

JOURNAL No. 86

VOL. III, September 18, 1986

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/462b3a55ae41/>

Wednesday, September 18, 1986

CALL TO ORDER

At 9:56 a.m., the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, called the session to order.

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mr. Lugum L. Uka, to wit:

Bismillah Ir Rahman ir Rahim

Most Merciful and compassionate Almighty God, we who are gathered here humbly ask for Thy Mercy, love and guidance to enable us to write a Constitution that shall bring about unity, democracy, justice, peace and prosperity for all our people, Muslims, Christians and tribal communities alike.

As we approach the last days of our great mission in writing the fundamental law of our land, we ask Thee, Oh God, to guide us to be patient and tolerant of each other's views that we may succeed in our great mission. Help us follow Thy Ten Commandments, among which is "Thou shall not kill."

Inspire us, Oh God, with the noble thought that we are all members of one great family with a common goal or objective in making our dear country a worthy member of the family of nations.

We thank Thee, Oh God, for all the inspiration and guidance You have given all of us during all our plenary sessions and we are happy with the thought that with Your guidance, we shall succeed in our great mission.

Amen.

ROLL CALL

Upon direction of the Chair, the Secretary-General of the Commission called the Roll and the following Members responded:

Bacani, T. C.

De Castro, C. M.

Bengzon, J. F. S.

Colayco, J. C.

Bennagen, P. L.

Concepcion, R. R.

Bernas, J. G.

Davide, H. G.

Rosario Braid, F.

Foz, V. B.

Gascon, J. L. M. C.

De los Reyes, R. F.

Guingona, S. V. C.

Rigos, C. A.

Jamir, A. M. K.

Rodrigo, F. A.

Lerum, E. R.

Romulo, R. J.

Monsod, C. S.

Suarez, J. E.

Nieva, M. T. F.

Sumulong, L. M.

Nolledo, J. N.

Tan, C.

Ople, B. F.

Tingson, G. J.

Muñoz Palma, C.

Treñas, E. B.

Rama, N. G.

Uka, L. L.

Regalado, F. D.

Villegas, B. M.

Bacani, T. C.

De Castro, C. M.

Bengzon, J. F. S.

Colayco, J. C.

Bennagen, P. L.

Concepcion, R. R.

Bernas, J. G.

Davide, H. G.

Rosario Braid, F.

Foz, V. B.

Gascon, J. L. M. C.

De los Reyes, R. F.

Guingona, S. V. C.

Rigos, C. A.

Jamir, A. M. K.

Rodrigo, F. A.

Lerum, E. R.

Romulo, R. J.

Monsod, C. S.

Suarez, J. E.

Nieva, M. T. F.

Sumulong, L. M.

Nolledo, J. N.

Tan, C.

Ople, B. F.

Tingson, G. J.

Muñoz Palma, C.

Treñas, E. B.

Rama, N. G.

Uka, L. L.

Regalado, F. D.

Villegas, B. M.

With 32 Members present, the Chair declared the presence of a quorum.

The following Members appeared after the Roll Call:

A.M.

Abubakar, Y. R.

Maambong, R. E.

Alonto, A. D.

Natividad, T. C.

Aquino, F. S.

Quesada, M. L. M.

Azcuna, A. S.

Rosales, D. R.

Calderon, J. D.

Sarmiento, R. V.

Garcia, E. G.

Villacorta, W. V.

Abubakar, Y. R.

Maambong, R. E.

Alonto, A. D.

Natividad, T. C.

Aquino, F. S.

Quesada, M. L. M.

Azcuna, A. S.

Rosales, D. R.

Calderon, J. D.

Sarmiento, R. V.

Garcia, E. G.

Villacorta, W. V.

Abubakar, Y. R.

Maambong, R. E.

Alonto, A. D.

Natividad, T. C.

Aquino, F. S.

Quesada, M. L. M.

Azcuna, A. S.

Rosales, D. R.

Calderon, J. D.

Sarmiento, R. V.

Garcia, E. G.

Villacorta, W. V.

P. M.

Padilla, A. B.

Messrs. Laurel and Tadeo were absent.

READING AND APPROVAL OF THE JOURNAL

On motion of Mr. Rama, there being no objection, the reading of the Journal of the previous session was dispensed with and the said Journal was approved by the Body.

REFERENCE OF BUSINESS

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

REFERRAL TO COMMITTEES OF COMMUNICATIONS

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

Communication No. 923 — Constitutional Commission of 1986

Letter from Phan Quang Dan, MD, DrPH, Former Deputy Premier of South Vietnam, P.O. Box 11452, St. Thomas, US Virgin Islands 00801, USA, expressing his opinion that too frequent elections tend to destabilize the political conditions and make it difficult for the Executive to implement its programs, suggesting therefor that a presidency of two seven-year terms might be the best formula to consolidate stability

TO THE COMMITTEE ON THE EXECUTIVE

Communication No. 924 — Constitutional Commission of 1986

Letter from Mr. Antonio C. Pastelero, 5th Floor, Alexander House, 132 Amorsolo St., Legaspi Village, Makati, Metro Manila, proposing that in submitting the new Constitution, the choice should not be limited to ratifying or rejecting it, but on whether our people prefer to return to the 1935 Constitution, or to adopt the new one

TO THE COMMITTEE ON AMENDMENTS AND TRANSITORY PROVISIONS

Communication No. 925 — Constitutional Commission of 1986

Letter from one R.A. Tuvilla of Davao, suggesting that in order to enhance the easy approval of the proposed Constitution during the plebiscite, a question should also be asked whether or not they favor President Aquino to

continue in office as President of the Philippines

TO THE COMMITTEE ON AMENDMENTS AND TRANSITORY PROVISIONS

Communication No. 926 — Constitutional Commission of 1986

Communication from Mr. Eugenio A. Antonio, Jr., Chapter Commander, First District of Negros del Norte Chapter, Veterans Federation of the Philippines, submitting the Federation's Resolution No. 04-86, requesting the exclusion or deletion from the draft Constitution the issue of the removal of the American bases in the Philippines after 1991

TO THE COMMITTEE ON PREAMBLE, NATIONAL TERRITORY AND DECLARATION OF PRINCIPLES

Communication No. 927 — Constitutional Commission of 1986

Letter from one Nitnit Mongaya-Hoegsholm, Strandhøjsvej 12, 3050 Humlebaek, Denmark, urging the Constitutional Commission to incorporate in the Constitution the provision that the separation of the Church and the State shall be inviolable as embodied in the 1973 Constitution and as understood historically and jurisprudentially in the Philippines

TO THE COMMITTEE ON GENERAL PROVISIONS

UNFINISHED BUSINESS: COMMITTEE REPORT NO. 36 ON PROPOSED RESOLUTION NO. 537 ON THE ARTICLE ON DECLARATION OF PRINCIPLES

On motion of Mr. Rama, there being no objection, the Body resumed consideration, on Second

Reading, of proposed Resolution No. 537 (Committee Report No. 36) on the Article on the Declaration of Principles, entitled:

Resolution to incorporate in the Constitution an Article on the Declaration of Principles.

Mr. Rama informed that the period of debate had been closed except for the reservation made by Mr. Ople. Thereupon, he asked that Mr. Ople be recognized.

The Chair recognized the Vice-Chairman and members of the Committee on Preamble, National Territory and Declaration of Principles. She informed that the same privileges granted to other Members shall be extended to Mr. Ople but requested, to facilitate the proceedings, that the Body abbreviate the speeches and replies to interpellations and omit matters or issues which have already been discussed on the floor.

REMARKS AND INTERPELLATION OF MR. OPLE

Mr. Ople noted that Sections 1, 2 and 3 of the Committee Report are closely interrelated and linked together in the perception of the Committee and deal basically with two paramount issues — national security and national sovereignty. He noted that seen from the record of the debates, the Members differ in their fundamental perceptions on the two issues, which differences must be seen against contemporary historical realities in which the Members live and act out their respective individual beliefs.

These realities, he stated, to many Filipinos can be summed up in one phrase — a threat of a Communist takeover of the Philippines. The threat, he stated, looms large in the minds of many Filipinos and is considered so imminent a danger that the people have reacted in two ways: fight or flight.

Mr. Ople observed that many in the middle class have sent their families to the United States while others are

getting ready to leave just in case. He noted that young officers of the Armed Forces of the Philippines are getting restive, as they receive reports of one-sided casualties in the field when they are told to fight defensively while the government promotes an atmosphere of conciliation and restraint during ceasefire negotiations. He adverted to the recent NPA attack on an army detachment in San Pablo City, 80 kilometers from Manila.

He stated that Mr. Enrile told him that if the government continues with the policy of coddling the Communists and if General Ramos chooses to be wishy-washy, he can be isolated in his own Army.

He informed that young officers are already talking of "Remember Jakarta" as their future slogan. He noted that in Indonesia in 1965, after 6 generals of the Indonesian Army were assassinated by the Communists, the Indonesians rose up and massacred 600,000 of their countrymen.

He noted that the situation differ because while the Indonesian PKI the Partai-Komunist Indonesia, the world's largest communist party then, had no army, on the other hand, the CPP has its own army.

Mr. Ople stated that he is taking advantage of the debate to inform the Body of the feelings of many Filipinos on the issues concerning the bases, neutrality and nuclear-free territory. He noted that the issues are being debated in an atmosphere of nascent civil war as both sides of the bases issue are larger than life and have many differences, the sharpest being that between democracy and communism.

