logging. So, those are the changes we would like to propose.

MR. TINGSON: Will this change that the committee would like to make still remain as a mandate for the next Congress?

MR. VILLEGAS: Yes, definitely.

MR. TINGSON: Although the chairman of the committee did not mention the number of years for the prohibition, would it be that the sense of this Commission, which is greatly disturbed by the destruction of our forests, that the destiny and future of our country will not be ignored by the next Congress?

MR. VILLEGAS: Yes, it is a very strong mandate.

MR. TINGSON: Madam President, inasmuch as there were twenty of my colleagues who signed this amendment with me, and they told me personally that they were in complete agreement with it, is it possible for me first to

personally go around and at least confer with them in the light of what the committee has suggested?

THE PRESIDENT: Then we will call Commissioner Tingson's proposed amendment later on when we come to Section 5 because that is the recommendation of the committee.

MR. TINGSON: I appreciate that, Madam President.

THE PRESIDENT: Thank you.

So, is there any amendment to Section 4?

MR. RAMA: Madam President, I ask that Commissioner Colayco be recognized.

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: Thank you, Madam President.

This may be a typographical error; I am referring to line 1, page 3, the classification into agricultural, forest or mineral lands.

THE PRESIDENT: Is this line 1?

MR. COLAYCO: Yes, this is on line 1. After the word "forests," we delete the word "or."

MR. VILLEGAS: Upon the suggestion of Commissioner Concepcion, we also added "Forest or TIMBER, mineral lands and national parks."

MR. COLAYCO: That will be all right.

MR. VILLEGAS: Yes, thank you very much.

THE PRESIDENT: So, that will be "forest or TIMBER, mineral lands and national parks."

MR. RAMA: It is accepted by the committee, so we could submit it to a vote.

MR. VILLEGAS: It is accepted by the committee.

THE PRESIDENT: The committee has accepted the amendment.

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

MR. RAMA: May I ask that Commissioner Davide be recognized, Madam President?

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President.

The first amendment will be on line 6 of Section 4 on page 3, but my omnibus proposed amendments could be on page 4. After the word "lease" at the end of the line, insert a comma (,) and the phrase "FOR A PERIOD NOT EXCEEDING TWENTY-FIVE YEARS, RENEWABLE FOR NOT MORE THAN TWENTY-FIVE YEARS." So it will read: "hold alienable lands of the public domain except by lease, FOR A PERIOD NOT EXCEEDING TWENTY-FIVE YEARS, RENEWABLE FOR NOT MORE THAN TWENTY-FIVE YEARS."

MR. VILLEGAS: The amendment is accepted.

THE PRESIDENT: The committee has accepted the amendment.

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

MR. DAVIDE: On line 10, I seek the substitution of the word "twenty-four" with TWELVE."

MR. VILLEGAS: Is this a homestead?

THE PRESIDENT: Yes, this is a homestead.

MR. DAVIDE: I seek for the reduction of homesteads from "twenty-four" to "TWELVE" in order that more and more people can enjoy the benefits of homestead grants, especially now that the population is increasing.

MR. MONSOD: Does the Commissioner have any technical basis for "TWELVE"? The phrase now says: "in excess of twenty-four." We were wondering if there have been any studies on the size of economic and viable units.

MR. DAVIDE: Yes. Although the phraseology used is "in excess of twenty-four," the fact of the matter is that many of the grants of homesteads are at exactly twenty-four. It has always been the maximum that had been given.

THE PRESIDENT: So, Commissioner Davide will limit that maximum now from twenty-four to twelve?

MR. DAVIDE: To twelve, yes.

MR. VILLEGAS: Madam President, we accept the amendment which is "TWELVE" hectares. This is really in the spirit of the provisions under social justice which would want a wider distribution of public lands in the Philippines.

THE PRESIDENT: Is there any objection to this proposed amendment on line 10 to reduce "twenty-four" to "TWELVE"?

MR. DE LOS REYES: Madam President.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: May I just ask Commissioner Davide and the members of the committee some clarificatory questions? There are cases where applicants have already cultivated twenty-four hectares and their applications are pending before the Bureau of Lands. Considering that they have practically complied with existing laws regarding twenty-four hectares, what will be the effect of Commissioner Davide's amendment on those cases?

MR. DAVIDE: Upon the approval of the Constitution, only twelve hectares can be granted.

MR. DE LOS REYES: Even if the applicant has cultivated and cleared twenty-four hectares, will it be just and consistent with the humane and equitable thrust of our Constitution?

MR. DAVIDE: A possible exception can be incorporated, but I would prefer that such exception be in the Transitory Provisions.

MR. DE LOS REYES: So the understanding is that this amendment should apply only to future applications?

MR. DAVIDE: Yes, that would be the proper interpretation. It is without prejudice to perfected applications. I say perfected because probably what is only lacking is the approval of the application.

MR. DE LOS REYES: That is precisely my point. There are several cases of that nature pending before the Bureau of Lands where the delay is only due to some bureaucratic requirements but the applicants have already complied with almost everything.

MR. DAVIDE: We will work together for that in the Transitory Provisions.

MR. DE LOS REYES: With that understanding, I am satisfied with the Commissioner's amendment.

Thank you.

THE PRESIDENT: Is there any objection to this proposed amendment on line 10 reducing the number "twenty-four" to "TWELVE" hectares? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE: On line 12, Madam President, after the word "resources," insert the following: "AND SUBJECT TO THE PRINCIPLES OF AGRARIAN REFORM." Necessarily, we delete lines 16 and 17.

MR. VILLEGAS: We accept the amendment. This is a transposition of that last phrase.

MR. DE LOS REYES: Madam President.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: May I know the reason for changing "requirements" to "PRINCIPLES"? I think the first word is better as in "SUBJECT TO THE REQUIREMENTS OF AGRARIAN REFORM" instead of "PRINCIPLES."

MR. DAVIDE: I accept "AND SUBJECT TO THE REQUIREMENTS OF AGRARIAN REFORM."

MR. DE LOS REYES: Thank you.

THE PRESIDENT: Will the Commissioner please read line 12 now?

MR. DAVIDE: So, line 12 will read as follows: "of the natural resources, AND SUBJECT TO THE REQUIREMENTS OF AGRARIAN REFORM, shall determine by law the size . . ."

THE PRESIDENT: Is there any objection?

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: I just want to call the attention of Commissioner Davide and the members of the committee that we are using the word "requirements" twice on this line 12 as amended: "and developmental requirements of the natural resources, AND SUBJECT TO THE REQUIREMENTS." Could we not use some other term because it does not look elegant to me using the same word twice?

MR. DAVIDE: That is why my original amendment was "SUBJECT TO THE PRINCIPLES OF AGRARIAN REFORM."

MR. VILLEGAS: Could we leave it to the Committee on Style to work out the phraseology of this line 12?

MR. DAVIDE: All right.

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

MR. DAVIDE: So, lines 16 and 17 would be deemed to be deleted in view of the transposition.

MR. VILLEGAS: Yes.

MR. DAVIDE: I have nothing more on Section 4, but I will have my amendments on Section 5, if there are no anterior amendments.

MR. TADEO: Madam President.

THE PRESIDENT: Commissioner Tadeo is recognized.

MR. TADEO: Line 5 states:

No private corporation or association may hold alienable lands of the public domain except by lease, not to exceed one thousand hectares.

Anong ibig sabihin nito tungkol dito sa panig ng Dole at Del Monte? Nilalabag ng Dole ang seksyon na ito na nagsasabing ang isang korporasyon ay maaari lang umupa ng isang libong ektarya, ngunit ang sinakop ng Dole ay 30,000 ektarya; ang Del Monte ay 24,000 ektarya; ang Sime Darby at Guthrie, 8,000 ektarya; ang Manila Paper Mills, 43,000 ektarya; at ang Aguinaldo Development Corporation, 27,000 ektarya. Paano po ngayon ang mangyayari rito? Nilalabag nila mismo ang ating Saligang Batas sa pamamagitan ng Amendment No. 6.

MR. VILLEGAS: Those would not be possible anymore under this present Constitution.

MR. TADEO: Ang tanong ko po ay ano ang mangyayari sa Dole at Del Monte?

MR. VILLEGAS: They will have to comply with the Constitution. The law will make sure that they comply with the present Constitution. I think those corporations were able to go around some of these provisions through these service contracts, by applying service contracts to land. It is very clear in this Constitution that those service contracts no longer are applicable to agricultural lands.

MR. TADEO: Kasi po nakalulungkot na ito ay renewable for another 25 years. Ang pangalawang tanong ko ay ganito: Are they to be exempted because of prior rights?

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: The law is very clear. Even if the abovementioned corporations have prior rights, the adjustment might be in the case of those who distributed these hectares of lands. That is where we consider just compensation or progressive or fair compensation. But the law is quite clear. There is a limit on what these corporations can hold. So, there are no exceptions to that.

MR. TADEO: Nililina ko lang ito. Section 6 of the Article on Social Justice, under Agrarian Reform states:

The State shall apply the principles of agrarian reform or stewardship whenever applicable in accordance with law in the disposition or utilization of other natural resources, including lands of the public domain suitable to agriculture under lease or concession.

Nilagyan po natin ito ng "subject to prior rights" ngunit ang ibig naming sabihin sa "prior rights" ay hindi ang prior rights ng Del Monte o ng Dole. Ang ibig naming sabihin sa "prior rights" ay iyong prior rights referred to the previous rights of indigenous cultural communities and safeguards over the land which they cultivate and use for livelihood.

MR. MONSOD: That has nothing to do with this section, and if I may correct the Commissioner, the constitutional provision says "prior rights." If the Commissioner remembers, the phrase that he mentioned was dropped. When we talked about "prior rights," we explained during the interpellations on the Article on Social Justice that in the event that it was an unjust acquisition, then the law will deal with that as an unjust acquisition. Hence, said corporations are not entitled really to justice. If it is a just and legal acquisition, then there could be room for compensation, but the law must be applied.

MR. TADEO: Pagkaraang mapagtibay ang Saligang Batas na ito, ang puwede lamang angkinin ng Dole at Del Monte ay maliwanag na 1,000 ektarya lamang?

MR. MONSOD: Ito po ang nakalagay. Iyan po ang ating batas ngayon.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: As a follow-up to the question of Commissioner Tadeo, may I seek a clarification from the committee? Under the scenario that he has contemplated where these landholdings of Dole and Del Monte would now just be reduced to a thousand hectares, and pending the application of the agrarian reform program in that particular area, would the committee be amenable to a proposal to incorporate in the Transitory Provisions that until Congress shall have so provided, reversion proceedings may be instituted by the State insofar as the excess area is concerned?

MR. VILLEGAS: I think that would be a just provision.

MR. MONSOD: Yes, and, I think, just because there is going to be a distribution of the land does not mean that the plantation will break up. The plantation can continue but this time it would be owned by Filipinos.

MR. REGALADO: Yes. At least we provide for the right of the State to institute reversion proceedings because, as presently provided, reversion proceedings refer only to public lands illegally acquired.

MR. MONSOD: Yes.

MR. REGALADO: We want an expanded view of reversion proceedings, that even if the land was supposedly legally acquired under the previous regime, since it exceeds the maximum limits, the State shall also have the right to institute reversion proceedings, precisely for an implementation of the agrarian reform program.

MR. MONSOD: We agree with that position.

MR. REGALADO: Thank you.

SR. TAN: May I ask the committee, Madam President?

THE PRESIDENT: Commissioner Tan is recognized.

SR. TAN: Would private corporations in this section include family corporations which own thousands of hectares of land? So, even if they got it from the King of Spain, they would have to give part of it; is that the understanding?

MR. VILLEGAS: Yes, whatever corporation.

SR. TAN: That is wonderful. Does it include friar lands that the Church got from the King of Spain?

MR. VILLEGAS: Yes.

SR. TAN: Thank you very much.

MR. DE LOS REYES: Madam President.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: I would just like to clarify the question of Commissioner Tadeo. It is as if this provision, providing for 1,000 hectares, is a new one. But this was already existing in the 1973 Constitution under Section 11

which states:

No private corporation or association may hold alienable lands of the public domain except by lease not to exceed one thousand hectares in area.

So, when these lands were given to Dole, was it by virtue of Amendment No. 6 or by virtue of the martial law powers of the President when he imposed martial law?

MR. VILLEGAS: I do not know the real facts, so I cannot comment.

MR. DE LOS REYES: I ask that question because it is as if we are discussing the same on the premise that it is only now that we are limiting to 1,000 hectares in area lands which may be acquired by lease by a private corporation, which is not so.

MR. VILLEGAS: The question of fact is whether or not some of these lands were leased under this procedure of the service contract, which the committee found as a way that some corporations were able to circumvent specific provisions in the 1973 Constitution. That is really a question of fact.

MR. OPLE: Madam President.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: Since almost fortuitously the Commission has now come upon this fact that this provision of the Constitution, even as early as the 1973 Constitution, has been successfully circumvented through service contracts, will the committee entertain an amendment that will place a very strong safeguard against the abuse of service contracts so that a constitutional principle is circumvented in this manner?

MR. VILLEGAS: First of all, there is no longer the possibility of applying service contract arrangements on agricultural lands.

MR. OPLE: Given that assurance, what about these service contracts overtaken by this new Constitution?

MR. VILLEGAS: That is where the recommendation of Commissioner Regalado comes in, providing reversion proceedings in the Transitory Provisions.

MR. OPLE: Hence, it is a reversion process in the Transitory Provisions.

Thank you, Madam President.

MR. CALDERON: Madam President.

THE PRESIDENT: Just one point to the committee. The Chair would like to be clarified.

MR. VILLEGAS: Yes, Madam President.

THE PRESIDENT: Are we pursuing a principle that our Constitution now is being given retroactive effect rather than a prospective effect?

MR. VILLEGAS: That is not the thinking, Madam President. It is just that if it can prove that some of these acquisitions were unjust, then there is where the Transitory Provisions could be able to deal with them.

MR. CALDERON: Madam President.

MR. TADEO: Madam President.

THE PRESIDENT: Commissioner Tadeo is recognized.

MR. TADEO: Madam President, ito pong minister noong panahon ni Ginoong Marcos at minister pa rin sa ilalim ng pamahalaan ni President Corazon Aquino ay nakapag-angkin ng 2,000 hectares. Alam naman nating hanggang 24 ektarya lang ang maaaring angkinin at paunlarin pero isa pong minister na hanggang ngayon ay minister pa rin ang nakapag-angkin sa Basilan City ng 2,000 ektaryang lupa.

MR. CALDERON: Madam President.

THE PRESIDENT: Commissioner Calderon is recognized.

MR. CALDERON: I would like to ask this committee a question in connection with the previous question of Commissioner Tan.

MR. VILLEGAS: Yes.

MR. CALDERON: Commissioner Tan asked whether or not the so-called friar lands which were a gift from the King of Spain are covered by this provision.

MR. VILLEGAS: Commissioner Tan was asking whether or not the phrase "private corporation" applies to family corporations or friar lands. If they were organized as corporations they definitely would be included as private corporations. That was the question.

MR. CALDERON: I see. In connection with the so-called friar lands — since not only this type of lands was deeded by the King of Spain but also so many of our people, in their desire to have their souls acquire a heavenly repose, deeded in their last will and testament several parcels of land to the Church — I would like to know whether or not these lands are within the purview of the narrations.

MR. VILLEGAS: Those are not covered by this specific provision. I think they can be tackled under the provisions of the Article on Social Justice under agrarian reform. This specific provision talks about land of the public domain which is alienable.

MR. CALDERON: So, donations to the Church or to any other group are not covered.

MR. VILLEGAS: They would not be covered by this specific provision.

MR. CALDERON: Thank you.

MR. AZCUNA: Madam President.

THE PRESIDENT: Commissioner Azcuna is recognized.

MR. AZCUNA: In relation to the amendment of Commissioner Davide on the limit of homesteads to 12 hectares, I would like to ask the members of the committee if they are willing to include aside from acquisition by purchase or homestead the wording of the 1973 Constitution which says: "purchase, homestead or GRANT" in order to cover other modes of disposition of public lands such as free patent, so as to plug a loophole.

MR. VILLEGAS: We accept the amendment to the amendment. How will the amendment read?

MR. AZCUNA: It will now read: "purchase, homestead, OR GRANT."

THE PRESIDENT: I beg the Commissioner's pardon.

MR. AZCUNA: On page 3, line 9, we insert the word "GRANT" after "homestead" so that it will read: ". . . purchase, homestead or GRANT, in excess of twelve hectares."

THE PRESIDENT: The committee has accepted the amendment.

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

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: There are no more proponents of amendments to Section 4 except Commissioners Foz and Sarmiento who are requesting that they be allowed to present their amendments later because some Commissioners would like to join them.

THE PRESIDENT: So, we shall defer the approval of the entire Section 4 until we receive or consider those amendments.

MR. RAMA: Yes, Madam President.

THE PRESIDENT: Shall we proceed now to Section 5?

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Before we go to Section 5, I am still a little bit worried about our discussion on Section 3 regarding the 60-40 sharing and I have appealed to the committee to solve that problem by inserting the word SUBSCRIBED before the word "capital" in order to make it aligned with the decision of the Supreme Court on this matter. I wonder if the committee has decided on it now.

MR. ROMULO: Madam President.

THE PRESIDENT: Commissioner Romulo is recognized.

MR. ROMULO: We would prefer to stay by the traditional wording which is "thirty-five" and "seventy-three," inasmuch as both the Corporation Law and jurisprudence are very clear that it is really based on subscribed capital.

MR. MAAMBONG: Then if that is the case, why can we not make it more specific by just saying "subscribed capital" because it will solve a lot of problems?

MR. ROMULO: But it also applies to associations which may not have shares of stock.

MR. MAAMBONG: Yes, but I thought we have solved that problem already by the use of the words "controlling interest."

MR. VILLEGAS: No, we are not using that phrase.

MR. MAAMBONG: We are not; we are not using it anymore.

THE PRESIDENT: The phrase "controlling interest" has been deleted.

MR. VILLEGAS: "Capital" is used here as a specific word.

MR. MAAMBONG: My thinking is like this: Commissioner Romulo who is well-entrenched in Corporation Law and practice could, perhaps, correct me on this, but as far as my recollection serves me, under the present Corporation Law and under the ruling of the Supreme Court, a person who subscribes to capital stock of corporation can vote already even if he has not yet paid fully, and that is a departure from the previous rulings of the Supreme Court. So, once we fix the subscription at 60 percent Filipino and 40 percent foreign, it does not really matter whether it is paid up or not because the recent provisions of the Corporation Law is very specific and

the ruling of the Supreme Court is also very specific.

MR. ROMULO: Yes.

MR. MAAMBONG: So, it could solve a lot of problems regardless of the paid-up situation?

MR. ROMULO: What the Commissioner is saying is correct. The only thing is, we are trying to handle the use of capital as a generic term because what is involved is not only corporations but also noncorporations or associations.

MR. MAAMBONG: Anyway, with the understanding that the word "capital" has really reference to subscribed capital stock, then I will not insist on that.

MR. ROMULO: Thank you.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: May I just clear up one point with Commissioner Maambong regarding the suggestion to use the word "subscribed" referring to capital. What bothers this Member is the possibility that Filipinos who are subscribers and incorporators in that 60-40 corporation may not pay at all any of their subscriptions because it may come to a point where the 40 percent fully paid up would indeed represent at least 25 percent of the paid-up subscribed capital of the entire corporation. Does the Commissioner have that in mind also?

MR. MAAMBONG: Yes, that is precisely the point I raised, Madam President. The problem would have arisen if the Corporation Law had not been amended or the Supreme Court had not reversed its previous stand. At present once one subscribes to a capital stock of a corporation, as long as there is no declaration that the subscription is declared delinquent, then the person has the right to vote his shares of stock based on his subscription and that right will not be taken away from him. So, there is no problem there.

MR. SUAREZ: I go beyond that. In other words, the Filipino subscribers did not even pay a single centavo from their subscriptions.

MR. MAAMBONG: But that is not possible, because the Commissioner has mentioned earlier that when one subscribes, there is a 25-25 ratio which has to have some paid-up capital.

MR. SUAREZ: So, that is just exactly what I am only trying to clear up. In other words, even if not a single centavo was paid on the 60-percent stock subscription by the Filipino subscribers, nonetheless, for purposes of interpreting the word "capital" under this Section 3, that is tantamount to a holding of 60 percent.

MR. MAAMBONG: I will again have to make clarification of that, because when we subscribe, we do have to pay a certain percentage.

MR. SUAREZ: No, that is why I said in my example that I go beyond that. If it is on a 60-40 basis, the 40-percent share of foreigners is already fully paid up.

MR. MAAMBONG: Yes.

MR. SUAREZ: That will satisfy the 25 percent paid-up requirement under the Corporation Code on the totality. Therefore, there is no necessity to require the 60-percent Filipino subscription to be paid at all. That is the possibility that I am trying to picture before us. I asked that even under that situation, our interpretation that it should be based on subscribed capital stock will prevail.

MR. MAAMBONG: It will still prevail.

MR. SUAREZ: Thank you.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: May I have some clarification from Commissioner Suarez with respect to this subscription?

I do not know if I heard correctly that even if the subscriber does not pay a centavo on his subscription, the stocks to which he has subscribed shall already be considered for purposes of the computation?

MR. SUAREZ: That is in practice.

MR. REGALADO: Then can a so-called subscriber who has not paid even the minimum 25 percent under the Corporation Code be considered a subscriber?

MR. SUAREZ: Yes, that is exactly the point that I was trying to raise with Commissioner Maambong.

MR. MAAMBONG: Madam President.

MR. SUAREZ: Under the present Corporation Code, the normal requirement is that 25 percent of the authorized capital stock must be subscribed and 25 percent of the subscribed capital stock must be paid up irrespective of who is holding the 25 percent. That is the possibility that I was picturing to Commissioner Maambong when we come to interpret this 60-40 percent sharing based on capital.

MR. REGALADO: In other words, on a collective basis?

MR. SUAREZ: Yes.

MR. REGALADO: And not on an individual basis?

MR. SUAREZ: The Commissioner is right.

MR. REGALADO: We might be misled by the phrase "subscription by a subscriber who has never paid a centavo."

MR. SUAREZ: That is right.

THE PRESIDENT: Yes, but Commissioner Maambong sticks to his own personal views about it.

MR. MAAMBONG: Yes; I just want to interject a statement that I disagree with the statement that an individual subscriber may be given a share of stock based on his subscription without paying a single centavo. A corporate practice is always that he has to pay a certain percentage, and I think that should be the clarification to Commissioner Regalado.

Thank you.

THE PRESIDENT: Would Commissioner Padilla wish to add something to this discussion?

MR. PADILLA: No, not on Section 3, not on capital, but on Section 4.

Madam President, this Member was inquiring whether Section 4 has prospective or retroactive effect when Commissioner Davide proposed to reduce 24 hectares to 12 on a question propounded by Commissioner de los Reyes. The answer was that it refers to prospective or future applications.

Madam President, this limit of 1,000 hectares in area on line 7 of Section 4 is the same provision of 1,000 hectares in area in Section 11 of the 1973 Constitution. But prior to the 1973 Constitution, there were private Filipino domestic corporations which were granted, under the Public Land Law, 1,024 hectares. I do not really know why the area was 1,024, but that is a fact based on the 1935 Constitution. Now, does this mean that upon the ratification of this Constitution, said areas of 1,024 hectares held by domestic corporations would be reduced to 1,000, especially, considering the proposal of Commissioner Regalado that there be a reversion of the excess?

Madam President, I believe it would be improper and difficult, if not unreasonable, to reduce the holdings of Filipino corporations. I am not concerned with foreign corporations but with Filipino corporations which had been granted the 1,024 hectares to have that small excess hectarage of 24 hectares deducted from it. As a matter of fact, notwithstanding the provision of Section 11 of the 1973 Constitution, the rights previously granted under the 1935 Constitution had been respected.

MR. ROMULO: I think that one must distinguish between rights which are derived from the Constitution itself such as the case the Commissioner is describing. If I recall the Supreme Court decisions, that is not affected by a new Constitution, and such rights, because they were vested by virtue of the Constitution itself, are not retroactively affected.

MR. PADILLA: Even if the grant was really under the Public Land Law?

MR. VILLEGAS: Yes, but specifically authorized by the Constitution.

MR. PADILLA: Thank you.

MR. RAMA: Madam President, I ask that Commissioner Davide be recognized to amend Section 5.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President.

On Section 5, I propose the deletion of the words "upon recommendation of the President."

MR. VILLEGAS: We accept the amendment.

MR. MONSOD: When this amendment was done, the understanding was the Ministry of Natural Resources would really do it, but I believe that was understood even when we took out the first phrase.

MR. DAVIDE: Yes, that would be the effect because the Ministry of Natural Resources is in a better position to make the delimitations or delineations.

THE PRESIDENT: May we have the amendment again, Commissioner Davide?

MR. DAVIDE: It is just the deletion of the first line, line 18, which reads: "Upon recommendation of the President" and insert a comma (,).

THE PRESIDENT: Is that accepted by the committee?

MR. VILLEGAS: It is accepted, Madam President.

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

MR. DAVIDE: Madam President, in order that Congress shall immediately act on this very grave matter, I propose that on line 19, before the word "Congress," we insert the following: "THE FIRST"; and after "Congress," add the following: "ELECTED UNDER THIS CONSTITUTION." So, the entire section will read: "THE FIRST Congress ELECTED UNDER THIS CONSTITUTION shall determine by law the specific limits of

forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and not be diminished."

MR. VILLEGAS: The amendment is accepted.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Suppose the First Congress fails to act, may the Second Congress no longer act?

MR. DAVIDE: We have to give emphasis so that the First Congress must really act on this particular matter in order that we do not deplete further our forests and cause more denudation.

MR. RODRIGO: On the understanding that if the First Congress fails to act, we cannot penalize it.

MR. DAVIDE: And the Second Congress?

MR. RODRIGO: The Second Congress may act.

MR. DAVIDE: Yes.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: I want to share the concern of Commissioner Rodrigo that this proposed amendment seems to be very limiting. To avoid this confusion, I would suggest that the amendment should not be placed there at all, if the committee agrees.

MR. VILLEGAS: The thinking also in response to the original amendment by Commissioner Tingson is that the problem is a very urgent problem and that the whole country is really being devastated by denudation. And so this is really for emphasizing the urgency of the problem. It is understood that if the First Congress does not act, then the Second Congress will have to act.

THE PRESIDENT: What happens to the proposed amendment of Commissioner Tingson which is to be part of Section 5?

MR. TINGSON: Madam President, the new formulation now would be: "CONGRESS SHALL PROVIDE FOR SUCH PERIODS AS IT MAY DETERMINE MEASURES TO PROHIBIT LOGGING IN ENDANGERED FORESTS AND WATERSHED AREAS."

Madam President, just for the record, may I again read the names of those who joined me in this very important amendment: Commissioners Ople, Davide, Rigos, Treñas, Rodrigo, de los Reyes, Uka, Aquino, Natividad, Rosales, Rama, Quesada, Tan, Gascon, Tadeo, Rosario Braid, Garcia, Abubakar, Bacani and Guingona.

THE PRESIDENT: Yes, we had that already, Commissioner Tingson.

What the Chair will clarify is whether or not the group agrees to the rephrasing of the amendment submitted by Commissioner Romulo.

MR. TINGSON: Yes, Madam President.

MR. VILLEGAS: So, let me read: "CONGRESS SHALL PROVIDE FOR SUCH PERIODS AS IT MAY DETERMINE MEASURES TO PROHIBIT LOGGING IN ENDANGERED FORESTS AND IN WATERSHED AREAS."

THE PRESIDENT: Is this an additional sentence?

MR. VILLEGAS: The amendment is accepted.

THE PRESIDENT: Is that an additional sentence, Commissioner Villegas?

MR. VILLEGAS: That is an additional sentence to Section 5.

MR. TINGSON: May I just ask the chairman again, if this would be a mandate for the very First Congress?

MR. VILLEGAS: Yes, which is really a continuation of the first sentence.

THE PRESIDENT: So, may we now have the entire Section 5?

MR. VILLEGAS: Section 5, as amended, reads: "THE FIRST Congress, ELECTED UNDER THIS CONSTITUTION, shall determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and not be diminished.

"CONGRESS SHALL PROVIDE FOR SUCH PERIODS AS IT MAY DETERMINE MEASURES TO PROHIBIT LOGGING IN ENDANGERED FORESTS AND IN WATERSHED AREAS."

THE PRESIDENT: Have those amendments been accepted by the committee as is?

MR. VILLEGAS: Yes; Madam President.

MR. TINGSON: Thank you very much.

THE PRESIDENT: Is there any objection?

MR. BENNAGEN: Madam President.

THE PRESIDENT: Commissioner Bennagen is recognized.

MR. BENNAGEN: Just for clarity, may we ask what the contemplation of the committee is on the word "conserved"?

MR. VILLEGAS: To take care of the trees because, as we probably remember, there were all sorts of decrees asking people to plant trees.

MR. BENNAGEN: Would that include also the utilization and development projects?

MR. VILLEGAS: Yes.

MR. BENNAGEN: Does it refer to management?

MR. VILLEGAS: Yes.

MR. BENNAGEN: Would that also include the possibility of changing the specific limits of national parks in regard to the total boundaries of forest lands and national parks, or will the limits remain as is? I asked that because there is some danger here in the statement "Thereafter, such forest lands and national parks shall be conserved and not be diminished."

MR. VILLEGAS: That is right.

MR. BENNAGEN: Is that also the understanding? As formulated, it is rigid and possible that with the development of management technology, soft technology for forestry, there could be some alterations in the

boundaries. There should be some flexibility in the provision.

Thank you, Madam President.

MR. VILLEGAS: Yes.

THE PRESIDENT: What would Commissioner Bennagen propose?

MR. BENNAGEN: Madam President, it should be with the understanding that Congress, depending on development in management technology, forest technology, shall be empowered to make the necessary adjustments or shall be empowered to pass laws to respond to changing requirements of forest development and national economy.

Thank you.

MR. LAUREL: Madam President.

THE PRESIDENT: Commissioner Laurel is recognized.

MR. LAUREL: The changes on Section 5 would require "THE FIRST Congress, ELECTED UNDER THIS CONSTITUTION, shall determine by law . . ." et cetera. This Constitution is supposed to govern not only the immediate future but also the succeeding generations. Can we not think of better words instead of referring to the First Congress? After the First Congress, there will be no other First Congress and it may lead people, who might be adversely affected, to say: "The Congress can no longer do it."

Instead of referring to the First Congress, why do we not just say, "THE Congress shall AS SOON AS POSSIBLE determine by law. . ." We should not refer to the First Congress only because this Constitution we are now drafting is supposed to govern the future. We are not supposed to change the Constitution after every Congress.

MR. VILLEGAS: Commissioner Davide is recognized.

MR. DAVIDE: I am willing to accept the amendment if the committee will also accept it.

MR. VILLEGAS: Yes, we will accept the amendment: "THE Congress shall, AS SOON AS POSSIBLE, determine by law." Is that amendment acceptable?

MR. RODRIGO: Madam President.

MR. RAMA: We have to take a vote on the new amendment presented by Commissioner Laurel if there is no objection.

THE PRESIDENT: Has the amendment, as amended been accepted by the committee?

MR. VILLEGAS: Yes, Madam President.

THE PRESIDENT: The committee has accepted the amendment, as amended.

Is there any objection? (Silence) The Chair hears none; the amendment, as amended, is approved.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: I have my misgivings about the answer of the committee to the question of Commissioner Bennagen on whether Congress, after this provision is ratified, may subtract from the area determined or declared as forest lands and national parks. Was this the answer of the committee to that question?

MR. VILLEGAS: Yes. This was discussed in previous committee meetings, and that was the understanding, that Congress is empowered after a certain period of time, if it deems fit, to actually change the specific limits.

MR. RODRIGO: But the wording of the provision is very categorical — "Thereafter, such forest lands and national parks shall be conserved and not be diminished." So, I do not see how it can be subject to interpretation. With this provision, I think that Congress, unless it proposes a constitutional amendment, may not subtract even a hectare.

THE PRESIDENT: In fact, the Chair shares the observation of Commissioner Rodrigo.

MR. RODRIGO: Thank you.

MR. VILLEGAS: Since this is really the thinking, we can add the phrase "UNLESS SUBSEQUENTLY CHANGED BY LAW." Would that be clear enough?

MR. RODRIGO: Yes.

MR. MONSOD: Or we can say "AND THE LIMITS DETERMINED BY CONGRESS" or the terms "AS DETERMINED BY CONGRESS shall not be diminished." In other words, it is Congress who always defines "forest lines."

MR. ROMULO: Yes.

MR. RODRIGO: Why do we not just put a period (.) after the word "conserved"?

MR. DAVIDE: Madam President.

THE PRESIDENT: Is Commissioner Rodrigo through?

MR. RODRIGO: Yes.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: May I propose an amendment? It should be worded "and MAY not be diminished EXCEPT BY LAW."

THE PRESIDENT: In other words, not by executive fiat?

MR. BENNAGEN: Madam President.

THE PRESIDENT: Commissioner Bennagen is recognized.

MR. DAVIDE: Should it always be "by law"?

MR. BENNAGEN: Yes. The issue of forest lands and national parks is not just a matter of diminishing. It could also be expanded. I think a more flexible amendment is needed due to the development in technology or even due to the status of the forest themselves.

MR. VILLEGAS: So, the amendment should be: "MAY not be CHANGED EXCEPT BY LAW."

MR. BENNAGEN: Thank you.

MR. VILLEGAS: So, Madam President, the amended line will read: "Thereafter, such forest lands and national parks shall be conserved and MAY not be CHANGED EXCEPT BY LAW."

MR. RODRIGO: "CHANGED"?

MR. VILLEGAS: Yes, we use the word "CHANGED."

MR. RODRIGO: The word "CHANGED" is a word that does not refer to area. "MAY not be diminished" would be better because, with that, it means it can be increased by law but may not be diminished except by law. The word "CHANGED" can refer to quality, not necessarily to area.

MS. NIEVA: Madam President.

THE PRESIDENT: Commissioner Nieva is recognized.

MS. NIEVA: Can it not be "and MAY not be diminished OR INCREASED EXCEPT BY LAW"? I think that was the sense of Commissioner Bennagen — it may be increased or it may be diminished, depending on the developments in technology. So perhaps that would be more explicit, if those are the changes that are contemplated.

MR. BENNAGEN: Yes.

MR. VILLEGAS: Is it acceptable to Commissioner Bennagen?

MS. NIEVA: Unless there are other ways of expanding or diminishing.

MR. BENNAGEN: Madam President, one kibitzer here says: "SHOULD not be INCREASED NOR diminished EXCEPT BY LAW."

MS. NIEVA: Yes.

THE PRESIDENT: At any rate, I think the principle is there.

MS. NIEVA: Yes, that is the sense.

THE PRESIDENT: In the process, maybe we can find a better term. So, it will be subject to that.

MR. VILLEGAS: Yes.

THE PRESIDENT: But the principle that Commissioner Bennagen has stressed, I think, is acceptable to everybody. Is that correct?

MR. BENNAGEN: Yes. Thank you, Madam President.

THE PRESIDENT: So without prejudice to finding a happier term or a better term can we now proceed to vote?
Yes, Commissioner Padilla.

MR. PADILLA: Maybe the better term would be "shall not be ALTERED EXCEPT BY LAW."

THE PRESIDENT: I beg the Commissioner's pardon?

MR. VILLEGAS: Is it "MAY not be ALTERED"?

MR. PADILLA: A better term is: "shall not be ALTERED EXCEPT BY LAW."

MR. VILLEGAS: Yes.

THE PRESIDENT: We have the whole Section 5 now.

MR. VILLEGAS: Yes.

THE PRESIDENT: Are we ready to vote on the whole Section 5, as amended?

MR. VILLEGAS: Section 5 now reads: "Congress shall AS SOON AS POSSIBLE determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and MAY not be INCREASED NOR diminished EXCEPT BY LAW. CONGRESS SHALL PROVIDE FOR SUCH PERIODS AS IT MAY DETERMINE MEASURES TO PROHIBIT LOGGING IN ENDANGERED FORESTS AND IN WATERSHED AREAS."

VOTING

THE PRESIDENT: As many as are in favor of this particular Section 5 as read, please raise their hand. (Several Members raised their hand).

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

Is Commissioner Maambong opposing it?

MR. MAAMBONG: No, Madam President.

THE PRESIDENT: The results show 31 votes in favor, none against and one abstention; Section 5, as amended, is approved.

MR. RAMA: There are no proponents of amendments to Section 6, Madam President, so I ask that we approve it.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Madam President, may we just clarify some points with respect to Section 6 because of some changes in the use of the terms "lands of the public domain" and "agricultural lands of the public domain" which are now incorporated in Section 4 of the proposed Article.

In Section 6, the term "private lands" is utilized, and I suppose this has reference to private agricultural lands. Is my understanding correct?

MR. VILLEGAS: Yes, Madam President.

MR. SUAREZ: Thank you. And when we say "hold lands of the public domain," are we referring exclusively to agricultural lands of the public domain as mentioned in line 2 of Section 4?

MR. VILLEGAS: The phrase there is "acquire or hold." My own interpretation is "to hold" also includes the possibility of leasing. So, that means any public land that is alienable.

MR. SUAREZ: In other words, when we use the term "lands of the public domain," it could contemplate lands which are not necessarily agricultural in character. It could refer to grazing lands, for example, or to pasture lands, but not to forest or timber lands.

MR. VILLEGAS: That is right, Madam President.

MR. SUAREZ: In other words, it is something that is basically agricultural in character which may include, as; I said, pasture lands or grazing lands.

MR. VILLEGAS: That is right, Madam President.

MR. SUAREZ: And these could be transferred to individuals, corporations or associations who are qualified to acquire the same.

MR. VILLEGAS: To acquire or to hold.

MR. SUAREZ: When one says "qualified to acquire," it means those qualified to acquire public agricultural lands or any lands of the public domain because in Section 3, on lines 2, 3, 4 and 5, it is stated that the agricultural lands of the public domain are limited to citizens of the Philippines.

MR. VILLEGAS: That is right.

MR. SUAREZ: And yet in the last portion of Section 6, we are allowing corporations or associations to acquire lands of the public domain, provided they are qualified to acquire the same.

So, we are not limiting this to the citizens of the Philippines provided under Section 4.

MR. MONSOD: Madam President, I think the intent of line 13, Section 4 is that there are now four classifications in the generic sense of agricultural lands: agriculture, forest, mineral and national parks.