Under this new freedom, he observed that the CPP and NDF's thinking are reflected in their own publications. He informed that the CPP, NPA and NDF have just concluded a massive self-criticism and rectification campaign arising from their boycott of the February election and revolution.

Thereafter, he adverted to a discussion paper written by Marte Villalobos, dated March 30, 1986, a sequel to his piece "Where the Party Faltered", wherein Villalobos said that the party, instead of missing on the February election and uprising at EDSA, could have followed a two-stage scenario. He quoted:

"While the CPP-NDF were preparing for the leap in the next few years, into the next substage of the strategic defensive, that is to say, the strategic counter-offensive, the Marcos fascist regime was toppled in three months!

"There can perhaps be no evidence more damning than this — that the Party was pursuing an incorrect strategy, that the Party's strategy was out of sync with concrete reality.

"In a two-stage Philippine insurrectional movement, the first stage ends in an uprising or insurrection or a series of uprisings. Thousands are killed or captured. The anti-Marcos forces are unable to seize power, but the bloody repression polarizes the entire country and the left assumes undisputed leadership in the broad anti-dictatorship front. The second stage culminates in the downfall of the US-Marcos regime. A democratic coalition government (mainly of left and middle forces) is established, under left leadership.

"Under either scenario of a Philippine insurrectional strategy, the left would have increased its momentum and leverage for eventual seizure of power. It would not have lost the momentum and leverage it lost after the February 1986 uprising, by following a protracted people's war strategy that was no longer attuned to the concrete reality."

The debate within the CPP and its front organizations, he stated, revolves around the issue of protracted people's war to what extent this should be sustained or discarded. According to the latter theory, which is Maoist in origin, he informed, the cities are encircled from the countryside but the "insurrectional approach" provides that mass movements that are urban-based shall have the primary role, and the guerilla forces merely perform a supporting role. He noted that what is discernible from the literature is that Maoism is losing to classical Leninism within the CPP-NPA. He stated, further, that according to journalist Ross Munro, the International Department of the CPSU

(the Communist Party of the Soviet Union) Secretariat in Moscow continues to support the old "Partido Komunista ng Pilipinas" mainly for sentimental reasons and that the intelligence community is pressing for a coalition of the old Lava group and the CPP-NPA. He informed that he has a reliable report that Jose Ma. Sison and the Lavas recently conferred in Bulacan, which meeting could be one of the decisive moments in Philippine history as it can pave the way for foreign intervention and escalate the threat to Philippine security. He added that Mr. Munro quoted Senator Jose W. Diokno, after he left one of the important organizations which is regarded as a CPP front, as saying that the Communists believed they are so close to victory that they could already take their nationalist alliance for granted.

The Soviets, he observed, miss no opportunity to profess their adherence to noninterference in the internal affairs of other countries as an anchor of their foreign policy and that the Soviet Government has been correct and circumspect in its actions in the Philippines. He stated that what the Body is speaking of are "the cold realities of international politics".

Mr. Gorbachev, he noted, whose July 28 speech in Vladivostok had been referred to by Messrs. Garcia and Gascon, acknowledged the very issue facing the Commission. He noted that the Soviet leader said that the Philippines is a medium power strategically located from the standpoint of geo-politics; that if the U.S. leaves the Philippine bases, meaning to say if the Commission approves Section 3 of the draft Article, this gesture would not be unanswered. He recalled that in Mr. Gascon's interpellation, he drew an obliging answer from Mr. Garcia that the statement of Mr. Gorbachev should be taken seriously; that if the Body approves Section 3 and U.S. forces have to leave, this can begin the demilitarization of Southeast Asia and peace in the region might be assured. Mr. Ople further noted that Mr. Gorbachev also stated that the Soviet Union favored a nuclear-free zone in Southeast Asia; in the case of the South Pacific, Mr. Gorbachev said "we are ready to sign a protocol even tomorrow"; that Mr. Gorbachev would withdraw some regiments from Afghanistan and Mongolia; but . that he did not say anything about pulling out his "friendly troops" from Kampuchea.

Mr. Ople stated that one of the reasons why he would favor leaving options on the bases to the Philippine Government is that it has to be more skeptical and rigorous in the appreciation of such pronouncements. He maintained that such assertions must be studied thoroughly before the government can act and that the government should not take the words of a great power at face value.

The Commission, he noted, is divided between two outlooks. He stated that there is a school of thought that believes Communism is not a threat and that the threat comes from the Armed Forces of the Philippines. He cautioned that this school is largely indifferent to any changes in the global and regional power balance and would not mind if the U.S. superiority is eclipsed by the Soviet Union. He added that it also perceives national security differently from the perception of some Filipinos. He stressed that for many Filipinos national security means that the country should not fall to the Communists or even to a national democratic coalition.

To Mr. Ople's inquiry why the word "democratic " was added to "republican" in Section 1, Mr. Nollado replied that this would emphasize people power, align it with many Constitutional provisions already approved which recognize people's participation in policy making as well as assert respect for people's rights against authoritarianism. Mr. Nollado admitted that even without putting the word "democratic", democracy would be reflected in the characteristics of republicanism.

Mr. Ople remarked that democracy in the old days stood for liberal democracy although this has expanded in scope to include concepts of national democracy which is what the NDF stands for, or social democracy which is a synonym for democratic socialism. Liberal democracy, he noted, is the brand more immediately recognizable to many Filipinos.

As to whether "democracy" as used therein would accommodate all nuances of democracy, Mr. Nollado pointed out that according to Mrs. Rosario Braid, "democracy" as used in the Section is understood as participatory democracy.

On Section 2, Mr. Ople inquired whether renouncing war as a national policy would mean that the State should demilitarize unilaterally and take the words of a foreign power on faith that it will reciprocate if we do so, in reply to which Mr. Nollado stated that in the light of the Kellogg-Briand Pact which condemns aggressive war but does not condemn defensive war, which was the basis of the provision as adopted in the 1935 and 1973 Constitutions, the Committee was not necessarily thinking of demilitarization which may negate the possibility of waging a defensive war.

On Section 3, Mr. Ople inquired whether the Committee postulates neutrality in the context of the first paragraph on ZOPFAN as a condition for an independent foreign policy. He adverted to the literature which utilizes three terms, namely, neutralism, neutrality and neutralization.

On neutralism, he stated that India is a neutralist but not a neutral country.

On neutrality, he stated that the Swiss are neutral since 1815 because of a Concord of Great Powers in Europe which guarantees said neutrality and independence although the Swiss do not belong to any nonaligned movement. He cited, for instance, that the Suez Canal is neutralized by a general agreement of the powers for their own common benefit and individual convenience.

Mr. Ople pointed out that under the neutrality laws, a neutral state is not necessarily obliged even to issue a statement of neutrality at the outbreak of a war, but it is obliged to refrain from aiding any of the combatants and to pay damages in case of violation by its own citizens of the country's neutrality act. He also stated that the record, however, shows that since World War I, with the transformation of wars into wars of annihilation of thousands and millions of people, neutral countries had fared very well in terms of the respect that they were able to exact from the belligerent powers. He cited the case of Belgium? a neutral state which was overrun in World Wars I and II since it stood right in the path of advancing armies whether from the West or from the East. In the case of Switzerland, he stated that with a population of only five and a half million, it was capable of summoning in 48 hours half a million of the best trained and the best armed troops in Europe and, surrounded by its own walls of mountains with narrow and very few passes to the rest of Europe, said country has successfully preserved its neutrality not because of the guarantee of the Great Powers but because it has one of the most formidable armies in the whole of Europe.

Mr. Ople then inquired on the kind of neutrality contemplated in Section 3, whether it is a demilitarized neutrality or merely a neutralization or neutralism. He stated that Malaysia, Indonesia and Singapore are neutralists but not neutral because they belong to the nonaligned movement, while Cuba is simply a neutralist. On the ZOPFAN, to which the Philippines subscribes, together with the other five ASEAN members, he pointed out that it has been frequently invoked with all incantations in pious tribute to peace, neutrality and freedom but one could not conceive of a neutral Southeast Asia without the participation of the Indochina states and without the guarantees of China, USSR, Japan and the United States. He inquired why the Filipinos are in a rush to write neutrality in the Constitution when all the potential partners and potential guarantors have not committed themselves to considering neutrality when the time comes; and what impels or moves the Filipinos to surrender their flexibility in promoting and assuring its defense.

On the previous statements of the Committee that the Filipinos must, as part of mankind, do their share to avoid a nuclear holocaust, Mr. Ople contended that there is a certain lopsidedness to this argument that there is a tendency to locate all the burdens of responsibility for the threat of nuclear war on just one side of the global alignment of

forces. He then raised the question whether it is the official stand of the Committee that the United States and its allies are primarily responsible for the threat of nuclear annihilation of mankind, considering that he has not heard any single word of reproach on the Soviet Union as though the other side of this global nuclear configuration is completely blame-free.

Mr. Ople manifested that, properly formulated, he would support Section 4, and that he was going to vote for a nuclear weapons-free Philippines. He invited attention to the fact that the resolution of Mr. de los Reyes was the basis for the formulation of Section 4 and that, together, they were responsible for this provision eliminating nuclear weapons from Philippine soil.