So, we would be willing to entertain an amendment that will insert the word "AGRICULTURE" before "lands" on line 13.

MR. SUAREZ: That is in Section 4.

MR. MONSOD: Yes.

MR. SUAREZ: And does the Commissioner think that this will be consistent with the provision of Section 6?

MR. MONSOD: Yes, and also with line 2 of the same section.

MR. SUAREZ: Yes. And would the Commissioner not think of changing the phrase "lands of the public domain" to "PUBLIC AGRICULTURAL LANDS" or something in order to jibe and harmonize with Section 4?

MR. MONSOD: Does the Commissioner mean line 26?

MR. SUAREZ: I am referring to line 26, Madam President.

MR. MONSOD: That is also agricultural land, Madam President.

MR. SUAREZ: Yes, that is it. Is the Commissioner not thinking of changing the term "lands of the public domain" to "AGRICULTURAL LANDS"?

MR. MONSOD: We are also willing to entertain an amendment to that effect in order to clarify the intent of the article.

MR. SUAREZ: May I suggest that to the members of the Committee, Madam President?

MR. VILLEGAS: All right.

THE PRESIDENT: Is Commissioner Suarez proposing an amendment?

MR. SUAREZ: With respect to Section 6.

THE PRESIDENT: Yes, Section 6.

MR. SUAREZ: If it is reflective of the thinking of the Committee insofar as Section 4 is concerned, we propose that the words "lands of the public domain" appearing on line 26 of Section 6 be changed to "PUBLIC AGRICULTURAL LANDS"; but basically, it is "agricultural land."

MR. MONSOD: Maybe to be consistent and to harmonize, we just use the same phrase as we used in Section 4:

"AGRICULTURAL LANDS of the public domain."

MR. SUAREZ: Thank you.

MR. RODRIGO: Madam President, may I call attention to the fact that the words "public domain" are the words used in the 1935 as well as in the 1973 Constitutions.

MR. VILLEGAS: We retained it that way.

MR. RODRIGO: So, they have already adopted a meaning and I suppose there is even a jurisprudence on this matter. Unless it is absolutely necessary, I do not think we should change that.

MR. SUAREZ: What we are suggesting, Madam President, is to retain the words "public domain" but qualify the word "lands" with "AGRICULTURAL lands of the public domain."

MR. VILLEGAS: We are retaining "public domain."

MR. CONCEPCION: Madam President.

THE PRESIDENT: Commissioner Concepcion is recognized.

MR. CONCEPCION: If the Committee does not intend to change the original implication of this provision — and by original I mean the Constitutions of 1935 and 1973 — may I suggest the advisability of retaining the former phraseology. Otherwise, there might be a question as to whether the same meaning attached thereto by jurisprudence will apply or another meaning is sought to be imparted to this provision.

MR. VILLEGAS: As long as it is clear in our record that we really mean agricultural lands, can we ask Commissioner Suarez to just retain the existing phraseology?

MR. SUAREZ: I would have no objection to that. I just want to make it very clear, whether in the record or in the constitutional provisions, when we speak of "lands of the public domain" under Section 6 we are thinking in terms of agricultural lands.

THE PRESIDENT: So, there will be no need anymore to insert the word "AGRICULTURAL"?

MR. SUAREZ: That is right. We will not press on our amendment, Madam President.

THE PRESIDENT: We already have that interpretation.

MR. SUAREZ: Thank you, Madam President.

MR. TINGSON: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. TINGSON: There are no more registered speakers for Section 6; so we may now vote on Section 6, Madam President.

THE PRESIDENT: Will the honorable Chairman please read Section 6?

MR. VILLEGAS: Section 6 will read: "Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain."

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

MR. TINGSON: I ask that Commissioner Padilla be recognized to speak on Section 7.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Madam President, I have a proposal for a second exception — Section 7 is the first exception to Section 6 — that is in favor of a natural-born citizen who may acquire a residential lot not to exceed 1,000 square meters.

I had a proposal which I filed as a resolution regarding industrial lots of foreign investors used in the manufacture of export products to be allowed with a limited area under conditions to be prescribed by law which may be necessary for an export-oriented industrial enterprises.

During the period of interpellations, Commissioner Suarez said that this was not favorably considered because it can be covered by long-term leases.

Madam President, this would not be a sufficient incentive for foreign investors in the manufacture of export-oriented products, which will not only be dollar-saving but may be dollar-earning. Moreover, it is very difficult to have a long-term lease, say, for 25, 50 or 99 years because even a private owner may not enter into a long-term lease with a fixed monthly or annual rental. This is subject to the economic and financial conditions prevailing. So, as a long-term lease may not be adequate incentive and there being no danger that this lot, plus the improvements thereon, may ever be removed from the country by the foreign investor, I will repeat the proposal that will read as follows: "FOREIGN INVESTORS ENGAGED IN THE MANUFACTURE OF EXPORT PRODUCTS AS CERTIFIED BY THE BOARD OF INVESTMENTS MAY BE ALLOWED TO ACQUIRE, HOLD OR OWN PRIVATE LOTS WITH LIMITED AREA REQUIRED IN THE OPERATION OF THEIR EXPORT-ORIENTED INDUSTRIAL ENTERPRISES UNDER SUCH CONDITIONS AS MAY BE PROVIDED BY LAW."

I wonder if the committee will accept the proposed resolution that I have filed.

MR. VILLACORTA: Madam President.

THE PRESIDENT: Commissioner Villacorta is recognized.

MR. VILLACORTA: Before the committee makes the decision, would the proponent yield to some questions?

MR. PADILLA: Yes, gladly.

MR. VILLACORTA: The implication, Madam President, is that there is a direct correlation between foreign investment being attracted to a particular host country and the ownership of industrial lots. Am I right in my interpretation?

MR. PADILLA: Yes, Madam President. The general rule is found in Section 5. In other words, inasmuch as he is not qualified to hold lands of the public domain, a foreigner, even if he be a foreign investor, is disqualified under the present provision.

MR. VILLACORTA: In order that the committee as well as the body may make a decision on the matter — I am a member of the committee — we would like the Honorable Padilla to present facts with respect to countries that attract foreign investment and which allow foreign investors to own industrial lots in their national territories.

MR. PADILLA: Madam President, as a matter of fact, the rule is that in most countries foreigners may even acquire private lands. I agree with the general rule under Section 5 that foreigners should not be allowed to acquire private lands as was held in the *Krivenko vs. Register of Deeds* decision. But considering that we want a progressive economy and we want to give our people job opportunities, we are looking forward towards more

productivity to create more wealth for the country and for the people to enjoy the blessings of an advanced and progressive economy. These can only be realized when domestic and even foreign capital will be engaged in productive industrial enterprises.

MR. VILLACORTA: Madam President, I remember that in one of the public hearings that was sponsored by the Committee on the National Economy and Patrimony, this same proposal was brought up by some business groups, a few of which were foreign business groups, and I raised this very same question. I even said that if I was not mistaken, countries that are very successful in inviting as well as developing foreign investments do not allow these foreign investors to own lots of any kind. I named Singapore, Taiwan, Japan, Malaysia, and I do not think I was refuted by the resource persons who were present there. That is why I am asking for facts and statistics from the Honorable Padilla, because the implication seems to be that there is a causal relationship between allowing foreign investors to own land and the deluge of foreign investments in a host country.

My second reservation, Madam President, is that we discussed during the deliberations on the Article on Social Justice that there are millions of Filipinos who are landless. Now we are allowing foreign investors to own big tracts of land. Of course, they would be limited as provided by law, but from the experience of the past legislatures, aggressive lobbying and all sorts of incentives that could be provided by foreign lobbyists would imperil the idea of reserving our prime land to our own nationals, if the proposal of the Honorable Padilla is accepted.

MR. PADILLA: Madam President, this does not contemplate any big tracts of land; it does not contemplate big areas. It would be limited to what is strictly and necessarily required for the construction of manufacturing plants which will be engaged in the manufacture and export of products produced in the Philippines with local labor. The idea is not only for a limited area, but what is required by the operation of these export-oriented industrial enterprises. And, again, this is still subject to the phrase "as may be provided by law."

THE PRESIDENT: Is the committee ready to react to this or is there a need to confer with the other members of the committee?

MR. VILLEGAS: No, Madam President, this issue has been thoroughly discussed in the committee, and as Commissioner Villacorta mentioned, we did have a lot of resource persons, and really the information given to us has been divergent that even the committee itself was divided. So I would like to ask the body to vote on this, Madam President.

THE PRESIDENT: Are there any other comments, Commissioner Suarez?

MR. SUAREZ: May we ask a few questions of the distinguished Vice-President?

THE PRESIDENT: Please proceed.

MR. SUAREZ: We already heard about the suggestion that in situations like what the Vice-President is envisioning, it is proposed that instead of an alienation, they should only enter into a lease which could even extend up to 99 years if justly warranted. Would the Vice-President not think of extending that privilege of these export-oriented manufacturers, manufacturers, Madam President?

MR. PADILLA: The problem is that that is not practical. If one were a property owner in an industrial site and a foreign investor would ask for a term of 50 years, I am almost certain that the lessor-owner will not grant a long-term lease, first, because it is not possible to fix at this time what is the reasonable rental for the next succeeding years, especially if it is a long-term lease.

MR. SUAREZ: Thank you.

The Honorable Villacorta has also already observed that at one time in the committee meeting an English businessman, who had set up an export-oriented business in our country, was not really complaining about not making any profits here, notwithstanding the fact that he did not own the land on which the industrial project had been established. In other words, I am trying to point out that there is absolutely no need for these export-oriented businessmen to own the lands on which they do business, because independent of their in owning the land, they are already making and creating profits for our country. Nonetheless, under the proposal, would the Vice-President go beyond this leasing business and grant to them the right to own the land on which they put up the business?

MR. PADILLA: Yes, it says: "TO ACQUIRE, HOLD OR OWN PRIVATE LOTS WITH LIMITED AREA REQUIRED IN THE OPERATION OF THEIR EXPORT-ORIENTED INDUSTRIAL ENTERPRISES UNDER SUCH CONDITIONS AS MAY BE PROVIDED BY LAW." In other words, it is just to permit and not to impose an absolute prohibition.

MR. SUAREZ: And would the Vice-President limit the extension of this privilege to those engaged in the manufacture of export products?

MR. PADILLA: Yes, as a further limitation because I would not want any foreign investor to just acquire even private lots. It is a further limitation to encourage the production and exportation of products that should be competitive using materials of the Philippines and also Filipino labor. This will add to the productivity, which I have always been talking about, to create more work because we cannot be sharing wealth and the benefits of economic development unless we first produce wealth and have economic development.

MR. SUAREZ: And the Vice-President would want this to constitute an exception to the principle, which the Commissioners have been trying to establish here, that lands should be limited to Filipino citizens?

MR. PADILLA: Yes, this will be a second exception to Section 6.

MR. SUAREZ: Section 6, yes.

MR. PADILLA: Section 7 provides for one exception.

MR. SUAREZ: Yes.

MR. PADILLA: And my proposal is just to create or to provide another exception.

MR. SUAREZ: The three exceptions would be: one, in cases of hereditary succession; second, in the case of balikbayan, natural-born Filipino citizens; and what the Vice-President is proposing now would constitute the third exception.

MR. PADILLA: It is really a second exception because the phrase "save in cases of hereditary succession" has always been there since the 1935 and 1973 Constitutions.

MR. SUAREZ: Does the Vice-President not see any danger of abuse by those engaged in these so-called export-oriented industries in the matter of owning private agricultural lands in the Philippines?

MR. PADILLA: First of all, I do not foresee any abuse because it is very restrictive. First, it is limited to foreign investors in the manufacture of foreign products that are export-oriented; second, it says: "with a limited area"; third, it is only as required in the operation of their business or manufacturing enterprises; and fourth, it is still subject to the conditions that Congress may provide. So, there are many limitations, but the purpose is to give additional incentives and attraction for the production of more goods in the Philippines especially those that are foreign or export-oriented because this may improve our economy. This may give more opportunities for

employment to the unemployed and underemployed. This will produce more wealth to the country and the benefits of that economic expansion will be shared by all. That is why I have always been talking about progress and prosperity concomitant or consistent with the common good.

MR. SUAREZ: One more question, Madam President. Does not the Vice-President think it is more prudent to encourage these venturers or entrepreneurs to move over to the export processing zone where quite a number of multinational companies engaged in the same export-oriented business have been prospering and flourishing?

MR. PADILLA: Well and good, but as I understand it, the Bataan Export Processing Zone has not been very successful. Now, they have another area, I think, in Dasmariñas, Cavite. But this does not preclude or prevent the establishment or continuance of export-oriented areas.

MR. SUAREZ: Thank you, Madam President.

MR. SARMIENTO: Madam President.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: May I briefly speak against the proposal?

Madam President, the section on agrarian reform has been criticized by sectors because of its loopholes. They say the provision on agrarian reform has been watered down, and I need not repeat these loopholes before this body. Now, if we grant foreign investors this privilege, we take away from our marginalized sectors parcels of land that could be covered by agrarian reform. Secondly, multinational investors enjoy many privileges in our country. This proposal, to me, will be an additional privilege at the expense of our people.

Allow me to quote, Madam President, an article written by Professor Leonor Briones, an Associate Professor at the College of Public Administration, University of the Philippines. She said:

The roots of the present crisis can be traced to a politico-economic system characterized by the dominance in control of foreign capital. Such dominance is immediately visible in all sectors of the economy — private financial institutions, industry and manufacturing, agriculture general services, public finance and financial institutions and public enterprises.

I humbly submit, Madam President, that we will aggravate our people's problems if we give this privilege to foreign investors.

THE PRESIDENT: Commissioner Quesada desires to be recognized.

MS. QUESADA: Yes, Madam President, thank you.

Is it probably our hospitality trait as a people that has, among others, encouraged Commissioner Padilla to present this kind of proposal? We are known to be very hospitable people and I suppose that this is an extension of the hospitality that we afford foreigners to our country.

I think that the other speakers against this particular provision has already mentioned the reasons they oppose this particular provision. But, in addition to what they have already expressed, one of our concerns is that the consequence of more foreign investors coming to the Philippines, even if they are engaged in export-oriented industries, will be the degradation of our environment. What is now to prevent the bringing into the country of industrial plants that actually contribute to the ecological imbalance of our environment and the degradation of our land, waters, air? So this, again, is a consideration in our decision that the more these foreign investors come in and own the land where they will put up their business, the more they will contribute to such a consequence to our environment.

Secondly, of course, is the problem that the more we open up our land, our public domain, not only for lease but for ownership to foreign manufacturers, the more we will deplete the land which the Commission has already said is not enough for distribution for individual ownership through agrarian reform.

So, I would really move against the approval of this particular amendment to the Constitution so that we will not be accused of giving more incentives in the guise of national development, the benefit of which, in the long run, will not trickle down to the ordinary masses of our country.

Thank you.

MR. TINGSON: Madam President, Commissioner Tan will be the last speaker en contra.

THE PRESIDENT: Commissioner Tan is recognized.

SR. TAN: Madam President, with due respect to Commissioner Padilla, I object violently against this proposal on two grounds. First, I cannot understand why we should be breaking our heads in trying to give privileges to the foreigners. I think they are wealthy enough. The second ground is, I think, more important. I wonder if there will really be a better distribution of wealth because of the business with the foreigners. In my experience with the workers, those employed in the manufacture of Barbie dolls, brassieres, and the electronic factories, our women have lost their eyesight before they reach 26 years old, and our men have developed cancer. Our workers have also not become any richer. I do not want this kind of business with the foreigners; I think we should stop it.

THE PRESIDENT: Commissioner Bennagen is recognized.

MR. BENNAGEN: Thank you, Madam President. I think the line of argument of the proposal of Commissioner Padilla is premised on the altruism of foreign investors and the assumption that they are here to benefit a large number of the population of the host country. I think the record of foreign investors in the host countries is at best confusing. In any case, I recall that in the committee hearings that we had, Dr. Mahar Mangahas of the social weather station and the Development Academy of the Philippines argued very strongly against foreigners owning lands and natural resources in the Philippines, for the simple reason that these are scarce and nonrenewable resources and should be left alone for Filipinos for the benefit of Filipino citizens.

Thank you, Madam President.

MR. COLAYCO: Madam President.

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: Thank you, Madam President.

I think we are overreacting to the alleged foreign carpetbaggers. I do not know why we have to assume that every foreigner who wants to invest here is out to rob us. The proposal of Commissioner Padilla is not exactly opening the doors completely ajar. It is conditioned on the action of Congress to impose whatever conditions it may think would be necessary not only to safeguard our interests but to determine whether or not the proposal of the foreign investor will, in effect, benefit our country economically. So, it is too early to say that we are going to cause ecological harm, that we are going to degrade our population and many other things that have been so freely branded about. The proposal, I believe, merits more attention than it has received from the committee. I believe that if Commissioner Padilla will accept a proposal wherein the property will revert to Filipino ownership after the business of the foreign investor is finished, we should receive the proposal with more sympathy. That is why I would like to ask Commissioner Padilla this question. Would he agree that one of the terms should be that after the termination of the business, the ownership of the property should revert to Philippine ownership?

MR. PADILLA: Yes, Madam President, I have absolutely no objection to that. There is no intention to allocate our industrial lots forever to foreigners especially if they do not need them anymore for the operation of their industrial enterprises.

MR. COLAYCO: Thank you, Madam President.

SR. TAN: May I ask one question, Madam President.

THE PRESIDENT: Commissioner Tan is recognized.

SR. TAN: Does business ever terminate?

MR. PADILLA: There are some businesses, be they foreign or local, that either close or withdraw once they cease to be profitable.

Madam President, may I just say a few words with regard to the objections of some Members.

THE PRESIDENT: Yes, Commissioner Padilla may respond to all these objections that have been given.

MR. PADILLA: Commissioner Sarmiento speaks of the loss of agricultural lands that should be available to our people. This only refers to industrial lots, of course, or subdivision of agricultural lands only when required for the construction of the manufacturing plant. He says that there is no benefit to the people. What will benefit the people is economic advancement, the production of more wealth, the development of our economy, and that will inure to the benefit not only of the workers but even of our people.

Commissioner Quesada speaks of environment or the pollution of our water or air. This should be subject to zoning ordinances. One foreign investor should not be allowed to put up an industrial plant that emits dangerous or obnoxious substances within a residential area.

The other mentions about depleting our own agrarian system with no benefit to the people. This is not true; this is even imaginary and sometimes emotional. Madam President, in my opinion, we all want to be nationalists; we all want to help our people, but sometimes our poor people cannot help themselves. We need domestic capital and if domestic capital is not available, we should attract foreign capital not to dominate, much less, exploit our country to their exclusive benefit, but for the production of more wealth to be shared by all, including the workers and the poorer segments of our population.

Madam President, we are not talking of altruism on the part of foreign capital. We must accept the proposition that when business and capital come in, they are for profit; there must be always a profit motive. But that is natural and we cannot eliminate that, otherwise, we will never have increased productivity. But so long as that enterprise is good for the country because it may be dollar-saving and more dollar-earning, it will afford more opportunities for employment and increase our productivity, we have to be more practical rather than emotional. And I believe that although I was not present in any of these committee hearings because I was not a member of the committee, and notwithstanding the opinions of others who are theoretical, many times idealistic, we have to face the problem. Will this suggestion to allow foreign investors on export-oriented products to own a private lot necessary for the establishment of their manufacturing plant be against the interest of our people? Or will it help advance the economic development of the country?

MR. VILLEGAS: Madam President, can we put this to a vote?

MR. TADEO: Madam President.

THE PRESIDENT: Commissioner Tadeo is recognized.

MR. TADEO: Minsan pa babasahin ko ang sinulat ni Alexander Padilla, anak ng kagalanggalang na Commissioner Padilla para sa Philippine Society in Perspective: A National Situationer. Ito ang isinasaad ng kagalanggalang na anak sa isang kagalanggalang na ama:

There shall be a strict implementation of the rule that no foreign entity can own land or exploit the country's natural resources. Loopholes such as the admissibility of service contracts and leasing of lands shall be plugged.

MR. PADILLA: Madam President, may I just say one word?

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: I am very grateful to Commissioner Tadeo in quoting some of the statements of my son, Alexander Padilla. I am grateful to him because that is in recognition of some leadership that has been exemplified by my son. But many of those statements were statements against the Marcos regime. I also have been very expressive against the abuses and excesses of the Marcos regime but we are now providing for a Constitution under a new Aquino administration and others that will work for industrial peace and economic advancement. I hope that this issue will not be judged on an emotional or theoretical basis but on what it purports to be — one practical solution to advance the economic interest of the country.

MR. TINGSON: Madam President, Section 7 has been sufficiently debated upon and I ask that we vote on it now.

MR. SARMIENTO: With due respect to the Acting Floor Leader, I was alluded to by Commissioner Padilla in his brief remarks. So, may I make a brief rejoinder?

THE PRESIDENT: Please proceed, just one minute.

MR. SARMIENTO: One minute, Madam President.

Commissioner Padilla speaks of creating more wealth, of increasing productivity by means of export-oriented industries. Madam President, we are precisely in this economic rut because of these export-oriented industries, labor-intensive and export-oriented development strategy. It is my humble submission that what we need are capital-intensive industries, not export-oriented industries. Capital-intensive industries would mean industries that would create machines, tools, hand tools, trains, steels, etc. So I interpose my objection to the comments made by Commissioner Padilla.

THE PRESIDENT: Will Commissioner Padilla now read the proposed amendment?

MR. VILLACORTA: Madam President, I was also alluded to, with due respect to the Acting Floor Leader and the Chair.

THE PRESIDENT: Commissioner Villacorta may proceed.

MR. VILLACORTA: I was alluded to, so may I give my one-minute rejoinder. I would just like to say for the guidance of our colleagues in the Commission, as we are voting on this issue, that the proponent has not at all attempted to answer my question — whether or not there really is a causal relationship between ownership of land by foreign investors in a host country and the volume of foreign investment in that particular country. I do not think this is a theoretical question. It is a very empirical, real, practical question and I do not think we are being emotional, idealistic or theoretical in this matter and I think that is an ad hominem non sequitur statement on the part of the proponent.

THE PRESIDENT: Thank you.

We will call for a vote. Will Commissioner Padilla please read the proposed amendment because there was a change?

MR. VILLEGAS: Would Commissioner Padilla like to read the whole amendment?

THE PRESIDENT: His proposed amendment with the amendment of Commissioner Colayco.

MR. PADILLA: May I request Commissioner Colayco to state his amendment to my proposal which I have accepted.

MR. COLAYCO: Madam President, my amendment was: "AFTER THE TERMINATION OR THE CLOSING OF THE BUSINESS, THE OWNERSHIP OF THE PROPERTY SHALL REVERT TO FILIPINO OWNERSHIP."

MR. PADILLA: Which I have accepted, Madam President.

THE PRESIDENT: Can we have the proposed amendment now, Commissioner Padilla, with the amendment of Commissioner Colayco?

MR. PADILLA: The amendment will read: "FOREIGN INVESTORS ENGAGED IN THE MANUFACTURE OF EXPORT PRODUCTS AS CERTIFIED BY THE BOARD OF INVESTMENTS MAY BE ALLOWED TO ACQUIRE, HOLD OR OWN PRIVATE LOTS WITH LIMITED AREA REQUIRED IN THE OPERATION OF THEIR EXPORT-ORIENTED INDUSTRIAL ENTERPRISES UNDER SUCH CONDITIONS AS MAY BE PROVIDED BY LAW." I would ask Commissioner Colayco to repeat his amendment which will be the second sentence.

THE PRESIDENT: I think the stenographer is taking that down.

MS. QUESADA: Madam President, may we ask for a clean copy of the entire provision?

THE PRESIDENT: I think it is very simple. May we have the stenographer's copy now?

MS. QUESADA: I withdraw my motion.

MR. TINGSON: Madam President, I think we can vote now because Commissioner Quesada withdrew her request.

THE PRESIDENT: If I will be permitted, I would like to have it read again as the stenographer has taken it down. That is why I have asked the stenographers to please immediately transcribe. Anyway, it is only one brief paragraph; even in writing only, not necessarily to be typed, unless the honorable Chairman has taken it down.

MR. VILLEGAS: I have not completed it. I am sorry.

THE PRESIDENT: We do not want to make any mistake on this. The Chair will read the amendment as taken down by our stenographer: "FOREIGN INVESTORS ENGAGED IN THE MANUFACTURE OF EXPORT PRODUCTS AS CERTIFIED BY THE BOARD OF INVESTMENTS MAY BE ALLOWED TO ACQUIRE, HOLD OR OWN PRIVATE LOTS WITH LIMITED AREA REQUIRED IN THE OPERATION OF THEIR EXPORT-ORIENTED INDUSTRIAL ENTERPRISES UNDER SUCH CONDITIONS AS MAY BE PROVIDED BY LAW."

MR. PADILLA: And then add the amendment of Commissioner Colayco: "PROVIDING, THAT AFTER THE TERMINATION OF THE BUSINESS. THE OWNERSHIP SHALL REVERT TO FILIPINO OWNERSHIP."

VOTING

THE PRESIDENT: As many as are in favor of this particular amendment of Commissioner Padilla, please raise their hand. (Few Members raised their hand.)

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

As many as are abstaining, please raise their hand. (A Member raised his hand.)

The results show 8 votes in favor, 27 votes against and I abstention; the amendment is lost.

MR. TINGSON: Madam President, I ask that we call on Commissioner Maambong for his amendments on Section 7.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Thank you.

THE PRESIDENT: Does Commissioner Maambong have any other amendment to Section 7?

MR. MAAMBONG: I think I have a second one after Commissioner Padilla, Madam President. On Section 7, page 3, line 30, I propose to delete after "lands" the words "solely for residential purposes, not to exceed an area of one thousand square meters" and in its place add the clause: "SUBJECT TO LIMITATIONS PROVIDED BY LAW."

THE PRESIDENT: Does Commissioner Maambong mean the first sentence?

MR. MAAMBONG: Yes, there is only one sentence, Madam President.

THE PRESIDENT: Yes, that is right.

MR. MAAMBONG: It will now read: "Notwithstanding the provisions of Section 6 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands SUBJECT TO LIMITATIONS PROVIDED BY LAW."

THE PRESIDENT: Is the Commissioner omitting "solely for residential purposes. . .?"

MR. MAAMBONG: Yes, Madam President.

THE PRESIDENT: What does the committee say?

MR. VILLEGAS: The committee accepts the amendment.

MR. MAAMBONG: Thank you, Madam President.

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

MR. MAAMBONG: I just want to indicate for the record that this amendment is proposed not only by myself but also by Commissioner Davide.

MR. TINGSON: Madam President, I do not think there is anyone else who wants to propose an amendment.

THE PRESIDENT: For Section 7?

MR. RODRIGO: Madam President, before we vote on the amendment, I just want to ask one or two questions.

THE PRESIDENT: Which amendment?

MR. RODRIGO: On Section 7.

THE PRESIDENT: Please proceed. We voted already on the amendment of Commissioner Maambong.

MR. RODRIGO: Yes, but not yet on the whole section.

THE PRESIDENT: Yes.

MR. RODRIGO: Before we vote on the whole section, under the phrase "natural-born citizen of the Philippines who has lost his Philippine citizenship," a natural-born citizen who has become an American citizen comes under this?

MR. VILLEGAS: Yes, Madam President.

MR. RODRIGO: If his children are American citizens, they come under Section 6. So, if this natural-born citizen who became an American citizen dies, his children who are not natural-born but American citizens inherit the land.

MR. VILLEGAS: Yes, under Section 6, Madam President.

MR. RODRIGO: Yes, that is all.

THE PRESIDENT: I beg the Gentleman's pardon?

MR. VILLEGAS: Yes, that was covered by Section 6. The American child inherits the land under Section 6.

MR. TINGSON: So, Madam President, I think we can now vote on the whole Section 7.

THE PRESIDENT: All right. Will the honorable Chairman please read Section 7 with the amendment of Commissioner Maambong?

MR. VILLEGAS: Yes, Madam President.

The section will now read: "Notwithstanding the provisions of Section 6 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands SUBJECT TO LIMITATIONS PROVIDED BY LAW."

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

MR. MAAMBONG: Madam President, just for the record, I notice that there was also a proposed amendment of Commissioner Treñas to the same effect. So, I include him as one of the proponents.

Thank you.

SUSPENSION OF SESSION

MR. TINGSON: Madam President, unless it is the overwhelming desire of the Commission, I move that we suspend the session for our lunch and to come back at two-thirty.

THE PRESIDENT: The session is suspended until two-thirty this afternoon.

It was 12:21 p.m.

RESUMPTION OF SESSION

At 2:50 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. TINGSON: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. TINGSON: We move on to Section 9 and the first speaker is Commissioner Rosario Braid.

MR. DAVIDE: Madam President, I still have amendments to Section 8.

THE PRESIDENT: So let us proceed first to Section 8.

Commissioner Davide is recognized.

MR. DAVIDE: On Section 8 the following are may amendments: Before the word "The" at the beginning of the section, insert the following: "CONGRESS MAY ESTABLISH AN INDEPENDENT ECONOMIC AND PLANNING AGENCY HEADED BY"; do not capitalize the "T" in "The" before "President." Before "after," insert the following: "WHICH SHALL," then put a comma (,).

On line 3, delete the word "shall" before "recommend." On line 4, after "Congress," insert a comma (,) and after "implement," insert another comma (,); then delete the "and" and "an" and insert "CONTINUING." On line 5, delete "approach to" and in lieu thereof insert "PROGRAM AND POLICIES FOR" so that the entire section will read as follows: "CONGRESS MAY ESTABLISH AN INDEPENDENT ECONOMIC AND PLANNING AGENCY HEADED BY the President, WHICH SHALL, after consultations with the appropriate public agencies and the private sector, including labor and peasant organizations, recommend to Congress, and implement, A CONTINUING integrated and coordinated PROGRAM AND POLICIES FOR national development."

MR. VILLEGAS: Could Commissioner Davide read that again, please?

MR. DAVIDE: It will read: "CONGRESS MAY ESTABLISH AN INDEPENDENT ECONOMIC AND PLANNING AGENCY HEADED BY the President, WHICH SHALL, after consultations with the appropriate public agencies and the private sector, including labor and peasant organizations, recommend to Congress, and implement, A CONTINUING integrated and coordinated PROGRAM AND POLICIES FOR national development."

MR. VILLEGAS: The amendment is accepted, Madam President.

THE PRESIDENT: Are there any comments on this proposed amendment which has been accepted by the committee? Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. TINGSON: Madam President, I ask that Commissioner Rosario Braid be recognized also on Section 8.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: I believe, on the same section, Commissioner Bennagen has a proposed amendment but he is not here yet. Can we just reserve for him that right when he comes back, Madam President?

THE PRESIDENT: We will take that into account. In the meantime, can we have Commissioner Rosario Braid?

MR. MONSOD: Yes, Madam President.

MS. ROSARIO BRAID: Madam President, I will not insist on my amendment if the committee can ensure that this suggested amendment is taken care of by the NEDA or other planning agencies in the other provisions. But my proposed amendment will be on line 8, page 4. After "government." insert the following:

"WHICH SHALL PROMOTE COMPREHENSIVE DEVELOPMENT PLANNING, SET PRIORITIES FOR AGRICULTURE AND INDUSTRY, PROVIDE ADEQUATE INFORMATION CONCERNING THE MARKET, INCENTIVES FOR LOCAL INVESTORS, AND AN EFFECTIVE REGULATORY SYSTEM FOR EXTERNAL INVESTMENT INSTITUTIONS."

The reason for this is: this is what the business sector is seeking; that is, clearer signals on priorities for agriculture and industry, adequate information, incentives for local investors, as well as an effective regulatory system especially for multinationals. So, if these types of concerns are taken care of, I will not insist on my amendment.

MR. VILLEGAS: Yes. The thinking is, especially since the private sector will be consulted, if we are mandating the Congress and the President to consult the private sector, all the ingredients that the Commissioner mentioned are really part of the continuing integrated and coordinated programs and policies that are already referred to in this section. So it will be definitely in the record that all the specific points mentioned will be part of these programs and policies.

MS. ROSARIO BRAID: Yes. I just wanted it for the record. Thank you.

MR. TINGSON: Madam President, except for the reservation of Commissioner Bennagen on Section 8, we could move on to Section 9. And I ask that Commissioner Rigos be recognized.

THE PRESIDENT: Commissioner Rigos is recognized.

REV. RIGOS: Madam President, I would like to amend Section 9 by deleting the entire section and substituting a new sentence in its place. I understand that this is the same as the one in the old 1973 Constitution. I have no objection to that, except that perhaps the wording can be improved.

In the committee recommendation, the wording is: "The Congress shall reserve to citizens of the Philippines . . ." And if we jump to line 13, it reads ". . . certain areas of investments . . ." we would like to substitute this paragraph with the following: "ALL AREAS OF INVESTMENTS SHALL BE RESERVED TO CITIZENS OF THE PHILIPPINES OR TO CORPORATIONS OR ASSOCIATIONS WHOLLY OWNED BY FILIPINOS EXCEPT AS NOW OR MAY BE PROVIDED BY LAW AND THIS CONSTITUTION."

My coauthors are Commissioners Nollado, Sarmiento and Gascon. The committee has a copy of the proposed amendment and we seek the response of the committee to this.

SUSPENSION OF SESSION

MR. ROMULO: Madam President, can we ask for a suspension of the session so we can confer with the proponent?

THE PRESIDENT: The session is suspended for a few minutes.

It was 2:58 p.m.

RESUMPTION OF SESSION

At 3:05 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. TINGSON: Madam President, I ask that Commissioner Rigos be recognized.

THE PRESIDENT: Commissioner Rigos is recognized.

REV. RIGOS: Madam President, after conferring with the members of the committee, we hereby withdraw our proposed amendment and with the consent of the committee, we are happy to amend Section 9 by changing line 11 which reads: "sixty percent of whose voting stock or controlling interest" with "sixty percent of whose CAPITAL is owned by such citizens," per observation of Professor Nollado and the other coauthors of the proposed amendment.

So, we now present this new amendment on line 11 by deleting the words "voting stock or controlling interest" and putting the word "CAPITAL." So that it will read: "sixty percent of whose CAPITAL is owned by such citizens."

MR. VILLEGAS: The amendment is accepted, Madam President.

THE PRESIDENT: Is there any objection to this proposed amendment of Commissioner Rigos and others which has been accepted by the committee? Is Commissioner Aquino objecting?

MS. AQUINO: May we request a reservation on Section 9? The amendment will be proposed by Commissioner Sarmiento, collectively with the other Commissioners, but for the moment, Commissioner Sarmiento is not yet here. I have previously consulted with the committee about this and they are amenable to the reservation.

THE PRESIDENT: All right. But can we proceed to vote on this particular amendment or does it affect the whole section?

MS. AQUINO: It will affect substantially Section 9.

THE PRESIDENT: So we defer the voting on this one.

MS. AQUINO: Thank you, Madam President.

MR. TINGSON: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. TINGSON: We ask that Commissioner Nollado be recognized.

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: Thank you, Madam President.

I have an amendment to offer, Madam President, coauthored with Commissioners Rigos, Gascon, Sarmiento and Aquino. I would like to add a sentence to line 14 after the word "dictates," which shall run as follows: "IN THE GRANT OF RIGHTS, PRIVILEGES AND CONCESSIONS COVERING THE NATIONAL ECONOMY AND PATRIMONY, THE STATE MUST GIVE PREFERENCE TO QUALIFIED FILIPINOS." The term "Filipinos" refers to Filipinos as individuals and to entities wholly owned by Filipinos.

MR. MONSOD: Madam President, can we use "SHALL"?

MR. NOLLEDO: Yes, Madam President. Instead of "MUST," it will be "SHALL — THE STATE SHALL GIVE PREFERENCE TO QUALIFIED FILIPINOS." This embodies the so-called "Filipino First" policy. That means that Filipinos should be given preference in the grant of concessions, privileges and rights covering national patrimony.

THE PRESIDENT: How does the entire sentence read?

MR. NOLLEDO: The entire sentence, Madam President, reads, as a continuation on line 14, "IN THE GRANT OF RIGHTS, PRIVILEGES AND CONCESSIONS COVERING THE NATIONAL ECONOMY AND PATRIMONY, THE STATE SHALL GIVE PREFERENCE TO QUALIFIED FILIPINOS."

THE PRESIDENT: Is this accepted?

MR. MONSOD: Yes, Madam President, the committee agrees with the proposed amendment.

MR. NOLLEDO: Thank you.

MR. TINGSON: Madam President.

MS. QUESADA: Madam President.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: For the record, Madam President, could we be informed on why the proponents of the amendments on Section 9, as read by Commissioner Rigos, have changed their position concerning the proposed amendment? Obviously, there has been a change during the consultation. So, will the Commissioners be informed on the change of position of the proponents?

REV. RIGOS: Madam President.

MS. QUESADA: There is definitely a big difference between "WHOLLY-OWNED BY FILIPINOS" and a "sixty-forty" equity share, so we just like to be informed.

REV. RIGOS: Madam President, my advisers and I were satisfied with the explanation of the committee, and so, we will request the committee to make the same explanation to Commissioner Quesada.

MS. QUESADA: I suppose it should not be just an explanation for me but for the rest because we are not party or privy to the clarifications made during the consultation.

THE PRESIDENT: Yes, the committee will now explain whatever has transpired between Commissioner Rigos and the others and the committee. Will Commissioner Monsod please answer Commissioner Quesada.

MR. MONSOD: Madam President, the first one is on the question of 60 percent or wholly owned, and this article which dates back to 1935 merely says that it is up to the Congress to determine in specific cases whether they will specify 60, 75, 90 or 100, giving the Congress the leeway and the flexibility to dictate higher percentages than 60 percent for these activities. The second point is that, as proposed by the proponents reversing it and saying "all areas are prohibited except those that may be allowed," this imposes a heavy burden on Congress to look at the entire economy and to say which activities will be allowed or not, which brings us back to a question of central planning, the breadth and width and comprehensiveness of looking at the entire economy which is virtually impossible. As we see it, the Congress should look into areas that should be Filipino and not say, "Anything we do not say should not be Filipino." That is a very difficult thing to do. There are approximately 400,000 enterprises in this country, and we are going into very difficult areas there and putting a very heavy burden on Congress.

THE PRESIDENT: Is Commissioner Quesada satisfied?

MS. QUESADA: Thank you for the clarification.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: I would like to introduce an amendment to the Nollado amendment. And the amendment would consist in substituting the words "QUALIFIED FILIPINOS" with the following: "CITIZENS OF THE PHILIPPINES OR CORPORATIONS OR ASSOCIATIONS WHOSE CAPITAL OR CONTROLLING STOCK IS WHOLLY OWNED BY SUCH CITIZENS."