Adverting to the specific case of Europe, Mr. Ople noted that in terms of conventional forces the Warsaw Pact outnumbers the NATO three to one in manpower; two to one in armor; and about three to one in combat aircraft. He opined that if ever the Warsaw Pact countries massively attack Western Europe, the Philippines cannot hope to stop them, in which case Europe must surrender. Comparing the situation with the Philippines, Mr. Ople inquired whether Section 4 would entirely foreclose the option of stopping the enemy by means of battlefield tactical nuclear weapons in the event of a massive invasion of the Philippines by conventional forces which could not be matched by its own conventional forces, to which Mr. Azcuna replied that the Committee does not contemplate a rigid position that the Philippines may foreclose any possible right to defend itself through nuclear weapons, but only to establish as a principle that the State does not want its territories used for the stationing of nuclear weapons. He pointed out that the possibility envisioned by Mr. Ople could be met by tactical nuclear weapons from other areas not necessarily stationed in the country or by other non nuclear weapons such as laser weapons or neutron bombs which are just as devastating. He stated, however, that the Committee is studying a possible reformulation of Section 4 to make it sufficiently flexible in the event the national interest is threatened.

On the contemplation of the clause "subject to existing treaties, international or executive agreements" in the second paragraph of Section 3, Mr. Azcuna stated that it contemplates all existing treaties and agreements which may have some bearing on the provision including the existing US Military Bases Agreement, the Mutual Security Treaty and the Mutual Defense Treaty signed in 1951.

On the rationale for the reference to nonexistent treaties in Section 3, if indeed the Committee believes that the Military Bases Agreement and the Mutual Defense Treaty between the Philippines and the United States are null and void ab initio, Mr. Azcuna pointed out that the stand of the members of the Committee, who said that the Agreement may be so fatally flawed as to be null and void from the very beginning, referred to the extension of the area covered by the military bases beyond the naval reservations and fueling stations authorized under the Tydings-McDuffie Act which was the basis of the Ordinance appended to the 1935 Constitution.

Reacting thereto, Mr. Ople stated that this is a substantial change from the opinion given by the Committee and also reassuring for some Members of the Commission who feel that the Body should take seriously the second sentence of the second paragraph of Section 3 which otherwise could make the Philippines an outcast nation.

With respect to Mr. Garcia's statement that under Section 3, the Philippine Government could still negotiate a new treaty on the bases beyond 1991, in reply to Mr. Ople's request for the position of the Committee, Mr. Garcia replied that the Military Bases Agreement may be allowed to lapse in 1991, but if it is necessary to enter into a new treaty, it must be under certain rigorous standards, one of which is its submission to the people in a referendum.

On whether the provision "Upon the expiration of the RP-US Bases Agreement in 1991, foreign military bases, troops and facilities shall no longer be allowed in any part of the Philippine territory" would admit an equivocal interpretation that inspite of the very categorical, unconditional, unqualified prohibition of foreign bases, troops

and facilities, it is possible to negotiate a new treaty, Mr. Garcia stated that the Committee's position is that there should be no foreign military bases after 1991. He stressed that he was not referring to the Committee report but to another possible amendment that could be proposed. Mr. Garcia also stated that a major part of the arguments had been centered on U.S. military presence both in the Philippines and in the Pacific because the Soviet Union does not have military bases in the Philippines.

Mr. Garcia pointed out that in his entire presentation, what was condemned was the proliferation of nuclear weapons and warheads both by the United States with 37,657 and Russia with 17,656 or a total of 55,000 strategic and tactical nuclear weapons.

With respect to the presence of Soviet and American military bases in the region, Mr. Garcia disclosed that there are 520 military installations in the Pacific as of 1984, more than two dozens of which are Soviet military bases.

Reacting thereto, Mr. Ople stated that he would appreciate it if Mr. Garcia would identify the sources of his data so that the Commission and the public would be able to check the authenticity of these data.

Upon inquiry of the Chair if these documents could be furnished the Members, Mr. Ople stated that his request is for all Members of the Commission.

Mr. Garcia stated that the proposal for a non-nuclear provision in the Constitution was presented by the Alliance for Philippine Concerns and contained data sources which he could identify.

The Chair suggested that Mr. Garcia submit for the record whatever document he has, to which, Mr. Garcia replied that if the Body so desires, he could identify the exact names of the bases he earlier mentioned.

Mr. Ople stated that he would be very interested to know the sources considering the alleged massive disinformation campaign by the superpowers and it would be a great help to the Body if the data come from a prestigious institute like the Institute of Strategic Studies of the United Kingdom which would probably command more faith than if it came from a more biased source. He stressed that he was not questioning the accuracy of the data but he was just proposing a self-imposed obligation on the part of every Member to identify the sources of data and information for the protection of the Commission itself.

Thereupon, Mr. Garcia cited two other sources of the data he earlier mentioned. The Chair requested Mr. Garcia to furnish the Secretariat whatever copy he had in his possession.

Mr. Garcia stated, however, that the document he was referring to had already been submitted to the President of the Commission by the Alliance for Philippine Concerns.

REQUEST OF MR. DE CASTRO

Mr. de Castro requested that each Member of the Commission be given a copy of the source of the information, stating that to his knowledge, nuclear weapons are top secret matters particularly as to their number and capability.

INTERPELLATION OF MR. OPLE

(Continuation)

Relative to the contention of nullity or invalidity of the bases agreement, Mr. Ople inquired whether the eminent men of the law, including past Presidents involved with the incremental improvements of this Agreement since 1946, missed this point entirely through the thicket of their well-known erudition. He asked whether there was a legal amnesia for forty years in the sense that the law profession in the Philippines slept like Rip Van Winkle for

forty years and woke up with a new insight into this agreement to find that it is void ab initio. Assuming that this is accurate, Mr. Ople stated that he would want to pay obeisance to the men who provided this revelation because it merely means that after forty years, legal brains undoubtedly superior to the generations of lawyers that had existed before, had turned up this spectacular finding.

Replying thereto, Mr. Nollado informed Mr. Ople that it was former Senator Jose W. Diokno, a bar and CPA topnotcher, who presented this theory. He stated that he was not certain if former President Macapagal raised this issue but did not pursue it further, to which Mr. Ople replied that former President Macapagal was a signatory of the Mutual Security Treaty of 1951.

Mr. Nollado stated that it was Senator Diokno who inspired some Members to look deeper into it. He maintained that there was really a violation of the Constitution because the Tydings-McDuffie Law was made part of the 1935 Constitution. He explained that there are two kinds of illegal contracts, null and void ab initio, and inexistent, and the Committee would not even classify the Agreement as inexistent because it recognizes its existence in the sense that it is existing but not valid. He stressed that the Committee recognizes the principle that the government is not estopped by the illegal acts of its officers and that when it comes to a very transcendental issue of sovereignty, the nullity should be given some importance. He stressed that nullity would not mean that the Agreement does not exist at all but that although it exists, it is null and void. He pointed out that in civil law and even commercial law and political law, a contract that is null and void is not subject to prescription.

On whether Mr. Nollado would feel at ease with the clause "subject to existing treaties, international or executive agreements" considering that, as Mr. Azcuna earlier stated, the Bases Agreement is one of those included in this clause, Mr. Nollado reminded Mr. Ople that when he appeared before the Committee, he admitted that while the so-called RP-US Military Bases Agreement was ratified by the Philippine Senate, it was never ratified by the U.S. Senate.

Mr. Ople stated that he would stand by that admission. He pointed out, however, that although there are many defects in the Agreement, it is not equivalent to saying that it is null and void from the very beginning and, therefore, inexistent. He then inquired whether the Committee would consider an amendment that would eliminate any mention of existing international or executive agreements which might embarrass the Committee and the Commission if it insists on its interpretation that there is no existing agreement from the very beginning.

In reply, Mr. Nollado maintained that there is an existing treaty but it is the position of the Committee that the same is null and void, a fact which reinforces its argument that there should be no military bases in the Philippines.

On whether this is a rhetorical interpretation in the Aristotelian sense of buttressing an argument, Mr. Nollado opined that as a lawyer, he feels the Agreement suffers from a taint of unconstitutionality.

On whether he feels that his legal skills are called upon at this time in history to strengthen the argument of the Committee on the bases issue, Mr. Nollado stated that he is taking the risk despite the fact that every lawyer wants to maintain his professional standing.

Adverting to the resolution just passed, Section 3 of which could affect the leverage of President Aquino in the United States, Mr. Ople stated that he yielded to Mr. Garcia's arguments that the work of the Commission should not be linked to the visit of the President. Mr. Ople then inquired whether the approval by the Commission of Section 3 would have the effect of closing, even if unintended, the options which President Aquino kept saying that she would keep open until 1991 and preempt the competence of her office from passing upon foreign policy and international relations and even national security. He further inquired whether such approval would cause the

gravest political embarrassment to President Aquino.

Reacting thereto, Mr. Nollado agreed, stating that the Committee is taking this bold stand although it would not mean that it would not be receptive to any possible amendment to the provision.

On whether that would be an indication of flexibility, Mr. Nollado reiterated that the Committee stands on its original position subject to the will of the Commission.

Mr. Ople stated that although he is not a member of the Aquino government, he has a great feeling for the Philippine Government as the constitutional organ of the Filipino people, irrespective of the accident of personalities.

Mr. Nollado then manifested his intention to ask Mr. Ople some questions regarding his statement that he has a great feeling for the Philippine Government and therefore for the Filipino people, to which Mr. Ople replied that to raise the question is to cast aspersion on his integrity. He stressed that he was speaking of the Philippine Government.

Mr. Nollado clarified that he does not intend to cast an aspersion but simply wanted to know Mr. Ople's stand on the Committee's assertion that the existence of the American bases impairs the sovereignty of the Republic of the Philippines, to which Mr. Ople replied that it does to the extent that the Philippine Government allows the rights of the Filipino people in this relationship to be trampled upon. It is for this reason, he stated, that the existing government, under its present head, would not disappoint the nation if it is given courtesy that it is capable of exercising its own undaunted constitutional competence on matters of national security and foreign policy.