THE PRESIDENT: Commissioner Nollado is recognized.

MR. MONSOD: Madam President, apparently the proponent is agreeable, but we have to raise a question. Suppose it is a corporation that is 80-percent Filipino, do we not give it preference?

MR. DAVIDE: The Nollado amendment would refer to an individual Filipino. What about a corporation wholly owned by a Filipino? Why should it not be given the same preference also?

MR. MONSOD: My understanding of "Filipino" is it is not only to individuals but to corporations.

MR. NOLLEDO: Yes, Madam President.

MR. DAVIDE: Then I would seek this clarification. When we say "Filipino corporation," does it refer to a corporation or association whose capital or controlling interest is wholly owned by Filipino citizens?

MR. MONSOD: At least 60 percent, Madam President.

MR. DAVIDE: Is that the intention?

MR. MONSOD: Yes, because, in fact, we would be limiting it if we say that the preference should only be 100-percent Filipino.

MR. DAVIDE: I want to get that meaning clear because "QUALIFIED FILIPINOS" may refer only to individuals and not to juridical personalities or entities.

MR. MONSOD: We agree, Madam President.

THE PRESIDENT: Then can we go back now to the proposed amendment of Commissioner Nollado; that is, the additional sentence which has been accepted, I understand, by the committee?

MR. NOLLEDO: Will I read it again, Madam President?

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Before we vote, may I request that the amendment be read again.

MR. NOLLEDO: The amendment will read: "IN THE GRANT OF RIGHTS, PRIVILEGES AND CONCESSIONS COVERING THE NATIONAL ECONOMY AND PATRIMONY, THE STATE SHALL GIVE PREFERENCE TO QUALIFIED FILIPINOS." And the word "Filipinos" here, as intended by the proponents, will include not only individual Filipinos but also Filipino-controlled entities or entities fully controlled by Filipinos.

MR. RODRIGO: Madam President, I am asking this question as the Chairman of the Committee on Style. If the

wording of "PREFERENCE" is given to "QUALIFIED FILIPINOS," can it be understood as a preference to qualified Filipinos vis-a-vis Filipinos who are not qualified. So, why do we not make it clear? To qualified Filipinos as against aliens?

THE PRESIDENT: What is the suggestion of Commissioner Rodrigo? Is it to remove the word "QUALIFIED"?

MR. RODRIGO: No, no, but say definitely "TO QUALIFIED FILIPINOS" as against whom? As against aliens or over aliens?

MR. NOLLEDO: Madam President, I think that is understood. We use the word "QUALIFIED" because the existing laws or the prospective laws will always lay down conditions under which business may be done. For example, qualifications on capital, qualifications on the setting up of other financial structures, et cetera.

MR. RODRIGO: It is just a matter of style.

MR. NOLLEDO: Yes.

MR. RODRIGO: If we say "PREFERENCE TO QUALIFIED FILIPINOS," it can be understood as giving preference to qualified Filipinos as against Filipinos who are not qualified.

MR. NOLLEDO: Madam President, that was the intention of the proponents. The committee has accepted the amendment.

THE PRESIDENT: Is there any objection to this proposed amendment of Commissioner Nolleto which has been accepted by the committee, adding a sentence to Section 9 on line 14, which has been read? (Silence) The Chair hears none; the amendment is approved.

MR. TINGSON: Madam President, still on Section 9, I ask that Commissioner Davide be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President. This is a very simple amendment.

After the word "shall" on line 9, insert a comma (,) and the following words: "UPON RECOMMENDATION OF THE ECONOMIC AND PLANNING AGENCY." So the whole line will read: "The Congress shall, UPON RECOMMENDATION OF THE ECONOMIC AND PLANNING AGENCY, reserve to citizens of . . ."

MR. VILLEGAS: The amendment is accepted, Madam President.

MR. RODRIGO: Madam President, what is this agency?

MR. VILLEGAS: The economic and planning agency referred to in Section 8.

MR. RODRIGO: Referred to in Section 8?

MR. VILLEGAS: Yes, Madam President.

MR. RODRIGO: So we limit the power of Congress here. Unless there is a recommendation, Congress may not act. Is that it?

MR. DAVIDE: That would be the effect.

MR. VILLEGAS: Yes.

MR. RODRIGO: Does the committee accept such a situation to limit the power of Congress?

MR. VILLEGAS: Yes.

MR. RODRIGO: Thank you.

THE PRESIDENT: May we have the sentence, Commissioner Davide? How will it read now?

MR. DAVIDE: The first sentence of Section 9 will read: "The Congress shall, UPON RECOMMENDATION OF THE ECONOMIC AND PLANNING AGENCY, reserve to citizens of."

THE PRESIDENT: This has been accepted by the committee?

MR. DAVIDE: Yes, Madam President.

THE PRESIDENT: Is there any objection?

Commissioner Bacani is recognized.

BISHOP BACANI: I would like to ask Commissioner Davide whether he finds this kind of amendment helpful to Filipinos.

MR. DAVIDE: It will be helpful to the Filipinos because if we leave this to Congress, as presently worded, without even a recommendation from the economic and planning authority, Congress may, in the light of the proposal earlier given, expand the scope. And so, since we have adopted the National Economic and Planning Authority which shall be responsible for a continuing program of economic planning, then it would become very logical that any recommendation must be made by that body, which is headed by the President, by the way, for Congress now to determine whether certain areas of investments must be reserved to the parties therein stated.

BISHOP BACANI: But may the effect not be this way: that if there is no recommendation from the economic planning agency, then the Congress will not necessarily have to reserve to Filipino citizens, corporations or associations at least 60 percent of its voting stock, et cetera, certain areas of investments. In other words, there will be no reservation by Congress and so there will be a greater leeway even for foreigners or foreign corporations.

MR. DAVIDE: No, because this particular provision is subject to the general restrictions in the matter of utilization, disposition and exploration of natural resources.

BISHOP BACANI: If it is seen that way, it is all right.

MR. TINGSON: Madam President, with the reservation on Section 9 for Commissioner Sarmiento, we can move now to Section 10. I ask that Commissioner Quesada be recognized.

MS. QUESADA. Madam President.

THE PRESIDENT: My attention is called to the Nollado amendment, that we have not yet approved it. Is there any objection?

MR. TINGSON: I do not think we have voted on that, Madam President.

MR. VILLEGAS: There has been a reservation.

MR. TINGSON: There was a reservation, I think, for Section 9.

MR. VILLEGAS: That is right.

MR. TINGSON: That is why I thought we could not vote on that now and I asked for Commissioner Quesada to be recognized for Section 10.

THE PRESIDENT: We will reserve the voting on that.

MS. QUESADA: Madam President, I would like to propose an amendment on line 17, Section 10. After "from the private sector," insert the phrase "REPRESENTING FILIPINO INTERESTS AND OF KNOWN PROBITY AND PATRIOTISM." So, there shall be a period (.) after PATRIOTISM. Then the next sentence would read: "IT shall provide policy direction in the areas of money, banking, and credit."

THE PRESIDENT: Let us take up the first portion. Commissioner Quesada will please repeat.

MS. QUESADA: The entire sentence would then read: "The Congress shall establish an independent central monetary authority, the majority of whose members shall come from the private sector, REPRESENTING FILIPINO INTERESTS AND OF KNOWN PROBITY AND PATRIOTISM."

THE PRESIDENT: Is this acceptable?

MR. MONSOD: Madam President, Commissioner Davide has a very long amendment to this section. We are wondering if we can incorporate the amendment of Commissioner Quesada with that of Commissioner Davide.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: It will be incorporated with my proposed amendment, and I will be very glad to join coauthorship with Commissioner Quesada.

MR. MONSOD: Our only comment is: Is it not redundant to say "REPRESENTING FILIPINO INTERESTS" and, at the same time, "PATRIOTISM"? If we say "OF KNOWN PROBITY AND PATRIOTISM," does that not include already a pro-Filipino sentiment?

MS. QUESADA: If the phrase "FILIPINO INTERESTS" would already encompass all the principles that make one patriotic, I would settle to remove "PATRIOTISM" here.

MR. MONSOD: The other question is: Is there no absolute possibility of appointing a foreigner?

MS. QUESADA: We are not saying that we are going to have foreigners as members of the Monetary Board but there could be dummies; there could be Filipinos who might be representing foreign interests. So, this is the reason the qualification has been made.

MR. MONSOD: It might be a bit paranoid for us to put in the Constitution the suggestion that there are Filipinos who do not represent Filipino interests.

MS. QUESADA: I think that is something debatable. We know of Filipinos who have served as dummies, so we would like this to be clear, especially the matter of monetary and banking issues of the country. We feel that this is a very important body which makes decisions on international transactions entered into by the country, hence, these particular qualifications. Since we have removed it from Congress and from the Office of the President so that it will be an independent body, we would like to be assured that those representing the Filipinos from the private sector would truly represent Filipino interests.

MR. MONSOD: Madam President, can we ask Commissioner Quesada to sit down with Commissioner Davide and incorporate their ideas so we can take the whole article?

THE PRESIDENT: The Chair recommends that Commissioners Davide and Quesada confer on this matter.

MS. QUESADA: Thank you.

MR. BENGZON: In the meantime, Madam President, may we comment on the statements of Commissioner

Quesada just so we will have it straight on the records?

THE PRESIDENT: Please proceed.

MR. BENGZON: It is understood that people who will be appointed in the Monetary Board will be Filipinos of probity, independence and that they are also patriots; that they are not dummies. And if ever it will be proven that these people are dummies, we have the Anti-Dummy Law. Next, for us to put in very specific terms that the members of the Monetary Board will be Filipinos representing Philippine interest, I think, smacks of an inferiority complex. And I think we do not want to appear to have an inferiority complex. So, I would like to caution the proponents on this matter. We would be willing to entertain amendments that would ensure such a thing but we should be cautious in the use of our words.

Thank you, Madam President.

SUSPENSION OF SESSION

THE PRESIDENT: May we suspend the session for a few minutes while the parties are conferring?

The session is suspended for a few minutes.

It was 3:27 p.m.

RESUMPTION OF SESSION

At 3:51 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. TINGSON: Madam President, I think it was Commissioner Davide who was on the floor.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President.

This is now an amendment proposed by the following: this Representation, Commissioners Quesada, Azcuna, Villacorta and Foz. May we be allowed to read the first sentence so we can have the full picture.

THE PRESIDENT: Yes, please proceed.

MR. DAVIDE: The first sentence will read: "SEC. 10. The Congress shall establish an independent central monetary authority, THE MEMBERS OF WHOSE GOVERNING BOARD MUST BE OF KNOWN PROBITY, INTEGRITY AND NATIONALISM, the majority of WHOM shall come from the private sector." And then, on line 18, it will now read as follows: "THE AUTHORITY shall provide policy direction in the areas of money, banking, and credit." Insert the words "THE AUTHORITY" before "provide," with the "T" in "The" in capital letter. That is a new sentence.

MR. VILLEGAS: Would the proponent mind if we retain the word "patriotism"?

MR. DAVIDE: "Patriotism"?

MR. VILLEGAS: Instead of "NATIONALISM" we use "PATRIOTISM."

MR. DAVIDE: Yes.

MR. VILLEGAS: The committee accepts the amendment.

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: May we submit an amendment to the amendment? The amendment would consist of the following: before the words "OF KNOWN PROBITY," insert the words "NATURAL-BORN CITIZENS."

MR. DAVIDE: We already changed "NATIONALISM" to "PATRIOTISM." Personally, I am willing to accept the proposal if only to emphasize the relationship between "PATRIOTISM" and the members being natural-born citizens. But I would leave it to the committee, having accepted the same.

MR. VILLEGAS: We accept the amendment to the amendment.

MR. FOZ: Thank you, Madam President.

MR. VILLEGAS: So it will read: "WHOSE GOVERNING BOARD MUST BE NATURAL-BORN CITIZENS, OF KNOWN PROBITY, INTEGRITY AND PATRIOTISM."

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: May we address a clarificatory question to the Honorable Foz?

THE PRESIDENT: What does Commissioner Foz say?

MR. FOZ: Yes, Madam President.

MR. SUAREZ: There is sense in introducing the phrase "NATURAL-BORN CITIZENS" to apply to the membership in the central monetary authority. And I take it that this refers also to those coming not only from the public sector but also from the private sector.

Is my understanding correct, Madam President?

MR. FOZ: That is right, Madam President.

MR. SUAREZ: In other words, all the members of the central monetary authority must be natural-born citizens?

MR. FOZ: That is right.

MR. SUAREZ: May I call the Commissioner's attention to Section 8, especially lines 2 and 3, wherein the phrase "the private sector" is attended with a comma and that this is without prejudice to representatives from the labor and peasant organizations from being appointed representatives of the private sector in the central monetary authority.

MR. FOZ: I would have no objection, but I think the burden of having this accepted falls on the shoulders of the committee which has accepted the amendment to the amendment.

MR. SUAREZ: So, may we address the question to the honorable chairman of the committee?

MR. VILLEGAS: Commissioner Suarez, we will leave it in the record that "private sector" includes "labor and peasant organizations."

MR. SUAREZ: Without necessarily amending Section 10?

MR. VILLEGAS: Yes.

MR. SUAREZ: Can we state clearly in the record that when we speak of "private sector" under Section 10, we also have in mind the inclusion of the appropriate representatives from the labor and peasant organizations?

MR. VILLEGAS: Yes.

MR. SUAREZ: Thank you.

MR. BENNAGEN: Madam President.

THE PRESIDENT: Commissioner Bennagen is recognized.

MR. BENNAGEN: I am, of course, sympathetic to the idea of having appropriate representatives from peasant and labor organizations. I think their voice should be heard but may we know from the committee what would be a minimum requirement in terms of professional training for somebody to be a member of the monetary board. Does one have to know something about the monetary theory?

MR. VILLEGAS: No. The original amendment proposed by Commissioner Davide actually enumerates the requirements, and among them is a sufficient knowledge of banking and finance if he is going to set directions for money and credit.

MR. BENNAGEN: The requirement presupposes at least a modicum of knowledge in these areas.

MR. VILLEGAS: Yes, of banking and finance.

MR. BENNAGEN: Thank you, Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Madam President, may I ask a question for clarification? This section says, "The Congress shall establish an independent central monetary authority." My question has reference to the word "independent." How is the independence of this authority supported by this Constitution?

In the case of the Judiciary, the Members are independent because they have a fixed term and they may not be removed except by impeachment or some very difficult process. This applies to the different constitutional commissions. But in the case of this central monetary authority which we call "independent," how is that independence maintained?

MR. VILLEGAS: The thinking is: Congress, in establishing that independent central monetary authority, should provide a fixed term. Actually that was contained in the original Davide amendment but we thought of leaving it up to Congress to determine that term — a fixed term of probably five years or seven years serving in the monetary board.

MR. RODRIGO: Does this include that they may not be removed except by impeachment by the Congress?

MR. VILLEGAS: Exactly.

MR. RODRIGO: Just like the members of the other constitutional commissions?

MR. VILLEGAS: Yes. That is why we say that they shall be subject to the same disabilities or disqualifications as the members of the constitutional commissions.

MR. RODRIGO: And we are leaving that to Congress?

MR. VILLEGAS: That is right.

MR. RODRIGO: Thank you.

MR. TINGSON: Madam President, Commissioner Sarmiento would like to make a manifestation in connection with Section 9 and after that we may vote on the whole Section 9.

THE PRESIDENT: Yes, but what about Section 10? May we have the opinion of the committee?

MR. VILLEGAS: Could we just finish Section 10 and then vote on it?

MR. TINGSON: If so, Madam President, then I ask that we recognize Commissioner Garcia.

THE PRESIDENT: Commissioner Garcia is recognized.

MR. GARCIA: Thank you, Madam President.

Actually, I have two proposed amendments by addition which may not properly belong to Section 10, but upon consultation with the chairman of the committee, this could belong after Section 10 or just before Section 11. Would the committee wish to integrate it into Section 10 or could we have a separate section?

MR. VILLEGAS: Probably we could take it as a separate section.

MR. GARCIA: Thank you.

THE PRESIDENT: Right now, we have the Davide-Quesada amendment. Are there any comments on this particular proposed amendment of Commissioners Davide and Quesada?

MR. VILLEGAS: The committee accepts the amendment, Madam President.

THE PRESIDENT: The committee has accepted.

MR. PADILLA: Madam President, may I inquire who will appoint the members of the Monetary Board?

MR. VILLEGAS: The President will appoint them, Madam President.

MR. PADILLA: But it does not say so.

MR. VILLEGAS: We leave that to Congress to specify in the law.

MR. PADILLA: Madam President, when we use the words "HONESTY," "PROBITY," "NATIONALISM," "PATRIOTISM," are those words not superfluous and redundant? They sound good, but are these not too many words without real substance?

MR. VILLEGAS: We think they are there for emphasis.

MR. PADILLA: But as members of the Monetary Board which is the central authority of money, finance and banks, it is understood that they must not be even ordinary businessmen; they should be highly qualified in their knowledge of these subjects rather than for mere honesty or probity. Congress will not nominate nor the President appoint persons who are not even pro-Filipino.

THE PRESIDENT: There are other problems that have to be resolved. Is Commissioner Padilla through?

MR. PADILLA: That is what is disturbing me, Madam President. I am leaving this matter to the committee for consideration because sometimes amendments which do not add substance to the provision have been accepted.

THE PRESIDENT: Does Commissioner Davide wish to have a vote on his proposed amendment?

MR. DAVIDE: Yes, Madam President.

THE PRESIDENT: Will the Commissioner please read the whole of Section 10.

MR. DAVIDE: The whole of Section 10, as reformulated, reads as follows: "The Congress shall establish an independent central monetary authority, the MEMBERS of whose governing board MUST BE NATURAL-BORN FILIPINO CITIZENS, OF KNOWN PROBITY, INTEGRITY AND PATRIOTISM, the majority of WHOM shall come from the private sector. THEY SHALL BE SUBJECT TO THE SAME DISABILITIES OR DISQUALIFICATIONS AS MEMBERS OF THE CONSTITUTIONAL COMMISSIONS. THE AUTHORITY SHALL PROVIDE POLICY DIRECTION IN THE AREAS OF MONEY. . ."

THE PRESIDENT: We shall now have the first portion read by Commissioner Davide voted upon.

Is there any objection to that first portion that has been read by Commissioner Davide and which has been accepted by the committee? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE: Madam President, the following amendment will be a new sentence on line 18. I propose to insert the words "THE AUTHORITY SHALL," then we now proceed with the original wording of the committee. So the whole of line 18 will read: "THE AUTHORITY SHALL provide policy direction in the areas of money, banking, and credit." Nothing more has been amended thereafter.

THE PRESIDENT: Is that acceptable to the committee?

MR. VILLEGAS: Yes, Madam President.

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

MR. DAVIDE: Madam President, that particular amendment is jointly authored by Commissioners Quesada, Azcuna, Villacorta and Foz.

THE PRESIDENT: May we know from the honorable Chairman if, with these two amendments, the whole of Section 10 is completed?

MR. VILLEGAS: Yes, Madam President.

MR. TINGSON: Madam President, Commissioner Gascon would like to have the floor in connection with Section 10.

THE PRESIDENT: Commissioner Gascon is recognized.

MR. GASCON: Madam President, I would like to propose either an additional sentence or a separate paragraph to Section 10, with the same matter of style which would read as follows: "FILIPINOS SHALL BE GIVEN PREFERENTIAL RIGHT TO ACCESS TO FINANCIAL RESOURCES." The basic reason why I would like to encourage the Commission to agree to this is that it is hoped that in providing financial resources, which would include credit, Filipinos will be given preferential priority or right in attaining credit.

MR. SARMIENTO: Madam President, may I ask Commissioner Gascon one clarificatory question.

THE PRESIDENT: Please proceed.

MR. SARMIENTO: Madam President, with the approved new section which reads "In the grant of rights, privileges and concessions concerning the national economy and patrimony, the State shall give preference to Filipinos," does the Commissioner not think his proposal is covered by this new section?

MR. GASCON: Madam President, I would like to concentrate my discussion on the issue of access to financial resources and, to my mind, it does not cover totally the spirit of what I would like to encourage. My point is that preferential treatment must be given to nationals as far as credit is concerned so that there could be aid for Filipino

nationals in the development of their enterprises.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: We defer to Commissioner Rosario Braid.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Madam President, in the Article on General Provisions, there is a provision which states that "wholly-owned Filipino corporations shall be given priority to domestic credit facilities. " Will this express the Gentleman's concern?

MR. GASCON: Yes. But I was thinking that since we are now discussing the central monetary board and the issue of banking, finance and credit, perhaps this is an opportune time to discuss such a provision.

MR. MONSOD: Madam President, in our committee meetings, we agreed on an omnibus provision that is why we have Section 1. What we are afraid of is that we shall be repeating in this article the pro-Filipino sentiment which is becoming redundant, and also unproductive at some point.

Secondly, the act of lending money is a voluntary act. If we say that there should be discriminatory types of incentives, that is ultimately bad for the Filipinos and the country if that will be taken as a mandate for such things. Perhaps, we should be silent about this because the sense of this whole article is very pro-Filipino.

MR. GASCON: I realize that, Madam President, but I do not mean that when we speak of providing credit to Filipinos, we will bar credit to nonnationals. My only point is in attaining credit, all things being equal, there should be preference for Filipinos.

MR. MONSOD: Madam President, in view of the fact that this is in the Article on General Provisions, the committee regrets that it cannot accept that amendment.

THE PRESIDENT: Does Commissioner Gascon insist on his amendment?

MR. GASCON: After conferring with Commissioner Rosario Braid, I shall await that opportune time to discuss this when we go into the Article on General Provisions.

MR. MONSOD: Thank you.

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

THE PRESIDENTS: Commissioner Suarez is recognized.

MR. SUAREZ: May we just clarify some points with respect to Section 10, Madam President?

THE PRESIDENT: Please proceed.

MR. SUAREZ: There is a statement here on lines 20, 21 and 22, which reads:

It shall have supervisory authority over the operations of banks and exercises such regulatory authority as may be provided by law over the operations of finance companies and other institutions performing similar functions.

My first question is: When we make reference to other institutions performing functions which are similar in nature with the operations of finance companies, do we have in mind investment companies?

MR. VILLEGAS: Investment houses, for example Madam President.

MR. SUAREZ: Thank you.

My second question is: Would this not collide with the regulatory authority granted to the Securities and Exchange Commission under the Securities Act? In other words, there might be a conflict of jurisdiction between the Central Monetary Authority and the Securities and Exchange Commission insofar as securities are concerned.

MR. MONSOD: Madam President, I believe that the reconciliation is already being resolved because they are making a distinction between regulatory authority and supervisory authority. The Securities and Exchange Commission has supervisory authority over finance companies, for example, whereas the regulatory authority is still with the Central Bank.

MR. SUAREZ: So, the Securities and Exchange Commission shall not be granted the regulatory jurisdiction or authority?

MR. MONSOD: That is the present situation, Madam President.

MR. SUAREZ: So, the distinction is, we vest authority on the Securities and Exchange Commission insofar as supervision is concerned, and we grant to the Central Monetary Authority the power of regulation.

MR. MONSOD: That is right.

MR. SUAREZ: Thank you for making clear the distinction.

MR. TINGSON: Madam President, we do not seem to have anybody else speaking on Section 10. Perhaps, this is already clear to the body.

VOTING

THE PRESIDENT: This will be submitted to a vote. As many as are in favor of Section 10, please raise their hand. (Several Members raised their hand.)

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

As many as are abstaining, please raise hand. (One Member raised his hand.)

The results show 33 votes in favor and 1 abstention; Section 10, as amended, is approved.

MR. TINGSON: Madam President, the Floor Leader would like to give the information that Commissioner Bennagen has a manifestation to make on Section 8; Commissioner Sarmiento has a manifestation to make on Section 9 before voting is done.

MR. SARMIENTO: Madam President, I am withdrawing my reservation with respect to Section 9.

THE PRESIDENT: Therefore, we can go back to Section 8. Commissioner Bennagen is recognized.

MR. BENNAGEN: Thank you, Madam President. On lines 2 and 3, place a comma (,) after "agencies" delete the word "and" before "the" then insert the word "VARIOUS" between "the" and "private"; add "S" to "sector," and continue with "AND THE LOCAL GOVERNMENT UNITS." Then delete the phrase "including labor and peasant organizations, shall." The amended portion shall now read: "the appropriate public agencies, the VARIOUS private sectors AND THE LOCAL GOVERNMENT UNITS."

It should be understood that "VARIOUS private sectorS" include management, peasant, and labor organizations, cooperatives, indigenous communities, academies and others, which should be part of the consultation. We

already have the experience with this in the case of NEDA which came out with its people-powered development plan; local government units would include the autonomous regions. The significance of this was highlighted during the deliberations on the relationship between the development plans of the autonomous region level and the national plans.

THE PRESIDENT: What does the committee say?

MR. VILLEGAS: The amendment is accepted, Madam President.

THE PRESIDENT: The committee has accepted the amendment.

MR. RODRIGO: Madam President, may I ask a question?

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: How many sectors or how many people will the President have to consult before he can act?

MR. BENNAGEN: It is the Congress which shall conduct public hearings.

MR. MONSOD: Madam President, there has been an amendment to this section that was introduced by Commissioner Davide. I guess the consultations are undertaken during the process of formulating the program before it is presented by the President to Congress and then Congress will also conduct hearings. That is actually happening now in the formulation of the program — there are consultations going on in all the regions. So, it does not mean that the President himself or herself conducts the consultations.

MR. RODRIGO: This means that all the provinces, cities and municipalities, including the autonomous regions, will have to be consulted.

MR. MONSOD: Yes, and this is actually happening. There are regional consultations where representatives of the provinces and the cities are asked to attend because they are the ones who are supposed to present the projects that make up the total national development program.

MR. RODRIGO: If the committee believes that this is practical and that this is not imposing too many conditions on the President who, after all, would be elected by our people, I pose no objection.

MR. MONSOD: It is a process that includes a lot of people and is actually being practiced today.

MR. RODRIGO: Thank you.

THE PRESIDENT: The Bennagen amendment has been accepted by the committee. Is that correct?

MR. VILLEGAS: Yes, Madam President.

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

MR. VILLEGAS: May we now vote on the entire Section 8, Madam President?

THE PRESIDENT: Will Commissioner Villegas please read the entire Section 8?

MR. VILLEGAS: Section 8 now reads: "CONGRESS MAY ESTABLISH AN INDEPENDENT ECONOMIC AND PLANNING AGENCY HEADED BY THE PRESIDENT WHICH SHALL, after consultations with the appropriate public agencies, the VARIOUS private sectorS AND THE LOCAL GOVERNMENT UNITS, recommend to Congress and implement CONTINUING integrated and coordinated PROGRAMS AND POLICIES FOR national development.

"Until Congress provides otherwise, the National Economic Development Authority shall function as the independent planning agency of the government."

VOTING

THE PRESIDENT: As many as are in favor of Section 8, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (One Member raised his hand.)

As many as are abstaining, please raise their hand. (One Member raised his hand.)

The results show 30 votes in favor, 1 against and 1 abstention; Section 8, as amended, is approved.

MR. TINGSON: Madam President, before we vote on Section 9, Commissioner Foz has some clarificatory questions to ask.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: Madam President, I would like to request Commissioner Nollado to please restate his amendment so that I can ask a question.

MR. NOLLEDO: "IN THE GRANT OF RIGHTS, PRIVILEGES AND CONCESSIONS COVERING THE NATIONAL ECONOMY AND PATRIMONY, THE STATE SHALL GIVE PREFERENCE TO QUALIFIED FILIPINOS."

MR. FOZ: In connection with that amendment, if a foreign enterprise is qualified and the Filipino enterprise is also qualified, will the Filipino enterprise still be given a preference?

MR. NOLLEDO: Obviously.

MR. FOZ: If the foreigner is more qualified in some aspects than the Filipino enterprise, will the Filipino still be preferred?

MR. NOLLEDO: The answer is "yes."

MR. FOZ: Thank you.

THE PRESIDENT: Are there any other comments on Section 9? Are we ready to vote on Section 9?

MR. VILLEGAS: Yes, Madam President.

May I read Section 9, as amended.

THE PRESIDENT: Please proceed.

MR. VILLEGAS: "The Congress shall, UPON RECOMMENDATION OF THE ECONOMIC AND PLANNING AGENCY, reserve to citizens of the Philippines, or to corporations or associations at least sixty per cent of whose CAPITAL is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments when the national interest so dictates. IN THE GRANT OF RIGHTS, PRIVILEGES, AND CONCESSIONS COVERING THE NATIONAL ECONOMY AND PATRIMONY, THE STATE SHALL GIVE PREFERENCE TO QUALIFIED FILIPINOS."

VOTING

THE PRESIDENT: As many as are in favor of Section 9, as read by the honorable Chairman, please raise their hand. (Several Members raised their hand.)

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

The results show 37 votes in favor and none against; Section 9, as amended, is approved.

MR. MONSOD: Madam President, I just want to clarify. I refer to Commissioner Nollado's answer to Commissioner Foz regarding qualifications. I assume that in weighing and evaluating competing requests for grants, when we say "QUALIFIED," it would cover all aspects, including the benefits to the country.

Thank you.

MR. MAAMBONG: Madam President, I also want a clarification. When we say "CAPITAL," do we refer to subscribed capital?

MR. VILLEGAS: Yes.

MR. MAAMBONG: Thank you.

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

THE PRESIDENT: Commissioner Garcia is recognized.

MR. GARCIA: Thank you, Madam President.

I would like to make two proposals concerning two critical areas of the national economy: the foreign debt question and foreign trade policy. The first amendment I would like to make, a copy of which I submitted to the chairman of the committee, reads as follows: "SECTION ____ FOREIGN LOANS SHALL BE CONTRACTED ONLY TO FINANCE VITAL UNDERTAKINGS IN LINE WITH THE NATIONAL DEVELOPMENT PROGRAM. A CEILING ON FOREIGN BORROWINGS SHALL BE FIXED BY CONGRESS AND FOREIGN LOANS OF THE PRIVATE SECTOR SHALL BE SUBJECT TO STATE REGULATION.

"CEILINGS ON INTERESTS AND PRINCIPAL PAYMENTS AS A PERCENTAGE OF EXPORTS SHALL BE IMPLEMENTED AND INFORMATION AS TO THE TERMS AND CONDITIONS OF FOREIGN LOANS OBTAINED BY THE GOVERNMENT SHALL BE MADE AVAILABLE TO THE PUBLIC."

MR. MONSOD: Madam President, during the discussions on the Article on the Executive, we had a very lengthy and exhaustive discussion on the incurring of foreign loans. If the Gentleman will recall, we approved in that article a section that reads:

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

Madam President, this is quite a comprehensive provision that already implements the sense of the Commission with respect to foreign loans. We are sorry that we cannot accept the amendment of the Gentleman because the features of his amendment already take the form of a legislation. These are the things that Congress should go into after much discussion and hearings. For example, on the question of ceilings on interest and principal payments as

a percentage of exports, there are other formulas that are now being tried by Peru and Mexico, and the Philippines is also exploring these areas. In the case of Mexico, it has linked its formula of payment to oil. In the case of the Philippines, we are looking at linking our repayments to the current account. There are formulas linking payments to the deficit of the national budget, depending on the circumstances and the state of the economy.

With the proposed amendment, we are going into the details of economic policy, economic strategy, and foreign debt negotiations which have no place in the Constitution. Added to these is the fact that the proposal is amply covered by Section 20 of the Article on the Executive.

MR. GARCIA: Can I respond briefly, Madam President?

THE PRESIDENT: Please proceed.

MR. GARCIA: I realize that this is amply discussed and covered by Section 20 of the Article on the Executive. I fully appreciate that fact. But since we are right now discussing the Article on National Economy and Patrimony, and since the very heart of the economic crisis is the foreign debt question, I think this issue should be addressed. In fact, if we look at the proposal very carefully, it does not go into details. It simply states very vital points: first of all, that loans are only for vital undertakings; secondly, that there is a ceiling fixed on the amount of the loans; and, thirdly, the amount of interest payments is fixed on ability to pay, which I think is not asking too much. It is simply saying that a country's borrowing should be based on its ability to pay. Of course, one of the indices or one of the indicators is the ability to earn foreign exchange. That, I think, can be stated. And, finally, information as to whatever terms and conditions made must be made public. In other words, these are not secret negotiations so these should be made public.

For an Article on National Economy and Patrimony not to consider the question of foreign debt would be lacking or would be rather inadequate because our foreign debt is a very critical aspect of our economic crisis. I felt this deserves a place or a statement at least in this article. As I said earlier, I do not think it goes into very many specifics. It simply states those four vital issues which any sound economy must be able to address.

MR. VILLEGAS: Madam President, another reason why we have a reservation about accepting the amendment is that the foreign debt problem is not going to be forever. I hope the Gentleman is not that pessimistic to suggest that this foreign debt problem is going to continue for the next century. It is a very specific problem that we are facing today, which is properly addressed by legislation, but it does not really fit into the basic law of the land.

MR. MONSOD: Madam President, the economy is a very complicated set of transactions. For example, foreign loans may be incurred for reasons other than the importation of equipment for vital undertakings. Is it being suggested here that we cannot use foreign loans for the importation of raw materials, for intermediate goods, for the importation of certain products that may be needed, like the importation of medicine? What I am saying, Madam President, is that a statement may be innocuous. It may say foreign loans shall be contracted only to finance vital undertakings. But there are many uses of foreign loans which are also good for the country. And here, we are already going into economic policy. This is a very complicated issue and it is not the proper subject of a constitutional provision.

MR. GARCIA: In fact, what it states very simply is that we should not take to the path of foreign loans. One of the reasons why many Third World countries are now very deeply tied to dependent development and uneven and unequal development is the fact that before any solution towards borrowing is taken, they did not make sure that there was sufficient public discussions. That is why the terms and conditions must be made public because the repayment terms are normally shouldered by the great majority. Secondly, it must be considered vital. That, I think, is broad enough. Here, there is no statement as to what are the ventures that will be considered outside the

realm of laws. No, we are not saying that. We are simply saying that the terms must be considered vital both by the executive and the legislative departments. I think it is a necessity here now because our experience in the past, and not only us but many other countries, is that we have taken to the path of borrowing rather lightly. I think this is a check to that tendency.

MR. MONSOD: Madam President, we are prepared to sit down with Commissioner Garcia on a general statement of foreign loans which we can harmonize and which is consistent with Section 20 of the Article on the Executive. But we do not think that it is proper for us to go into such details in this section that would limit or restrict or modify Section 20 because, as I said, this is a very complicated subject.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

May we request Commissioner Garcia to furnish the Commissioners a copy of his proposal because we may find merit in it and probably many of us could help in the formulation of an acceptable amendment.

MR. GARCIA: I shall furnish the Members of the Commission a copy of the proposal.

MR. SUAREZ: Thank you.

In the meantime, can we defer consideration of the Garcia proposal, Madam President?

MR. MONSOD: Madam President, we would like to sit down with the proponents and see whether we can work out a good provision on this matter.

MR. GARCIA: Thank you very much.

THE PRESIDENT: Can we proceed then to the next section?

MR. GARCIA: Madam President, I have the following as a second part of this proposal which concerns foreign trade policy: "THE STATE SHALL ADOPT A TRADE POLICY THAT WILL GIVE PRIORITY TO THE PRODUCTION OF GOODS FOR DOMESTIC REQUIREMENTS OVER EXPORT. IMPORTS SHALL BE GEARED TOWARD HASTENING NATIONAL INDUSTRIALIZATION.

"THE STATE SHALL MAKE FULL USE OF ALL FORMS OF EXCHANGE INCLUDING COUNTER-TRADE WITH ALL COUNTRIES ON THE BASIS OF EQUALITY AND MUTUAL BENEFIT."

THE PRESIDENT: Is this a new section?

MR. GARCIA: This is a section after Section 10, Madam President. I had hoped that there would be two policies — principle statements on foreign loans and foreign trade as part of the Article on National Economy and Patrimony, and the second, which I just finished reading, would address the issue of foreign trade.

MR. MONSOD: Madam President, the Gentleman's proposal on the State's adopting a trade policy with all countries, making full use of all forms of exchange on the basis of equality and reciprocity could be a good statement. But the sentence on imports being geared toward hastening national industrialization is already dealt with in Section 1; the policy on industrialization is already there.

The statement about giving priority to the production of goods for domestic requirement over export involves a very serious question of government economic policy and foreign trade which is more complicated than just saying we must produce for domestic requirement over export.

I would like to refer to a statement in Section 1 which says: "The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos." Self-reliance is not the same as self-sufficiency. The Gentleman's sentence on domestic requirements and on imports suggests self-sufficiency as contrasted with self-reliance. Secondly, there is already a sentence in Section 1 that says:

The goals of the national economy are a more equitable distribution of opportunities, income and wealth, a sustained increase in the amount of goods and services produced by the nation for the benefit of the people.

If we recall when this omnibus provision was first drafted — I think it was Commissioner Suarez who was the main author — it was precisely written this way to put in the same ideas but in a manner that was not extreme.

MR. GARCIA: Madam President, I realize that in Section 1 there is a general statement regarding a self-reliant and independent economy under the effective control of Filipinos. But in this proposal that I am making, I believe this gives life precisely to that self-reliant policy. Self-sufficiency is a desired objective — if a nation can provide the basic necessities of its people, that is a desired objective. I mean, if our resources can provide that kind of economic reality, then that can be made an objective for our national economy.

MR. MONSOD: May we ask Commissioner Suarez to take the floor?

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: We have already addressed a request to Commissioner Garcia to furnish us a copy of his first proposal. Can we also address the same request with respect to the second proposal? And may we reiterate our request that discussions on the two proposals be deferred until copies thereof be furnished the Commissioners.

THE PRESIDENT: So, please furnish us copies, Commissioner Garcia.

MR. GARCIA: Yes, I will do so, Madam President.

MR. SUAREZ: Thank you, Madam President.

MR. TINGSON: Madam President, Commissioner Ople would like to make a manifestation.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: Madam President, as early as four or five days ago, I submitted to the committee a number of proposed amendments to the Article on the National Economy and Patrimony. I believe that some of these may have been overtaken by subsequent amendments when I was in no position to call the attention of the committee because of a brief absence from the floor. May I, therefore, reserve the right tomorrow morning to present these amendments without prejudice to the committee locating them later, if these are acted upon favorably in the proper places in the article. That is all, Madam President.

Thank you.