On whether the existence of the American bases in the country is indispensable to national security, Mr. Ople stated that it is not, but that he is concerned with this one significant political leverage which the Filipinos have with the United States of America as a hegemonic superpower. He pointed out that this is a bargaining clout which has never been so great since 1898 or 1947 and to deny the President the options that she would like to keep open until 1991 which, he noted, is what the Committee is trying to do, would make this political leverage meaningless. He opined that this political clout could be used to redress the historic inequalities between the two countries.

Mr. Ople pointed out that the realities of international politics show that self-interest is the only law for every nation unless the whole world becomes one state with one government. He advised that until such time, the Body must be prudent and should not give away, out of a trusting nature, the country's only leverage of being able to compel the United States to respond to the grievances of the government and the people. He adverted to a resolution he filed, together with Messrs. de los Reyes, Natividad and Maambong, proposing the abrogation of the bases agreement without waiting for 1991 provided the President keeps her options whether to abrogate or entertain a joint initiative or even a unilateral initiative from the United States for a new treaty, so that all this political leverage would be available to her. He pointed out that this is the long awaited historic moment to compel the United States to bargain and to redress all these historic inequalities that began in 1898. He opined that there are many Americans who would likewise welcome this opportunity to correct these inequalities which, to them, are also painful.

On whether he was referring to the one-sided provisions of the Agreement and the onerous conditions contained therein, Mr. Ople replied in the affirmative. He pointed out that it would be better to give the President this clout in order to obtain for the Philippines the Caribbean Basin Initiative or CBI-type scheme according to which manufactured goods outside of textiles of about 20 Caribbean countries, including Central America, enter the United States market free of duty. If this is achieved, he opined that within ten years, it would propel the country

to a level of development higher than that of Korea and Taiwan.

On whether he would support the amendment to be submitted by Mr. Bernas authorizing the President to enter into a new treaty subject to ratification by the people, Mr. Ople stated that although it is not yet in the agenda, he was informed that the amendment referred to was partly derived from the resolution he earlier mentioned. He stated that there is no reason to repudiate such an amendment.

On Section 9, on the right to life, specifically on the proviso that "The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic social institution", Mr. Ople noted that the focus of the sentence is on the sanctity of family life. In this regard, he inquired whether the term "sanctity" could be interpreted as being inviolable and being pure, and whether this would disauthorize Congress from passing, for instance, a divorce law or some future legislations that would grant marital partners a wider freedom of choice than what they enjoy under existing law, in reply, Mr. Nollado stated that this would not disauthorize Congress from enacting a divorce law in the future.

Relative to the sentence "The State shall equally protect the life of the mother and the life of the unborn from the moment of conception", Mr. Ople stated that in an interpellation, Mr. Villegas, on behalf of the Committee, said that this could be related to some statements in the General Provisions on family planning. In the light of this reply, he inquired whether providing protection for the life of the unborn from the moment of conception could be taken as a signal to dismiss the relevance and validity of all family planning programs in the Philippines.

In reply thereto, Mr. Villegas stated that it would not, considering that as pointed out earlier, any contraceptive that is not abortifacient could still be legal.

Mr. Ople stated that he would support this provision on the ground that in writing the Constitution, the Body should set the tone for a whole civilization in terms of public and social morality. He stated that the commitment to the protection of life even in its incipient stage is a declaration of commitment to a higher tone of civilization but should not be Considered as a mandate to discredit the family programs of the country. He pointed out that although the United States and the European countries can afford to have population problems because they are economically and socially developed and are able to support a large population, the situation in the Philippines and in the Asian countries is different. He disclosed that the data of the Population Commission showed that the population growth rate over the past ten years dropped from 3.5% to 2.4%, which decline came simultaneously with stagnation in the economy. He stated, however, that government and nongovernmental organizations should be credited for such population control.

In reply, Mr. Villegas stated that family planning and population control are statistically debatable issues, subject to changes in economic policy, urbanization and industrialization and, therefore, should not be included in the Constitution.

On whether jurisprudence has settled the question on the exact moment when conception begins, Mr. Villegas explained that although this has not been settled by jurisprudence, natural scientists during the first International Conference on Abortion held in Washington, D.C. in October, 1967, found that "there could be no point in time between the union of sperm and egg, which is the fertilization, or at least in the blastosis stage until the birth of the infant, when one could say that there was no human life" and that "the changes occurring between implantation, a six-week embryo, a six-month fetus, a one-week old child and a mature adult are merely stages of development and maturation." He therefore stressed that life begins upon fertilization of the ovum.

He affirmed, however, that it is the Congress that should legislate the standards on the question of human life in relation to legal rights and obligations.

On Section 23, Mr. Nollado affirmed Mr. Ople's observation that opportunities for public office would be broadened by prohibiting political dynasties which monopolize power. He stated, however, that he was not sure whether "political dynasty" could apply to the Laurel family, since Congress has yet to define it. He underscored that Congress should see to it that after a reelection of a government official, his close relatives should not be allowed to run in the succeeding election since they would have advantage over others who are equally deserving but who do not have the necessary financial support, although said relatives may run in other elections.

Specifically, he affirmed that the case of Governor Ignacio Santiago, whose grandfather was the first governor of Bulacan during the American period, would not be covered by the provision because there was an interruption in the line of succession, although Congress may consider the third degree of consanguinity or affinity to be covered by the prohibition.

On Mr. Ople's further query whether his son would be prohibited from running in an election, Mr. Nollado reiterated that it would depend on the limitations Congress would provide, although personally, he would, out of delicadeza, advise his son not to run in an election.

Mr. Ople pointed out that the prohibition on political dynasty should provide some equity so that it would not violate the freedom of choice of the voters who may want somebody who happens to be a relative of the incumbent.

Mr. Nollado maintained that no matter how old the incumbent might be, he still has control of the facilities of government and is in a position to influence the people into voting his relative to succeed him.

Finally, Mr. Ople opined that the roots of political dynasties are the feudal socioeconomic structures, whereby those who are born by accident to a rich family would have advantage over others. He stressed that the solution to the problem would be to reform such inequitable social and political structures without violating individual rights and freedoms. He stated that the right to be voted upon is also inherent in the right of suffrage.

INQUIRY OF MR. SUAREZ

On Mr. Suarez' query whether the statements of Premier Gorbachev would imply that the Russians would also pull out of Cam Ranh Bay if the United States pulls out of Clark Air Base and Subic Naval Base, Mr. Ople pointed out that the official position of the Russians is that they have no military bases outside Russia and that the facilities in Cam Ranh Bay are only used for refuelling. He stated that since the statement of Mr. Gorbachev was vague, the Philippines should be skeptical about it.

On whether Mr. Ople would agree to a pullout of the United States from Subic and Clark, if the Russians would not use Cam Ranh Bay as a port of call for its nuclear-powered vessels, Mr. Ople stated that he would not welcome foreign military presence in Southeast Asia; there should be enough safeguards against exposing the regional security to the mercy of the competing powers.

MANIFESTATION OF MR. TINGSON

Thereafter, upon request of Mr. Tingson, the Chair allowed Mr. Garcia to reply to Mr. Ople's statements with the request, however, that he should refrain from repeating the answers already given earlier.

Mr. Ople reserved a turn for rebuttal.

REPLY OF MR. GARCIA

Mr. Garcia stated that the best leverage that could be given to any Philippine President is to be the head of a truly sovereign nation, which is recognized in the concert of nations. He pointed out, however, that the presence of foreign military bases in the Philippines is considered by many Third World nations as an impairment and a derogation of the national sovereignty.

On the efforts of the Philippines to move towards ZOPFAN, Mr. Garcia opined that the first steps in the pursuit of peace must be made in a bold and daring manner by the sovereign states of the Southeast Asian region.

Mr. Garcia stressed that right should prevail over might and the country cannot hide behind the shield of one of the two superpowers because studies conducted by scientists, including Filipinos like Dr. Frank Arcellana and Jorge Emmanuel, have shown the geopolitical implications of a nuclear winter and as far as the military bases in the country are concerned, they have shown that the weapons therein would not be able to protect the people but would eventually kill everyone in the face of a nuclear war. He added that the justification that U.S. overseas bases are essential for national security interest is no longer valid since the nuclear winter scenario recognizes no national boundaries. He pointed out that even U.S. scientists, as a gesture of concern for the human rights of the people of South Pacific and Asia, have suggested that the U.S. fall back not only to Saipan or Tinian but all the way to the deserts of Nevada.

Mr. Garcia also pointed out that nuclear accidents do happen as revealed by the Center for Defense Information which estimated that since 1945, there has been an average of one major nuclear accident per year and as many as 250 minor ones during the same period, which is enough reason for the removal of nuclear weapons and bases in the country.

Lastly, Mr. Garcia stressed that the RP-US Military Bases Agreement is null and void ab initio as pointed out by Messrs. Nollado, Diokno, J.B.L. Reyes and Tañada. He explained that the Military Bases Agreement is seriously flawed because it violated the 1935 Constitution considering that Section 10 of the Philippine Independence Act which was incorporated therein only provided for naval reservations and refueling stations. He added that Section 1 of Article XV of the 1935 Constitution states that "amendments shall be valid as part of this Constitution, when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for ratification" and while a plebiscite was indeed conducted, it was only on the parity rights and the Military Bases Agreement was concluded three days later without being submitted for approval in the plebiscite. He also stated that at that time, three agreements, namely: the Philippine Rehabilitation Act, the Philippine Bill Trade Act and the Military Bases Agreement, were rammed down the Filipinos' throats in one single embryo program of the Truman Administration for Philippine independence. He stressed that the financial and economic aid in exchange for the establishment of the military facilities brazenly derogated Philippine sovereignty since they were concluded during the time when the Philippines just emerged from a colonial experience and the ravages brought about by World War II. He maintained that the position taken by the Committee is correct because it took into account this historical aberration.

REBUTTAL OF MR. OPLE

On Mr. Garcia's contention that the best leverage for a President is to be the head of a genuinely sovereign nation, hence the military bases must be removed, Mr. Ople maintained that the country would be no less sovereign than Cuba, Nicaragua, Vietnam, Mozambique, Angola or any of the countries which claim to be nonaligned but whose foreign policies are closely geared to Soviet foreign policy. He maintained President Aquino is the worthy head of a truly sovereign nation even by the standards of some of these countries whose

foreign policies are anti-American.

On right prevailing over might, Mr. Ople opined that this could only be achieved if all countries of the world were under one juridical global entity; and with regard to the nuclear winter theory, he pointed out that everyone would be annihilated in the event of a nuclear war regardless of the location of the military bases. He added that Mr. Garcia has an abundant data about nuclear accidents in the United States because it is an open society whereas the Soviet Union is a close one, hence, it was a cause for jubilation throughout the world when Mr. Gorbachev, in a radical departure from policy, made available to foreign scientists the details of the Chernobyl disaster. He stated that he would rather live in an open society.

On the alleged nullity of the Bases Agreement from the very beginning, Mr. Ople pointed out that according to the Members of the Committee, the existing Military Bases Agreement is included as part of the treaties referred to in Section a which is an ironic repudiation of its own legal position. He opined that the Members should be allowed to propose amendments to the section consistent with the belief of the Committee that there is no agreement at all in legal contemplation.

PERIOD OF AMENDMENTS

There being no other Speakers, the Body proceeded to the period of amendments

PROPOSED AMENDMENT OF MR. DAVIDE

At this juncture, Mr. Davide proposed to reword Section 1, to read:

THE PHILIPPINES IS A UNITARY REPUBLICAN AND DEMOCRATIC STATE. SOVEREIGNTY RESIDES IN THE PEOPLE AND THEIR WILL AND CONSENT ARE THE ONLY SOURCE OF ALL GOVERNMENT AUTHORITY.

Mr. Tingson requested for a suspension of session to allow the Committee to discuss the proposal as well as proposals from other Members

SUSPENSION OF SESSION

On motion of Mr. Rama, the Chair suspended the session.

It was 12:11 p.m.

RESUMPTION OF SESSION

At 2:55 p.m., the session was resumed.

Upon resumption of session, Mr. Davide was recognized for his amendment.

PROPOSED AMENDMENT OF MR. DAVIDE

Mr. Davide adverted to his proposed amendment on Section 1.

Mr. Bernas sought to amend Mr. Davide's amendment.

Thereupon, Mr. Azcuna manifested that Section 1 was reformulated, taking into account Mr. Davide's proposed amendment and amendments proposed by the Members, to read as follows:

THE PHILIPPINES IS A REPUBLICAN DEMOCRATIC STATE. SOVEREIGNTY RESIDES IN THE

FILIPINO PEOPLE AND ALL GOVERNMENT AUTHORITY EMANATES FROM THEM.

Mr. Azcuna explained that the Committee amendment deleted "and" between "republican" and "democratic", put a period (.) after "them", and deleted and continues with their consent."

Mr. Monsod proposed an anterior amendment to delete "Filipino" between "the" and "people" on the ground that "people" necessarily refers to the Filipinos.

Mr. Tingson accepted the amendment.

INQUIRY OF MR. BERNAS

In reply to Mr. Bernas' query, Mr. Azcuna affirmed that the phrase "all government authority emanates from them" means that in order to preserve a government of laws, public officers would only have the authority given them by law. He also affirmed that such authority shall be limited by law and shall continue only with the consent of the people.

Thereupon, Mr. Bernas desisted from proposing an amendment.

INQUIRY OF MR. DAVIDE

Mr. Davide inquired whether it is understood that the people's authority and consent could be expressed either by appointment or by election notwithstanding the deletion of the phrase "and continues only with their consent."

ANTERIOR AMENDMENT OF MR. SUAREZ

Mr. Suarez proposed an anterior amendment to delete "and State Policies" and to retain only "Declaration of Principles" conformably with the caption appearing in the 1935 Constitution.

In reply, Mr. Azcuna stated the sense of the Committee to retain the words proposed to be deleted on the ground that most of the provisions, rather than principles, are in fact basic policies which the title should reflect, besides, the same phrase appeared in the 1973 Constitution. Additionally, Mr. Tingson adverted to the Committee Report which contains two classifications, one under "principles" and the other under "policies." He explained that "principles" includes, among others, the declaration that the Philippines is a republican democratic state, the renunciation of war, and self-determination; and "policies" includes the declaration that the Philippines is a nuclear-free country, and defense of the State. He also stated that Mr. Maambong, who submitted a paper relative to the matter, observed that the Committee Report contains more state policies than principles.

DEFERMENT OF PROPOSED AMENDMENT ON THE TITLE

At this juncture, on motion of Mr. Bernas, there being no objection, the Body deferred consideration of the amendment on the title until after all the amendments shall have been considered.

REPLY TO MR. DAVIDE'S INQUIRY

In reply to Mr. Davide's inquiry, Mr. Azcuna stated that the government would no longer have a legal basis for continued exercise of authority once the people withdraws such authorization in accordance with the manner provided in the Constitution.

Thereupon, Mr. Davide withdrew his proposed amendment.

INQUIRIES OF MR. SARMIENTO

In reply to Mr. Sarmiento's query whether his proposed amendment on Section 1, jointly with Messrs. Rama, Bacani and Colayco, which reads:

THE SOVEREIGN WILL OF THE PEOPLE SHALL BE ASSERTED THROUGH THE SECRET VOTE IN FREE, FAIR, CLEAN AND HONEST ELECTIONS HELD PERIODICALLY;

was embraced in the Committee reformulation, Mr. Tingson stated that the Committee agreed with Mr. Sarmiento's group on the retention of the first sentence of their proposal but felt that the declaration that "the Philippines is a republican democratic State" already includes the proposed sentence read.

On whether there is such a thing as "republican democratic state", Mr. Azcuna explained that there are two forms of democratic states, namely, the republican democratic state and the direct democratic state, and there are two forms of democracies: direct democracy and representative or republican democracy. He confirmed that republican democratic state refers to representative democracy.

Mr. Sarmiento suggested the retention of the old formulation under the 1935 and 1973 Constitutions stating that a republican state refers to a democratic state where people choose their representatives, to which Mr. Azcuna replied that the Committee would like to emphasize the participation of the people in the government.

Quoting Jose P. Laurel in his book Bread and Freedom, the Essentials of Popular Government, Mr. Sarmiento argued that the word "republican" is sufficient to cover popular representation. Mr. Azcuna, however, stressed that the word "democratic" was added to emphasize the instances when the people would act directly, and not through their representatives, such as in initiative, referendum or recall.

AMENDMENT OF MR. SARMIENTO

Thereupon, Mr. Sarmiento proposed to restore "and" between "republican" and "democratic" to distinguish popular representation from direct participation of the people, which the Committee accepted.

APPROVAL OF SECTION 1

Upon direction of the Chair, Mr. Azcuna read the new formulation of Section 1 as follows:

THE PHILIPPINES IS A REPUBLICAN AND DEMOCRATIC STATE. SOVEREIGNTY RESIDES IN THE PEOPLE AND ALL GOVERNMENT AUTHORITY EMANATES FROM THEM.

Submitted to a vote, and with 35 Members voting in favor and none against, the Body approved Section 1.

PROPOSED AMENDMENT OF MR. DAVIDE

On Section 2, line 11, Mr. Davide proposed to add THE PURSUIT OF TRUTH, JUSTICE after "to" and to transpose "freedom" before "peace" on line 12. He manifested that he coauthored the proposed amendment with Mr. Rama.

Mr. Tingson stated that "truth" and "justice" cannot be accepted because the section refers to foreign policy and that the words are already prominently mentioned in the Preamble.

In reply, Mr. Davide stated that the section is not only a declaration of foreign policy but also a declaration of a firm commitment to the ideals of truth, justice, freedom, equality and peace, the totality of the universal aspirations of man. On the contention that the words already appear in the Preamble, Mr. Davide stated that

Section 2 could therefore be deleted. He stressed that his proposed amendment is for purposes of symmetry since the Preamble is a commitment and the other is a declaration of such principles.

Mr. Tingson offered a compromise by accepting "justice", to which Mr. Davide agreed with the observation that "justice" is indirectly included in "truth."

Supporting the inclusion of "truth", Mr. Bennagen stated that "truth" is an important aspect of foreign policy as there is a great deal of disinformation on international affairs.

Mr. Padilla proposed to include PROGRESS OR PROSPERITY after "peace" stating that the man in his home or in his office may have peace, freedom and justice, but if there is no policy of betterment or improvement, of progress or prosperity, he may not be a happier man because he may be stagnant in his enjoyment of freedom and peace.

Mr. Davide accepted Mr. Padilla's modification to add PROGRESS stating that it is a necessary element in national development.