MR. TINGSON: Madam President, I ask that Commissioner Davide be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President.

On Section 11, line 26, substitute "may" with the words "SHALL NOT"; then after the comma (,), insert the word "EXCEPT," so that the whole line will read: "The Congress SHALL NOT, EXCEPT by general law, provide. . ."

MR. VILLEGAS: Madam President, we accept the amendment. This was also the recommendation of the UP Law Center with whom we discussed this specific section.

THE PRESIDENT: May we have that voted upon? Is there any objection to this first amendment proposed by Commissioner Davide which has been accepted by the committee? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE: On line 29, Madam President, I propose to insert between the words "established" and "only" the phrase "BY SPECIAL CHARTERS AND," so that the whole line will read: "may be created or established BY SPECIAL CHARTERS AND only in the interest of the common good."

THE PRESIDENT: What does the committee say?

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Will Commissioner Davide accept an amendment to his amendment? I suggest that on line 28, the phrase should be "Government-owned or controlled corporations OR THEIR SUBSIDIARIES." The phrase "OR THEIR SUBSIDIARIES" was already proposed by Commissioner Davide, and I support him along that line.

MR. DAVIDE: Madam President, may I explain?

THE PRESIDENT: Please proceed.

MR. DAVIDE: In the course of the interpellation, it was clearly stated by the committee that subsidiaries of government-owned or controlled corporations may be organized under the general law, and government-owned or controlled corporations may be so organized by special charters only. That was my understanding.

MR. REGALADO: So under that understanding, I will withdraw my proposed amendment to Commissioner Davide's amendment. But may I have another proposal, Madam President? Since the proposal of Commissioner Davide ends at the phrase "to the common good," may I propose a further amendment by adding the following: "AND, UNLESS PROVIDED OTHERWISE, SHALL BE SUBJECT TO THE SAME REQUIREMENTS, OBLIGATIONS AND RESTRICTIONS AS PRIVATE CORPORATIONS." The reason for this is that there had been instances in the past when government-owned or controlled corporations were created supposedly with the powers of private corporations but not with the obligations of private corporations. I illustrate this with the case of the Experimental Cinema of the Philippines, which I had the occasion to sue in court. It was created by an executive order but which was never published in the Official Gazette. The ECP was given the powers of a private corporation, but never had a board of directors, but only a director-general and an assistant director-general. In other words, the purpose of my further amendment is that in the absence of a specific provision otherwise in the special charter, then the provisions of the corporation code may have suppletory effect at least to protect private interests.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Madam President, may we clear up one point with the proponent? Does the Gentleman not believe that when we speak of the creation of these government-owned or controlled corporations under a special charter, the fears and apprehensions expressed by him may have already been covered?

MR. REGALADO: Not necessarily, because while the charter and the Congress may be well-meaning, there may

be some lacunas in the provisions which they overlooked. In the absence of a contrary specific provision in the special charter, and in order to protect private interests, then the same shall be subject to the provisions of the corporation code which will merely have supplementary effect. But, of course, if the entire range of the obligations of that government corporation is properly spelled out in the charter; then the corporation code will have no effect.

I just want to have a backer-up provision because there had been a number of instances when, because of the lack of a corresponding provision, intentionally or perhaps by oversight, a private individual who happens to be caught in the coils of the operations of that government-owned or controlled corporation may be without recourse.

MR. SUAREZ: I agree with Commissioner Regalado's observations, but I am concerned about cluttering up this Section 11 with what I feel may be a surplusage. Would the Commissioner be satisfied with what he already stated in the record without adding his amendment on the understanding that when Congress enacts the special charter it would already have in mind exactly what Commissioner Regalado is declaring to us this afternoon?

MR. REGALADO: Very well, Madam President. Let the record, therefore, show that when this provision here states that these government-owned or controlled corporations are created or established by special charters, in the absence of specific and controlling provisions in the special charters creating them, and for the protection of the private interest, then the provisions of the corporation code or any other pertinent provision of law relative to the transaction in question shall have supplementary effect.

MR. SUAREZ: I thank Commissioner Regalado for his reasonable approach to the problem.

MR. REGALADO: Thank you.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: May I direct a few questions to Commissioner Regalado and, perhaps, we can clear this up.

I have with me a copy of Presidential Decree No. 2029 which was promulgated on February 4, 1986. Would the Commissioner agree to this definition under P.D. No. 2029 of a "government-owned or controlled corporation," which says:

SECTION 2. Definition. A government-owned or controlled corporation is a stock or a nonstock corporation, whether performing governmental or proprietary functions, which is directly chartered by special law or if organized under the general corporation law, is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock.

MR. REGALADO: That is a general definition of a government-owned or controlled corporation which in certain instances, however, may be subject to qualificative features. As a general proposition, yes.

MR. MAAMBONG: I am going to that direction, Madam President. And then Section 2 of P.D. No. 2029 provides further:

Provided, that a corporation organized under the general corporation law under private ownership at least a majority of the shares of stock of which were conveyed to a government corporation in satisfaction of debts incurred with a government financial institution, whether by foreclosure or otherwise, or a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time, shall not be considered a government-owned or controlled corporation before

such disposition and even if the ownership or control thereof is subsequently transferred to another government-owned or controlled corporation.

MR. REGALADO: The provision that Commissioner Maambong just read has not yet been given jurisprudential interpretation in the light of the provisions of the corporation code on the consolidation and merger of corporations.

MR. MAAMBONG: Then probably, the next provision will solve the problem. It says:

Provided, further, that a corporation created by special law which is explicitly intended under that law for ultimate transfer to private ownership under certain specified conditions shall be considered a government-owned or controlled corporation until it is transferred to private ownership.

Does that solve in a way the concern of the Commissioner?

MR. REGALADO: But, Madam President, that is precisely the objection and the subject of the Davide amendment which provides that "The Congress SHALL NOT, EXCEPT by general law, provide for the formation, organization, or regulation of private corporations." That is advisably taken because this is stated in Section 4, Article XIV of the 1973 Constitution. As was pointed out in the deliberations, the purpose of this provision was to insulate Congress from being pressured into creating favored corporations. That is why instead of the permissive phrase used here by the committee which says "The Congress may, by general law, provide for the formation, organization, or regulation of private corporations," I support fully the view of Commissioner Davide in his amendment based on the 1973 Constitution. Commissioner Davide's view is that Congress shall not do so except by general law to avoid favoritism in the creation of special corporations avowedly for governmental purposes but actually intended to favor a particular group or class or sector in the government.

MR. MAAMBONG: Madam President, the Commissioner mentioned that a government-owned or controlled corporation may have to register under the Securities and Exchange Commission. Probably this last provision of P.D. No. 2029 may answer the concern of the Commissioner, and I quote:

Provided, finally, that a corporation that is authorized to be established by special law, but which is still required under that law to register with the Securities and Exchange Commission in order to acquire a juridical personality, shall not on the basis of the special law alone be considered a government-owned or controlled corporation.

MR. REGALADO: Madam President, it depends on the type of the corporation because a corporation may be created by general law or by a special congressional act. If that special congressional act by itself already creates the government-owned or controlled corporation and confers juridical personality on it, then there will be no need for registration under the general law for corporations under the corporation code. What I am after, however, is that even if the corporation is conferred juridical personality without the need of registration, it must still comply with certain reportorial requirements. It must be subject to auditing if there has been private exposure in that governmental corporation, as there are some such situations. Then it must comply with the corporation code provisions on divestiture of acquired assets, on the matter of appraisal values or the right of appraisal in the absence of a specific provision in the charter itself. However, if all those things are set out in the charter, then there is no need for a supplementary application of the corporation code. That is my purpose.

MR. MAAMBONG: In other words, this clarification in P.D. No. 2029 does not address and solve the concern of the Commissioner?

MR. REGALADO: In the first place, Madam President, that is statutory. In the second place, its interplay with whatever corporation laws and commercial laws may later be passed by the new Congress will open that specific

presidential decree to a review and a revisiting of its propriety. But since we are after the guidelines here, I am just making a stopgap provision that in the absence of any other contrary provision, at least we have a suppletory provision.

MR. MAAMBONG: Thank you.

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: May we ask some questions of Commissioner Davide.

MR. DAVIDE: Gladly, Madam President.

MR. FOZ: Madam President, by not including or by excluding the term "SUBSIDIARIES" after the words "Government-owned or controlled corporations" which was proposed earlier, are we saying that subsidiaries of government corporations cannot be organized by special law?

MR. DAVIDE: They can be organized.

MR. FOZ: Do they have to be organized only under the corporation code?

MR. DAVIDE: As a general rule, a subsidiary can be organized under the general law, but there is nothing that can prevent Congress from granting a special charter for the creation of another corporation.

MR. FOZ: What is the accepted meaning of the term "subsidiaries" in relation to a government-owned or controlled corporation?

MR. DAVIDE: It has the same meaning as the Commissioner had elucidated to the Commission when we took up the Article on the Constitutional Commissions, under which, especially in relation to the duty of the Commission on Audit — to exercise power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of and expenditures or uses of funds and property — we included government-owned or controlled corporations and their subsidiaries.

MR. FOZ: Are we saying that "subsidiaries," in relation to government-owned or controlled corporations, are mere creatures or creations of these government-owned or controlled corporations?

MR. DAVIDE: Yes, to a certain extent as may be required by law. For instance, the law may define what is a subsidiary corporation, meaning, a corporation created pursuant to law; that is, even under the general law, where a certain percentage of the outstanding capital stock must be owned by a government-owned or controlled corporation.

MR. FOZ: And these subsidiaries which were created or deemed necessary by the government-owned or controlled corporations were formed under the general corporation law?

MR. DAVIDE: Yes.

MR. FOZ: And, therefore, they may be considered not as government-owned or controlled corporations but as private corporations.

MR. DAVIDE: During its organization under the general law, a subsidiary may on the face be considered a private corporation, but we must have to look into the particular function of this corporation. For instance, if it performs practically the same activity as the mother corporation or the government-owned or controlled corporation, the fact that it was organized under the general law will not make it merely a private corporation.

MR. FOZ: If the subsidiary is going to perform the same functions as the government-owned or controlled corporations, then there is no need to create the subsidiary.

MR. DAVIDE: There might not be a need.

MR. FOZ: The purpose of creating subsidiaries by the government-owned or controlled corporation is that of a necessity — the government-owned or controlled corporation cannot perform a special function and, therefore, it is necessary to create those subsidiaries to perform those special functions.

Does not the Commissioner think so?

MR. DAVIDE: That is so, but we have to distinguish what is that particular function because if it will be performing a function which is just an extension of the principal function and power of the mother corporation, then, necessarily, it is a subsidiary performing the very act of the mother unit; and, therefore, its being organized under the general law will not convert it into a purely private corporation.

MR. FOZ: Madam President, I think that is the thrust of our amendment to the original provision under the Civil Service Law when we defined the scope and extent of the term "civil service." I refer to a clause there which says: "including government-owned or controlled corporations with original charters." By providing such a definition we are, therefore, excluding the subsidiaries of government-owned and controlled corporations from the scope or definition of the civil service and, therefore, being outside the civil service, these subsidiaries are private corporations. However formed, in whatever manner these subsidiaries are organized or formed under the general corporation law or by special charters, they remain as private corporations.

MR. DAVIDE: That is the reason why my amendment is merely the insertion of the words "BY SPECIAL CHARTERS and the establishment of government-owned or controlled corporations." I did not include "other subsidiaries."

MR. FOZ: Thank you.

MR. SUAREZ: Madam President, may we just clear one point?

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Madam President, in Section 11, we are practically requiring government-owned or controlled corporations to comply with two requirements in order to be organized: One, they must be created or organized by means of special charters and, second, because of the conjunction "and," it must only be in the interest of the common good. Am I correct?

MR. DAVIDE: Yes.

MR. SUAREZ: Thank you.

Can I assume that this particular provision would apply prospectively?

MR. DAVIDE: Yes.

MR. SUAREZ: Then may I ask what would happen to those government-owned or controlled corporations which proliferated under the Marcos administration, since they have not been created by a special charter, and in all probability they may not be in the interest of the common good?

MR. DAVIDE: Madam President, I think certain realignments will have to be done and the Committee on Amendments and Transitory Provisions of which the Gentleman is the chairman can make the necessary harmonization.

MR. SUAREZ: I think I provoked a hornet's nest in that connection, but at any rate, would Commissioner Davide consider the advisability and practicality of seeking the reestablishment or the recreation under special charters of these government-owned or controlled corporations which have not been created under special charters and which may not be in the interest of the common good?

This is necessary in order that they can comply with this constitutional provision, Madam President.

MR. DAVIDE: I join Commissioner Suarez in that, Madam President. Perhaps, in the Article on Transitory Provisions we could provide for a section mandating compliance with this particular provision by existing government-owned or controlled corporations organized without special charter.

MR. SUAREZ: Is the Commissioner excluding from that what are considered by Commissioner Foz as those other subsidiaries of these present corporations?

MR. DAVIDE: I would not make a general commitment now, but we would go into the activities of the so-called subsidiaries to determine if these were done in violation of existing laws, or if these were intended to protect the interests of cronies. Then we might go as far as including the subsidiaries in the Article on Transitory Provisions.

MR. SUAREZ: So, as of now, the Gentleman would not extend the need to enact a special charter to those subsidiary corporations.

MR. DAVIDE: There is a need for that, but I guess a certain time must be given to them. Perhaps, in the Article on Transitory Provisions we could give a time limit within which they must be converted into corporations organized under special charters.

MR. SUAREZ: Thank you.

MR. OPLE: Madam President.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: May I put a question to the proponent of the amendment?

MR. DAVIDE: Gladly.

MR. OPLE: Commissioner Davide is aware that there are about P200 billion of nonperforming assets that have to be segregated and taken over by the national government from government corporations. This is a millstone around the neck of the nation. Will Commissioner Davide, therefore, consider raising the standard for the enactment of special charters to create new government corporations by qualifying the common good, which I think is a standing invitation for government corporations to lose money in the interest of the common good? Will he consider putting in the standard of economic viability together with the common good?

MR. DAVIDE: I would leave it to the committee, Madam President, because my only amendment is to require two conditions: one, by special charter and, second, that it is organized only in the interest of the common good. Perhaps, Commissioner Ople's amendment may be accepted by the committee.

MR. OPLE: I so propose, Madam President, and I submit.

Thank you.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: Madam President, I support the proposal to insert "ECONOMIC VIABILITY" as one of the grounds for organizing government corporations. I would like to give the information that a report has been submitted by

the Presidential Commission on Reorganization which precisely makes recommendations for the rationalization of the public corporate sector by seeking the abolition of certain government corporations and realigning some of them, meaning, merging some of them into new corporations. One of the grounds recommended for so doing is economic viability.

Thank you.

MR. OPLE: Madam President, the reason for this concern is really that when the government creates a corporation, there is a sense in which this corporation becomes exempt from the test of economic performance. We know what happened in the past. If a government corporation loses, then it makes its claim upon the taxpayers' money through new equity infusions from the government and what is always invoked is the common good. That is the reason why this year, out of a budget of P115 billion for the entire government, about P28 billion of this will go into equity infusions to support a few government financial institutions. And this is all taxpayers' money which could have been relocated to agrarian reform, to social services like health and education, to augment the salaries of grossly underpaid public employees. And yet this is all going down the drain.

Therefore, when we insert the phrase "ECONOMIC VIABILITY" together with the "common good," this becomes a restraint on future enthusiasts for state capitalism to excuse themselves from the responsibility of meeting the market test so that they become viable. And so, Madam President, I reiterate, for the committee's consideration and I am glad that I am joined in this proposal by Commissioner Foz, the insertion of the standard of "ECONOMIC VIABILITY OR THE ECONOMIC TEST," together with the common good.

Thank you.

MR. MONSOD: Madam President, may I just ask Commissioner Ople a question? When we say "ECONOMIC VIABILITY," is this not synonymous with "financial viability"?

MR. OPLE: Yes, I consider it more or less synonymous, Madam President.

MR. MONSOD: Then maybe we should make a distinction because a project may be economically viable but not financially viable. There are what we call economic externalities which are pluses and minuses taken into consideration in government-owned and controlled corporations.

MR. OPLE: If financial viability is a more stringent standard, then I am sure Commissioner Foz and I will be happy to support it.

MR. MONSOD: The economic viability test is more liberal because it allows for consideration of variables that are not translatable in financial terms.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended.

It was 5:15 p.m.

RESUMPTION OF SESSION

At 5:52 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. TINGSON: Madam President, the parliamentary situation is, if the amendments of Commissioner Davide and Commissioner Ople are accepted by the committee, then we will be ready to vote on Section 11.

THE PRESIDENT: What does the committee say?

MR. VILLEGAS: Madam President, we accept both amendments. Can we ask Commissioner Davide to read the whole section?

MR. DAVIDE: Thank you, Madam President.

Section 11 now reads: "The Congress SHALL NOT, EXCEPT by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established BY SPECIAL CHARTERS AND only in the interest of the common good SUBJECT TO THE BEST OF ECONOMIC VIABILITY."

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

MS. QUESADA: Madam President.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: Madam President, may we be clarified by the committee on what is meant by economic viability?

THE PRESIDENT: Please proceed.

MR. MONSOD: Economic viability normally is determined by cost-benefit ratio that takes into consideration all benefits, including economic external as well as internal benefits. These are what they call externalities in economics, so that these are not strictly financial criteria. Economic viability involves what we call economic returns or benefits of the country that are not quantifiable in financial terms. For example, the establishment of a copper smelter in an area in Leyte may mean that we have to build roads, resulting in an inducement for economic activity along the roads leading to the place and around the area where the plan is to be set up. In this case, this has some relationship with regional planning and with dispersion of industry. These returns are not captured by the firm itself, but they involve benefits to the surrounding areas and to other enterprises and are not quantifiable in financial terms.

MS. QUESADA: May the rest of the Commission and I be informed on the reason for this particular shift, instead of the one already provided earlier and which is only in the interest of the common good? Has the meaning changed? That it is no longer for the interest of the common good; that economic viability is the main consideration in the creation or establishment of government-owned or controlled corporations?

MR. MONSOD: No. The number one criterion is still the common good.

MS. QUESADA: Yes.

MR. MONSOD: I did not say efficiency but economic viability. This would include the nonfinancial returns.

MS. QUESADA: Does the Gentleman think that this particular formulation now will be easily understood by noneconomists or lay people who will be reading this particular provision, or do we need economic interpretations?

MR. MONSOD: We have another section that was introduced by Commissioner Sarmiento where we talk about the real contributions to the economy in the case of contracts involving foreign financial and management cooperation. That is also an economic term used when talking about real contributions beyond financial returns.

MS. QUESADA: So, would this particular formulation now really limit the entry of government corporations into activities engaged in by corporations?

MR. MONSOD: Yes, because it is also consistent with the economic philosophy that this Commission approved — that there should be minimum government participation and intervention in the economy.

MS. QUESADA: Sometimes this Commission would just refer to Congress to provide the particular requirements when the government would get into corporations. But this time around, we specifically mentioned economic viability. Would not the earlier formulation proposed by Commissioner Davide which states "BY SPECIAL CHARTERS AND only in the interest of the common good" already cover this particular criterion of economic viability?

MR. VILLEGAS: Commissioner Ople will restate the reason for his introducing that amendment.