Ms. Aquino stated, however, that the Committee is not yet prepared to make a stand on Mr. Padilla's modification as it would like to hear the other Members' opinion on the matter.

Mr. Bernas stated that he is having some difficulty in reconciling the first with the second sentence despite the amendment, for which reason, he moved to delete the first sentence, which was seconded by Mr. Bengzon, and accepted by the Committee.

Mr. Suarez proposed to amend "they" to THE FILIPINO PEOPLE which was supported by Mr. Bengzon.

On the first sentence, Mr. Davide objected to its deletion on the ground that it is as significant as the second sentence. He proposed separating the sentences into separate paragraphs to meet the problem of continuity.

Mr. Bernas stated that it is not just a matter of connection between the two sentences but that the first sentence does not seem to be necessary considering that its thrust is already contained in the Preamble.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 3:21 p.m.

RESUMPTION OF SESSION

At 3:24 p.m., the session was resumed.

Upon resumption of session, Mr. Azcuna stated that the Committee had reformulated Section 2 based on the proposal of Mr. Bengzon, to wit:

"THE PHILIPPINES renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the laws of the land AND ADHERES TO THE POLICY OF PEACE, EQUALITY, JUSTICE, FREEDOM, COOPERATION AND AMITY WITH ALL NATIONS."

Mr. Sarmiento stated that he had also introduced an amendment together with Messrs. Rama, Bacani and Colayco to add, after the word "land", the phrase:

AND WELCOME CULTURAL, SOCIAL AND ECONOMIC RELATIONS WITH ALL NATIONS IRRESPECTIVE OF IDEOLOGY, RACE OR CULTURE.

He inquired on the stand of the Committee on the proposal and whether this phrase would be covered by the reformulated Section 2, in reply to which Mr. Azcuna stated that the phrase COOPERATION AND AMITY WITH ALL NATIONS would cover relations with all nations regardless of ideology, race or culture. Thereupon, Mr Sarmiento desisted from pursuing his amendment

Mr. Sarmiento remarked that the Section has an enumeration of concepts and queried whether "love" would be covered. Mr. Azcuna, replying thereto, stated that "love" or the willingness of good for others is embraced in the word "amity."

Thereafter, Messrs. Bernas and Davide, in the light of the reformulation of Section 2, withdrew their respective amendments

Mr. Guingona inquired whether "law of the land" would refer to statutory laws or the Constitution considering that the principles and provisions of international law, both customary and conventional, should not be placed at par with the provisions of the Constitution inasmuch as there could be conflicts between the provisions of treaties and that of the Constitution. He cited the ownership ratio with respect to corporations operating public utilities where the Constitution expressly provides a 60:40 ratio. He maintained that should treaty provisions be made part of statutory laws, there would be no problem, because in case of conflict, the treaty provision would be unconstitutional. Mr. Azcuna replied that they would be part of statutory laws and not of the Constitution.

APPROVAL OF SECTION 2

Thereafter, upon direction of the Chair, Mr. Azcuna restated Section 2, as amended, to wit:

THE PHILIPPINES RENOUNCES WAR AS AN INSTRUMENT OF NATIONAL POLICY, ADOPTS THE GENERALLY ACCEPTED PRINCIPLES OF INTERNATIONAL LAW AS PART OF THE LAW OF THE LAND AND ADHERES TO THE POLICY OF PEACE, EQUALITY, JUSTICE, FREEDOM, COOPERATION AND AMITY WITH ALL NATIONS.

Submitted to a vote, and with 37 Members voting in favor and none against, Section 2, as amended, was approved by the Body.

CONSIDERATION OF SECTION 3

At this juncture, Mr. Azcuna informed the Body that the first paragraph of Section 3 remains as is, but that the second paragraph has been amended by the Committee based on Mr. Bernas' proposal, to wit:

"The State has the inherent right to self-determination, national independence and sovereignty. TO ENSURE THE INTEGRITY OF SUCH RIGHT, FOREIGN MILITARY BASES, TROOPS OR FACILITIES SHALL NOT BE ALLOWED IN THE PHILIPPINE TERRITORY EXCEPT UNDER TERMS OF A TREATY DULY CONCURRED IN BY THE SENATE, RATIFIED BY A MAJORITY OF THE VOTES CAST BY THE PEOPLE IN A REFERENDUM HELD FOR THAT PURPOSE AND RECOGNIZED AS A TREATY BY THE OTHER CONTRACTING NATION."

Consequently, he stated that the transitory portion has also been amended, to read as follows:

UPON THE EXPIRATION OF THE RP-US BASES AGREEMENT IN 1991, U.S. MILITARY BASES, TROOPS AND FACILITIES SHALL NOT BE ALLOWED EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 3 OF ARTICLE 11 (DECLARATION OF PRINCIPLES).

Furthermore, Mr. Azcuna informed that this is the majority position of the Committee although there is a minority

view that this should be transferred to the Transitory Provisions.

Reacting thereto, Mr. de Castro stated that the minority view is for the deletion of the original Section 3 and a reformulation of the section has been proposed, that in the event of the extension of the RP-US Bases Agreement in 1991, the treaty shall be reviewed and ratified by the people.

MOTION OF MR. RODRIGO

Mr. Rodrigo moved to delete Section 3, on page 1, lines 15 to 21 and page 2, lines 1 and 2, as well as on page 5, lines 29 to 31, denominated "Portion for inclusion in the Transitory Provisions." He stated that the reasons for his motion had been given in his speech during the period of general debate. Additional reasons were adduced in the speeches of other Members who supported his stand. Mr. Rodrigo, moreover, noted that this was the first time that the Body was informed of the reformulation of Section 3 by the Committee. He stated that he would also move for the deletion of the amended Section 3 on the ground that the matter should be left to the government, particularly the Executive. He observed that the treaty itself has a provision on renegotiation and reassessment in 1988 or 1989 and the Body should allow the Executive to exercise its options on the matter. He manifested his support for submitting to the people in a referendum a renegotiated treaty, should there be one, in 1989. He opined that the Body, which is appointive, should not impose too many conditions on the government composed of elective officials — the President, the Senators, and Members of the House of Representatives.

Mr. Azcuna, on behalf of the Committee, rejected the motion to delete and reiterated the Committee's acceptance of the Bernas amendment.

Thereupon, Mr. Rodrigo called for a vote on his proposal.

REMARKS OF MR. BERNAS

As author of the amendment, Mr. Bernas requested recognition to oppose the motion for deletion. Prior to his explanation, however, Mr. Bernas moved that the voting be done by paragraph on Section 3 and that the paragraph on page 5 be placed in the Transitory Provisions.

Explaining the second paragraph as reformulated, Mr. Bernas stated that it would not bar renegotiation because the normal process of a treaty formulation would start with negotiation by the Executive Department and then submission to the Senate for its concurrence. He stated that the other condition is ratification by majority votes cast by the people in a referendum held for that purpose.

Mr. Bernas stressed that the presence of military forces in a sovereign territory is of transcendental importance so that whether or not military bases or foreign troops be allowed, is something that the government and the people themselves would have to decide. He stressed that in the very first section of the Declaration of Principles already approved by the Body, it is already recognized that the possessor of ultimate sovereignty is the people and that in the same Section, aside from the fact that the government is a republican state, it is also a democratic state as the provision contains some elements of direct democracy. He observed that the Body recognizes the very importance of periodic consultation with the people on vital matters; that the election of representatives is not an act of a complete trust in those representatives as the people always retain the right to review their decisions affecting the survival of the people and the nation.

Furthermore, Mr. Bernas explained that if the country enters into a treaty, the other contracting party must respect that document as a document possessing force in the same way that the Filipino people would respect it.

The Bases Agreement, he observed, is a treaty as far as the Philippines is concerned but only an Executive

agreement as far as the United States is concerned inasmuch as the treaty process was never completed in the U.S. because of the failure of the U.S. Senate to ratify it.

On the view that it should be placed in the Transitory Provisions, Mr. Bernas stated that the provision has no transient character, and that what are placed in the Transitory Provisions are provisions which self-destruct upon the passage of time. He maintained that the particular provision would not self-destruct but would apply to future Philippine relations with any foreign country.

He observed that if the provision is approved, the Committee could transfer it to Section 21 of the Article on the Executive Department which deals with treaties. He stated that in terms of military bases in the Philippines, for the international agreement to be valid, it must be ratified by the people in the same manner that the parity rights amendments were ratified.

REMARKS OF MR. RODRIGO

Mr. Rodrigo opposed the motion of Mr. Bernas to vote on the provisions piecemeal. He opined that the provisions are intimately interrelated that they must be dealt with jointly. He informed that he has a motion to delete; but that other Members have a substitute provision; and it would be unfair to those Members, should they be preempted by the Committee's own amendment.

Mr. Rodrigo opined that the best procedure is to delete, and then to show the Members to propose new provisions, instead of starting with the Committee amendment which has just been presented. He insisted on a vote on this motion to delete.

Reacting thereto, Mr. Davide observed that there is a proposed amendment by substitution signed by 26 Members. He noted that inasmuch as Section 3 is sought to be substituted, the Body could not vote separately on deletion and later on an insertion of a new provision. He maintained that it should be a vote on the amendment by substitution which, in effect, would amount to a deletion of the original wording.

Mr. Rodrigo stressed that he is not a signatory to the proposed amendment by substitution and that he is the proponent of an amendment by deletion.

REMARKS OF MS. TAN

Ms. Tan observed that the deliberation was being railroaded and that the argument advanced "not to tie the hands of the President" is sheer hypocrisy as the Body had already tied her hands in many matters. On the argument that the Members are merely appointive, she stated that on the other hand, the elective officials do not necessarily represent the epitome of wisdom and integrity.

At this juncture, Mr. Nollado opined that Mr. Davide was correct inasmuch as Mr. Rodrigo, in adopting the motion, already makes him a party to the motion to delete and substitute.

QUESTION OF PRIVILEGE OF MR. RODRIGO

With the permission of the Chair, Mr. Rodrigo requested Ms. Tan to withdraw the word "hypocrisy" as it is unparliamentary and that the Members do not deserve it especially from a Sister of Charity. He manifested his intention to ask for the deletion of the unparliamentary word; but desisted from pursuing it.

INQUIRY OF MR. DAVIDE

Mr. Davide pointed out that Mr. Rodrigo admitted that there is a proposed substitute proposal for Section 3. He inquired whether the Members would have the right to introduce a new provision in lieu of Section 3 should the motion to delete be approved by the Body.

Mr. Rodrigo replied that it would still be open to proposals of new provisions, to which Mr. Davide stressed that an amendment to delete would remove the entire Section 3 and that technically it could not be opened for any amendment, hence, his proposal that the amendment of Mr. Rodrigo be considered as an amendment by substitution.

SUSPENSION OF SESSION

The Chair suspended the session.

It was 3:53 p.m.

RESUMPTION OF SESSION

At 4:32 p.m., the session was resumed.

RESTATEMENT OF MR. RODRIGO'S PROPOSED AMENDMENT BY DELETION

Upon resumption of session, Mr. Rodrigo reiterated his motion to delete Section 3 of the original Committee Report appearing on line 15 of page 1 up to line 2 of page 2 as well as the related portion for inclusion in the Transitory Provisions found on page 5, lines 28 to 31.

INQUIRY OF MR. BERNAS

In reply to Mr. Bernas' query, Mr. Rodrigo affirmed that his proposed amendment seeks to delete Section 3 as found in the original Committee Report and if ever there is a reformulation, he would likewise move for its deletion.

WITHDRAWAL OF MR. BERNAS' PROPOSED AMENDMENT

Thereupon, Mr. Bernas temporarily withdrew his amendment to Section 3.

WITHDRAWAL OF THE COMMITTEE'S ACCEPTANCE OF MR. BERNAS' AMENDMENT

In view of Mr. Bernas' withdrawal of his amendment, Ms. Aquino withdrew the Committee's acceptance of the original formulation of Section 3.

RULING OF THE CHAIR

The Chair ruled that should Mr. Rodrigo's motion to delete be approved, It will not preclude any Member from submitting a new formulation of Section 3.

INQUIRY OF MR. DE CASTRO

In reply to Mr. de Castro is inquiry, the Chair affirmed that an affirmative vote would be for the deletion of Section 3 and the portion for inclusion in the Transitory Provisions while a negative vote would be for the retention of said provisions.

NOMINAL VOTING ON MR. RODRIGO'S PROPOSED AMENDMENT BY DELETION

Upon request of Mr. Gascon, there being no objection, the Chair directed the Secretary-General to call the Roll for nominal voting. Thereafter, a second call was made.

RESULT OF THE VOTING

The result of the voting was as follows:

In favor:

Abubakar

Lerum

Rigos

Alonto

Maambong

Rodrigo

Bacani

Monsod

Romulo

Bengzon

Natividad

Rosales

Calderon

Nieva

Sumulong

De Castro

Ople

Tingson

Colayco

Padilla

Treñas

Concepcion

Rama

Uka

Guingona

Regalado

Villegas

Jamir

De los Reyes

Abubakar

Lerum

Rigos

Alonto

Maambong

Rodrigo

Bacani

Monsod

Romulo

Bengzon

Natividad

Rosales

Calderon

Nieva

Sumulong

De Castro

Ople

Tingson

Colayco

Padilla

Treñas

Concepcion

Rama

Uka

Guingona

Regalado

Villegas

Jamir

De los Reyes

Against:

Aquino

Davide

Quesada

Azcuna

Foz

Sarmiento

Bennagen

Garcia

Suarez

Bernas

Gascon

Tan

Rosario Braid

Nolledo

Villacorta

Aquino

Davide

Quesada

Azcuna

Foz

Sarmiento

Bennagen

Garcia

Suarez

Bernas

Gascon

Tan

Rosario Braid

Nolledo

Villacorta

Aquino

Davide

Quesada

Azcuna

Foz

Sarmiento

Bennagen

Garcia

Suarez

Bernas

Gascon

Tan

Rosario Braid

Nolledo

Villacorta

Abstention:

None

With 29 Members voting in favor, 15 against and no abstention, the Body approved Mr. Rodrigo's amendment by deletion.

PROPOSED AMENDMENT OF MR. BERNAS

Mr. Bernas proposed the substitution of the second paragraph of the reformulated Section 3 which was withdrawn, with the following:

THE STATE HAS THE INHERENT RIGHT TO SELF-DETERMINATION, NATIONAL INDEPENDENCE

AND SOVEREIGNTY. TO ENSURE THE INTEGRITY OF SUCH RIGHT, FOREIGN MILITARY BASES, TROOPS OR FACILITIES SHALL NOT BE ALLOWED IN PHILIPPINE TERRITORY EXCEPT UNDER TERMS OF THE TREATY DULY CONCURRED IN BY THE SENATE, RATIFIED BY A MAJORITY OF THE VOTES CAST BY THE PEOPLE IN A REFERENDUM HELD FOR THAT PURPOSE, AND RECOGNIZED AS SUCH BY THE OTHER CONTRACTING NATION.

PROPOSED SUBSTITUTE AMENDMENT OF MR. ROMULO TO MR. BERNAS' AMENDMENT

Mr. Romulo proposed a substitute amendment which reads:

THE STATE SHALL PURSUE AN INDEPENDENT FOREIGN POLICY. WHEN ENTERING INTO EXECUTIVE AGREEMENTS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS, THE PARAMOUNT CONSIDERATIONS SHALL BE NATIONAL SOVEREIGNTY, THE NATIONAL INTEREST AND THE RIGHT OF SELF-DETERMINATION.

Mr. Bernas stated that he would be willing to accept the first sentence but not the second sentence because it falls short of some of the elements which he would like to introduce.

SUSPENSION OF SESSION

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

It was 4:43 p.m.

RESUMPTION OF SESSION

At 5:17 p.m., the session was resumed.

MANIFESTATION OF MR. BERNAS

Upon resumption of session, Mr. Bernas stated that there were points of agreement between his formulation and that of Mr. Romulo, and it was agreed that the points of disagreement would be submitted to the Body.

He, however, accepted the first sentence of Mr. Romulo's amendment which reads: THE STATE SHALL PURSUE AN INDEPENDENT FOREIGN POLICY

He suggested that since the proposal was a general provision, it should be voted upon separately.

PROPOSED AMENDMENT OF MR. SUAREZ

In reply to the Chair's inquiry, Mr. Azcuna pointed out that there was a proposed amendment by Mr. Suarez to the first paragraph of Section 1, and suggested that it be considered first.

Thereupon, the Chair recognized Mr. Suarez.

Mr. Suarez proposed to substitute the first paragraph of Section 3 with the following:

THE STATE HAS THE RIGHT TO SELF-DETERMINATION AND SHALL PURSUE AN INDEPENDENT FOREIGN POLICY AND ENDEAVOR TO PROMOTE A ZONE OF PEACE, FREEDOM AND NEUTRALITY IN THE REGION. WHEN ENTERING INTO TREATIES OR INTERNATIONAL OR EXECUTIVE AGREEMENTS, THE PARAMOUNT CONSIDERATION SHALL BE NATIONAL SOVEREIGNTY, TERRITORIAL INTEGRITY AND THE NATIONAL INTEREST.

Mr. Monsod observed that Mr. Suarez' proposal was not a reformulation but the same idea as the provision that

was deleted, in reply to which Mr. Suarez stated that it was presented pursuant to the previous agreement that any Member may present a reformulated amendment.

The Chair affirmed the agreement.

Mr. Azcuna accepted Mr. Suarez' proposed amendment.

Mr. de Castro, however, manifested on behalf of the minority view in the Committee that he was not accepting the proposed amendment.

Submitted to a vote, and with 17 Members voting in favor and 27 against, the proposed amendment was lost.

APPROVAL OF THE FIRST SENTENCE OF SECTION 3

Mr. Bernas restated the amendment of Mr. Romulo which the former accepted as the first sentence of the first paragraph of Section 3, which reads: THE STATE SHALL PURSUE AN INDEPENDENT FOREIGN POLICY.

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

PROPOSED AMENDMENT OF MR. BERNAS

Mr. Bernas then proposed a reformulation of the original proposal, to be the second sentence of Section 3, to wit:

NO FOREIGN MILITARY BASES, TROOPS OR FACILITIES SHALL BE ALLOWED IN PHILIPPINE TERRITORY EXCEPT UNDER THE TERMS OF THE TREATY DULY CONCURRED IN BY THE SENATE, RATIFIED BY A MAJORITY OF THE VOTES CAST BY THE PEOPLE IN A REFERENDUM HELD FOR THAT PURPOSE AND RECOGNIZED AS A TREATY BY THE OTHER CONTRACTING STATE.

Mr. Azcuna accepted the amendment.

Mr. Romulo manifested that he has three points of disagreement with Mr. Bernas, namely: 1) that he would like, to place the paragraph in the Transitory Provisions; 2) that it should be qualified with the phrase AFTER THE EXPIRATION OF THE RP-US AGREEMENT IN 1991; and 3) the question of whether it should be ratified in a referendum by the people be left to Congress.