MR. OPLE: I am obliged to repeat what I said earlier in moving for this particular amendment jointly with Commissioner Foz. During the past three decades, there had been a proliferation of government corporations, very few of which have succeeded, and many of which are now earmarked by the Presidential Reorganization Commission for liquidation because they failed the economic test. For example, I already pointed out the P28 billion of new equity infusions this year out of a budget of P115 billion in order to support some of these government corporations, DBP and PNB in particular, and this money could have gone into health care, for example.

Now, if we do not provide for an additional standard of economic viability, the words "common good," so wonderful, so elevated a principle, will be used as a license by some people to set up more government corporations that will have to be funded by taxpayers' money ad infinitum because there is no standard of the economic test. This merely means that there will be fewer government corporations that will fail in order to become an albatross around the neck of the taxpayers and of the nation. But the common good is still the principal standard.

MS. QUESADA: But would not the Commissioner say that the reason why many of the government-owned or controlled corporations failed to come up with the economic test is due to the management of these corporations, and not the idea itself of government corporations? It is a problem of efficiency and effectiveness of management of these corporations which could be remedied, not by eliminating government corporations or the idea of getting into state-owned corporations, but improving management which our technocrats should be able to do, given the training and the experience.

MR. OPLE: That is part of the economic viability, Madam President.

MS. QUESADA: So, is the Commissioner saying then that the Filipinos will benefit more if these government-controlled corporations were given to private hands, and that there will be more goods and services that will be affordable and within the reach of the ordinary citizens?

MR. OPLE: Yes. There is nothing here, Madam President, that will prevent the formation of a government corporation in accordance with a special charter given by Congress. However, we are raising the standard a little bit so that, in the future, corporations established by the government will meet the test of the common good but within that framework we should also build a certain standard of economic viability.

MS. QUESADA: So, Madam President, are we now intending to just put, as requirement here, "ECONOMIC VIABILITY" and remove the phrase "only in the interest of the common good"?

MR. BENGZON: No, we are not removing that, Madam President.

MR. OPLE: The phrase "in the interest of the common good" remains, subject to the test of economic viability.

MS. QUESADA: Thank you.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: May I make a minor suggestion on the first sentence to make it positive instead of negative? I would say: "The Congress SHALL," then eliminate the words "NOT" and "EXCEPTS."

MR. VILLEGAS: That was the original phraseology and it changes the meaning a little. That is why we are going back to the 1973 formulation, Madam President.

MR. DE CASTRO: So, the Gentleman still prefers the negative.

MR. VILLEGAS: That is right, because it has a very specific meaning.

MR. DE CASTRO: What is the purpose for the negative rather than the positive?

MR. VILLEGAS: To say precisely that government corporations should be exceptionally created by a special charter, but that as a general rule this cannot be.

MR. DE CASTRO: Thank you.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: This is an inquiry to the committee. With regard to corporations created by a special charter for government-owned or controlled corporations, will these be in the pioneer fields or in places where the private enterprise does not or cannot enter? Or is this so general that these government corporations can compete with private corporations organized under a general law?

MR. MONSOD: Madam President, that was already discussed the other day, but we would like to repeat our answer to that. There are two types of government corporations — those that are involved in performing governmental functions, like garbage disposal, Manila waterworks, and so on; and those government corporations that are involved in business functions. As we said earlier, there are two criteria that should be followed for corporations that want to go into business. First is for government corporations to first prove that they can be efficient in the areas of their proper functions. This is one of the problems now because they go into all kinds of activities but are not even efficient in their proper functions. Secondly, they should not go into activities that the private sector can do better.

MR. PADILLA: There is no question about corporations performing governmental functions or functions that are impressed with public interest. But the question is with regard to matters that are covered, perhaps not exhaustively, by private enterprise. It seems that under this provision the only qualification is economic viability and common good, but shall government, through government-controlled corporations, compete with private enterprise?

MR. MONSOD: No, Madam President. As we said, the government should not engage in activities that private enterprise is engaged in and can do better.

MR. PADILLA: But that is not mentioned here. As it is now, there are only two standards — economic viability and the general phrase "common good." As it is, special charters may be granted to government corporations in fields of economic activity where the private sector is already engaged in, and a private corporation cannot compete with a government-owned corporation.

MR. MONSOD: Yes. Madam President, the committee feels that the "common good" provision already subsumes the meaning that the government should not go into an activity where it competes with business because that is

not their proper area of activity.

MR. PADILLA: That is precisely my point — government should not be in business, especially in fields where there are private enterprises. But the term "common good" is all very good. I do not know how many times the word "common good" appears in the Constitution, but there is no specific reference to the effect that these government-owned or controlled corporations, especially if they are to engage in private business, may be stifling, competing with and destroying private initiative and private enterprise. That is my concern.

MR. VILLEGAS: Madam President, the key to the answer to the Gentleman's question is found in the answer given by Commissioner Monsod about the difference between financial viability and economic viability, and that is precisely why the phrase "ECONOMIC VIABILITY" was used. Private enterprise must be financially viable, meaning, it must be making profits. While the use of that phrase "ECONOMIC VIABILITY" means that even if the corporation cannot recover all of the costs like the roads that are built in Leyte as a result of the copper smelter being put up, the government can still put up a corporation by special charter because it is beneficial to society without, in turn, being able to capture that benefit through the so-called market forces or through the financial channels. This is the justification for the government to go into these types of businesses — either because it is so capital intensive that it will not be financially viable for a private corporation, or it has a lot of these external benefits that are not captured by the market and the government would still be entitled to go into those types of businesses precisely for the common good.

MR. OPLE: However, for the record, I do not want it to be understood that I am endorsing the copper smelter project in Leyte, Madam President, because that was the example given. This is losing a lot of money and the copper producers in this country, most of them anyway are not in favor of this copper smelter.

MS. QUESADA: Madam President.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: Could we still have some clarification? I am still bothered, so I feel that I need to talk as a consumer this time. Would these government-owned or controlled corporations include utilities like water electricity and telephone?

MR. VILLEGAS: Yes, Madam President.

MS. QUESADA: My concern now as a consumer is that these particular enterprises would be taken over by private enterprise.

MR. VILLEGAS: It is not mentioned here.

MS. QUESADA: The Gentleman said these are part of those covered by government-owned or controlled corporations which will be created only if they pass the test of economic viability.

MR. VILLEGAS: Yes.

MS. QUESADA: Will there be the assurance that if they are taken over by private enterprise, the cost of electricity, water and telephone — all these consumer services — will be cheaper than those provided? My concern is not the viability but how this will affect the ordinary citizen of this land.

MR. VILLEGAS: Definitely, there is a regulatory board that makes sure that in those instances when public utilities are in the hands of the private sector, these private enterprises cannot increase prices at their will. They are completely regulated by the government.

MR. MONSOD: If it is a corporation that delivers utility services — they would be monopolies, for example — that

would fall under Section 14 which states: "The State shall regulate or prohibit monopolies when the public interest so requires."

MS. QUESADA: Will the Gentleman give a comparison of countries who have corporations established by the government and those established by private enterprises, especially those that relate to utilities?

MR. VILLEGAS: What does the Commissioner mean by countries? There are countries in Europe where most public utilities are in the hands of the government. There are countries like the United States where a lot of utilities are in the hands of the private sector. So, there are different practices, Madam President.

MS. QUESADA: Which will benefit the common good, those run by government or those run by private enterprises?

MR. VILLEGAS: There is no hard-and-fast rule. The circumstances have to be studied.

MS. QUESADA: So, even if these were given to private enterprises, there is no assurance then that it will be for the common good or the general welfare?

MR. VILLEGAS: That is right; it has to be studied. Congress in a study on the special charter will precisely have to study the specific circumstances which would warrant public corporations.

MS. QUESADA: Thank you, Madam President.

MR. TINGSON: Madam President.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Many of us feel that the debate and discussions on this particular issue or section has really been adequate and we would like to take a vote on it. Madam President.

MR. MAAMBONG: Madam President.

THE PRESIDENT: What is the pleasure of Commissioner Maambong?

MR. MAAMBONG: I have a very serious conceptual difficulty in the last sentence where we say "Government-owned or controlled corporations may be created or established BY SPECIAL CHARTERS."

I can live with the idea that government-owned corporations may be created or established by special charters. But when we say "Government-controlled corporations may be created or established BY SPECIAL CHARTERS," I immediately have some difficulties because earlier, I read a provision of P.D. No. 2029 which defines government-owned or controlled corporations and which identifies their role in national development.

In Section 1 — and this is also borne out by corporate practice — government-controlled corporations are not really created by special charters. Government-controlled corporations are controlled by the government because the government holds on to a majority of its outstanding capital stock. As a matter of fact, the proviso provides that majority of the shares of stocks of corporations under private ownership organized under the general corporation law were conveyed to a government corporation because of several reasons. It is not exactly correct to generalize that government-controlled corporations may be created or established by a special charter. I hope the committee can enlighten me; perhaps Commissioner Romulo can give his comment on this because he has extensive corporate practice. But as far as I am concerned, as far as the law is concerned and as far as corporate practice is concerned, this provision is simply not correct. We just cannot say in general terms that government-controlled corporations may be created or established by special charters because it is against the law. It is against corporate practice. I am glad Commissioner Aquino is nodding her head.

MR. NOLLEDO: May I make a statement on that, Madam President?

THE PRESIDENT: Commissioner Nolleto is recognized.

MR. NOLLEDO: I think when we say "owned or controlled" we mean ownership of shares. So "government-controlled" means the government owns 50 percent plus 1 percent. But whether there is control or no control, there is ownership of shares.

So I think the Honorable Maambong is delving into legal hermeneutics. We are not bound by those decrees containing many erroneous provisions. I teach corporation law, and I have never recognized those provisions of Mr. Marcos. They are contrary to the corporation law, and we do not talk of matters contrary to corporate practice or to law. We are drafting the fundamental law of the land, with which all jurisprudential rules or legal provisions must comply.

MR. MAAMBONG: I would accept that Commissioner Nolleto teaches corporation law and, as a matter of fact, he is a reviewer. I am just a humble professor of law in a provincial school. But we read the same law, we teach the same corporate practice and I am presenting the problem to the committee because I am not dealing here in legal hermeneutics, whatever that means, and I would like the problem resolved. We would become a laughing stock if we pass a provision which is incorrect. We just cannot make a general statement, as I said, regarding the creation of a corporation by saying that government-controlled corporation may be created or established by special charters. It just is not done, as far as my knowledge of corporation law is concerned. That is why I was asking the help of Commissioner Romulo because he is well-entrenched in corporate practice. I do not pretend to know corporation law very well; that is as far as my knowledge goes.

THE PRESIDENT: What does Commissioner Romulo say?

MR. ROMULO: My own interpretation is that it is in the alternative really. "Owned" or "controlled" means the same thing. That is with regard to the shares of the corporation. That is the only way one corporation can control another. But if it bothers the Gentleman that much, the committee is willing to just say "government corporations."

MR. MAAMBONG: Madam President, could we not probably solve the problem by just deleting the phrase "BY SPECIAL CHARTERS"? In our jurisprudence, government-owned corporations have always been by special charter. The words "BY SPECIAL CHARTERS" damaged the whole thing.

I was previously reading the understanding under a presidential decree of what a government-owned or controlled corporation is. The problem is not really on what we mean by "owned or controlled." That is not the problem. The problem is in the creation, and I would like to specify that kind of problem by probably eliminating the phrase "BY SPECIAL CHARTERS." The general corporation law and decisions of the Supreme Court are very specific on this. So probably we can solve this problem.

The committee has already accepted it. I do not think Commissioner Davide would like to interfere.

THE PRESIDENT: What does Commissioner Suarez say?

MR. SUAREZ: Madam President, may I just raise one point of clarification? I do understand the Gentleman's fear about government-controlled corporations being organized only by special charters. I suppose he has in mind what is originally a private corporation, organized in accordance with the corporation law, and then thereafter it becomes controlled by the government because the government subscribes to 51 percent of that private corporation. And he feels that there is no necessity to create or organize that corporation by charter since from the beginning it was only a private corporation. Is that what the Gentleman has in mind?

MR. MAAMBONG: I have that in mind, but let me be specific. What I am saying is that government-owned corporations are usually created by special charters. I am also saying that there are government-controlled corporations which are created by special charters, but that does not end there. There are government-controlled corporations, as defined under the presidential decree I read, which were originally private corporations, but they owe the government so much money and this indebtedness is converted into equity to the extent that 51 percent of the capital stock is already with the government. So, they become government-controlled corporations. That is the problem area I am talking about, Madam President.

MR. SUAREZ: So, the Gentleman has no problem about government-owned corporations being organized only by special charter.

MR. MAAMBONG: No problem at all, Madam President.

MR. SUAREZ: The problem is with respect to government-controlled corporations.

MR. MAAMBONG: Yes, which started out as private corporations.

MR. SUAREZ: So, the suggestion is that the words "BY SPECIAL CHARTERS" be deleted.

MR. MAAMBONG: That will solve the whole problem.

MR. SUAREZ: It will not solve the whole problem because government-owned corporations must still be created by special charter.

MR. MAAMBONG: That is correct, but the decisions of the Supreme Court and other laws already specify that government-owned corporations are usually created by special charters. So it is actually a surplusage as far as I am concerned, Madam President.

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

MR. TINGSON: Madam President, I move that we vote on Section 11.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Did I get it correctly that the committee had accepted the deletion of "BY SPECIAL CHARTERS"?

MR. VILLEGAS: We are asking the Gentleman first.

MR. DAVIDE: So, it will stand as is.

MR. VILLEGAS: We are asking the Gentleman to respond.

MR. DAVIDE: Thank you.

MR. MAAMBONG: I am now presenting the problem to the committee, Madam President.

MR. MONSOD: May we ask Commissioner Davide his opinion on the deletion of "BY SPECIAL CHARTERS"?

MR. DAVIDE: I strongly object because the authorities and the question presented by Commissioner Maambong to the committee would refer to corporations owned or controlled by the government pursuant to the existing provision of the 1973 Constitution. Section 4 of Article XIV reads:

The Batasang Pambansa shall not, except by general law, provide for the formation, organization, or regulation

of private corporations, unless such corporations are owned or controlled by the government or any subdivision or instrumentality thereof.

The clear meaning is that government-owned and controlled corporations can be organized by special law, and the fact is that all existing government-owned and controlled corporations excluding privately owned corporations which were taken over by the government were organized under a special law. The matter of a private corporation being taken over by the government is not a problem because the Constitution itself in the Article on Transitory Provisions may provide that privately owned corporations subsequently taken over by the government may be reorganized under a special charter.

MR. MONSOD: This section does not preclude the possibility of a government-owned and controlled corporation being established under the general corporation law.

MR. DAVIDE: It will not necessarily preclude.

MR. MONSOD: Because there are government corporations that are and will be established under the general corporation law.

MR. DAVIDE: Yes, Madam President, if it is not performing governmental functions.

MR. MONSOD: Thank you.

MR. BENGZON: May we ask now for a vote, Madam President.

MR. FOZ: Before we vote, Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: May we still add some more statements?

If we follow what has just been said a few minutes ago, we will create a lot more confusion like the present situation. There has been a proliferation of government corporations created either by special law or by special charters, and the difficulty has arisen as to whether all or some of them are indeed government corporations or whether they are private corporations. That is a source of confusion, even the application of labor laws. So, if we can more or less avoid or dispel the confusion right now, perhaps we can save Congress and the administrative agencies a lot of trouble later on.

MR. MONSOD: We tried to eliminate some of the possible confusion in the Article on the Civil Service Commission where the coverage of the civil service only includes government-owned and controlled corporations with original charter.

MR. FOZ: That is a step in the right direction because we are then trying to delimit the scope of the civil service by so declaring, by so providing.

MR. MONSOD: All we are saying is that this does not stop the government from organizing government-owned and controlled corporations under the general corporation law. That is all.

MR. FOZ: If we say that, then we open the door again.

MR. MONSOD: I am sorry but that is the case. We are saying that the government may go into certain activities which are not necessarily government functions for certain reasons that can be justified in the national interest. For example, it may be a structural monopoly like the copper smelter. One would not organize the copper smelter under a special charter because eventually he wants to make it private.

MR. FOZ: The question arises whether these corporations which are organized by the government under the general corporation law may now be amenable to the Labor Code of the Philippines, for instance.

MR. MONSOD: Of course, they are. All the government corporations organized under the general corporation law are treated like private corporations for purposes of the Labor Code.

MR. FOZ: Are we then now subscribing to the decision of the Supreme Court in the case of National Housing Corporation vs. Hugo that all government corporations, whether organized by special charter or by the general corporation law, come under the jurisdiction of the Labor Code and all labor laws?

MR. MONSOD: That is why we made that provision in the Civil Service Code. We made that distinction precisely in order to get away from the possible confusion.

MR. FOZ: I thank the Gentleman.

MR. MAAMBONG: Madam President, I will now submit to the ruling of the committee but I will just put in one word. If the committee feels that government-owned or controlled corporations may, after all, be created by general law or special charters then I would reiterate my statement — why put special charters at all? If it can be created by the general corporation law and by special charter, why do we have to specify "BY SPECIAL CHARTERS"? That is all, Madam President.

THE PRESIDENT: In other words, what is the thrust of this particular section?

MR. VILLEGAS: As a nonlawyer, the thrust is to specify that only in very exceptional cases should the government be allowed to organize corporations under the general law. But in ordinary situations, the government should organize corporations under a special charter. That is the way I understand the thrust of this provision.

MR. BENGZON: May we ask for a vote now, Madam President?

THE PRESIDENT: The Gentleman will please restate his amendment.

MR. VILLEGAS: "The Congress SHALL NOT, EXCEPT by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established BY A SPECIAL CHARTER in the interest of the common good AND SUBJECT TO THE TEST OF ECONOMIC VIABILITY."

MR. MAAMBONG: Madam President, may I ask first that we take a vote on whether or not we are going to delete "BY A SPECIAL CHARTER" because it is not necessary anyway as far as the committee is concerned. Then after we resolve that issue, we can vote on that particular provision.

Thank you, Madam President.

MR. BENGZON: We submit.

THE PRESIDENT: In other words, the committee is not keen on keeping the phrase "BY A SPECIAL CHARTER."

MR. VILLEGAS: No, we would like to keep them but we can subject it to a vote.

VOTING

THE PRESIDENT: As many as are in favor of deleting the phrase "BY A SPECIAL CHARTER," please raise their hand. (Few Members raised their hand.)

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

The results show 11 votes in favor and 21 against; the proposed amendment is lost.

MR. BENGZON: May we vote on the whole section now, Madam President?

THE PRESIDENT: May we read again the whole section?

MR. VILLEGAS: "The Congress SHALL NOT, EXCEPT by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established BY A SPECIAL CHARTER in the interest of the common good AND SUBJECT TO THE TEST OF ECONOMIC VIABILITY."

VOTING

THE PRESIDENT: As many as are in favor of this section, please raise their hand. (Several Members raised their hand.)

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

The results show 32 votes in favor and none against; Section 11, as amended, is approved.

ADJOURNMENT OF SESSION

MR. TINGSON: Madam President, before the Floor Leader asks for adjournment, there is an announcement from your office that our proposed Puerto Azul excursion tomorrow is postponed until further notice.

Madam President, I understand from the committee members who have been working long and hard today that their tiredness is irreversible for tonight. So, we ask for adjournment until tomorrow at nine o'clock in the morning.

THE PRESIDENT: The session is adjourned until tomorrow at nine o'clock in the morning.

It was 6:32 p.m.

[*] Appeared after the roll call

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