Mr. Bernas suggested that the Body first discuss the merits of the proposal and decide later whether it should be placed in the Transitory Provisions or in the Article on the Declaration of Principles, by making whatever changes main be necessary should the Body decide to transfer it to the Transitory Provisions.

He maintained that the proposal is not transitory in nature but one that would remain in force as long as it is not deleted from the Constitution, requiring: 1) that military bases cad be allowed only by a treaty; 2) that the treaty must be duly ratified by the people in a referendum; and 3) that it must be accepted as such by the other contracting State.

Mr. Romulo, on the other hand, maintained that the provision is transitory in nature because placing it in the Declaration of Principles would imply that the country would have foreign bases forever. He stated that by placing it in the Transitory Provisions, it would emphasize the fact, that deals only with the American bases which, hopefully, even if a new treaty is entered into, will be dismantled as soon as practicable.

Mr. Bernas, however, contended that placing it in the Transitory Provisions might be construed that it applies only to foreign military bases of the United States, to which Mr. Romulo replied that the phrase "no foreign military

bases, troops or facilities" is clear enough.

INQUIRY OF MR. OPLE

In reply to Mr. Ople's query whether there is anything in the proposal that would prevent the Philippine Government from abrogating the existing bases agreement, Mr. Bernas replied that there is none. Mr. Romulo concurred with Mr. Bernas' answer.

Mr. Ople informed that a resolution he filed, together with Messrs. Natividad, Maambong and Regalado, embodies the position that the Republic of the Philippines should be able to terminate or abrogate the Military Bases Agreement as one of the options. He opined that the Agreement is flawed from the very beginning but is not a nullity because the treaty was ratified by the Philippine Senate, hence, a treaty under Philippine laws, but since the American Senate did not do the same, to them it is merely an executive agreement. He opined that if the present government deems it in the national interest to terminate the Agreement or to renegotiate it, it must start with a clean slate and not be burdened by the flaws of the 1947 Military Bases Agreement.

In reply, Mr. Romulo pointed out the two phrases in the formulation which address Mr. Ople's concerns, namely: 1) the phrase which states "except under the terms of a treaty" which means that if the present treaty would be renegotiated it must be under the terms of a new treaty; and 2) the concluding phrase which states "and recognized as a treaty by the other contracting State."

Additionally, Mr. Bernas stated that as far as the present Agreement is concerned, there is nothing to prevent the present government from rejecting the treaty under the principle of *rebus sic stantibus* if there are grounds for the application of such principle.

INQUIRY OF MR. SUAREZ

On Mr. Suarez' query whether the proposal is prospective, Mr. Bernas stated that it is, because it does not touch on the validity of the present agreement, adding however, that if a decision should be arrived at that the present agreement is invalid prior to 1991, then the proposal becomes operative immediately.

Specifically, on whether it would be correct to state that the proposal does not impress the previous agreements with a valid character and neither does it say that it is null and void *ab initio*, Mr. Bernas replied that it is not the function of the Commission to pass judgment on the validity or invalidity of the subsisting Agreement.

As to how the other contracting nation would express its recognition of the treaty as required by the proposal, Mr. Bernas stated that the U.S. Senate must concur with the treaty in accordance with American Constitutional law. He added that the phrase "the other contracting State must recognize it as a treaty" means that it must perform all the acts required for the agreement to attain the status of a treaty under its jurisdiction.

MANIFESTATION OF MR. PADILLA

Mr. Padilla manifested his disagreement to the first sentence which starts with "No foreign" because it is not only mandatory but even prohibitive. He stated that once a treaty is entered into by the Executive and ratified by the Senate, such ratification should be final. He opined that it would not be necessary, as it may even be violative of the Constitution, to require as an indispensable requisite that a treaty entered into by the Executive and ratified by the Senate be further submitted to the people for ratification. He stressed that the President and the Members of Congress are elected by the people and once a treaty has been entered into by the Executive and ratified by the Senate, such a treaty is deemed to be for the benefit of the people and even in the name of the people. He stressed that a further requirement for a plebiscite is not only unnecessary but even expensive. He then manifested his

objection to Mr. Bernas' proposal.

Reacting thereto, Mr. Nollado stressed that the Senate cannot competently speak on behalf of the 55 million Filipinos on the matter of existence and maintenance of foreign military bases. He stressed that sovereignty resides in the people and all government authority emanates from them, hence, the Filipino people should be given the right to give their consent on matters relating to foreign military bases because these limit the sovereignty of the country. He noted the contention that the Body should not touch the military bases issue because it does not have the mandate of the people, if so, he asked why the people should be denied the right to determine whether or not such bases should be maintained in the country. He then expressed support for Mr. Bernas' proposal.

INQUIRY OF MR. MAAMBONG

On Mr. Maambong's query whether, based on the formulation, any such kind of treaty entered into by the country must cover all three — bases, troops and facilities — or it may cover only one or two of them, Mr. Bernas stated that the requirements would be the same even if the treaty covers only one, like troops only.

On whether the concurrence of the people should be through a referendum or through a plebiscite, Mr. Bernas stated that it would be through a referendum after which it goes to the other contracting party for their ratification so that the treaty would be binding on both parties.

On whether a foreign country can have military facilities without necessarily allowing bases in the Philippines, Mr. Bernas stated that such a situation is possible.

At this juncture, Mr. Bacani suggested that the Body vote separately on the matter of date requirement and the matter of mandatory referendum, to which Mr. Bernas agreed.

MR. ROMULO'S AMENDMENT TO THE AMENDMENT

Thereupon, Mr. Romulo proposed to reword Mr. Bernas' proposal as follows:

AFTER THE EXPIRATION OF THE RP-US AGREEMENT IN 1991, NO FOREIGN MILITARY BASES TROOPS OR FACILITIES SHALL BE ALLOWED IN THE PHILIPPINES EXCEPT UNDER THE TERMS OF A TREATY DULY CONCURRED IN BY THE SENATE, AND WHEN CONGRESS SO REQUIRES, RATIFIED BY A MAJORITY OF THE VOTES CAST BY THE PEOPLE IN A REFERENDUM HELD FOR THAT PURPOSE AND RECOGNIZED AS A TREATY BY THE OTHER CONTRACTING STATE.

Mr. Bernas suggested the insertion of OTHER between "no" and "foreign", to which Mr. Romulo replied that his original proposal is stronger because it would apply to all.

Mr. Azcuna stated that majority of the members of the Committee reject the amendment to Mr. Bernas' proposal.

Mr. Padilla suggested that "no" be substituted with ANY, to which Mr. Romulo agreed.

Mr. Bernas pointed out that the proposal which was accepted by the Committee carried a negative statement to precisely emphasize the mandatory and prohibitive language.

Mr. Romulo pointed out that his proposal as amended by Mr. Padilla is also mandatory in character, to which Mr. Bernas replied that his original proposal was stronger.

Mr. Padilla then suggested the substitution of "shall not be allowed" with SHALL BE ALLOWED IN ACCORDANCE WITH A TREATY.

At this juncture, Mr. Ople expressed support for the original formulation as more reflective of the sentiment of the Body.

On the phrase "upon the expiration of the RP-US Bases Agreement in 1991", Mr. Suarez stated that Mr. Bernas who is the proponent of the proposal had assured him that it has prospective application. He pointed out that the phrase might give constitutional benediction to the legality of the RP-US Bases Agreement which, he said, would complicate the situation.

Replying thereto, Mr. Romulo stated that it would not, because the provision would be placed in the Transitory Provisions for purposes of particularizing the foreign bases.

On whether it would still be necessary to provide the phrase considering the admission of Mr. Bernas that it would not have retroactive effect, Mr. Romulo answered in the affirmative stating that he would like to particularize on the U.S. Military Bases problem.

Mr. Suarez argued that Mr. Bernas' formulation is a blanket statement referring to all kinds of foreign military bases which would not give a semblance of benediction to the legality of the RP-US Bases Agreement.

Mr. Bernas pointed out that the problem is where to place the provision. He suggested that the matter be decided later except for the second sentence on which a decision should be made whether it should be in the Declaration of Principles and State Policies or in the Transitory Provisions.

Mr. Romulo stressed that the Committee Report originally included the phrase and he expressed agreement to Mr. Bernas' suggestion to pose the second sentence as a prejudicial question.

Mr. Rigos observed that approval of "1991" would require its incorporation in the Transitory Provisions while approval of Mr. Bernas' amendment would require its inclusion in the Declaration of Principles and State Policies.

Thereupon, Mr. Romulo moved that the last sentence on page 5 be placed in the Transitory Provisions and asked that the Body take a vote.

INQUIRY OF MR. NATIVIDAD

In reply to Mr. Natividad's query whether it was Mr. Romulo's intention to consider the U.S. military bases temporary in nature, Mr. Romulo answered in the affirmative. He also affirmed that since said military bases are transitory or temporary in nature, the same should be placed in the Transitory Provisions.

REMARKS OF MR. SARMIENTO

Speaking against the motion, Mr. Sarmiento stated that the Bernas formulation is transcendental and fundamental in nature, and adverting to the statements of the late Senators Tomas Confesor and Claro Recto, and Mr. Nollado, he stressed that the matter should be placed in the Declaration of Principles and State Policies.

INQUIRY OF MR. BERNAS

In reply to Mr. Bernas' query whether the question would still be discussed during the consideration of the Transitory Provisions, Mr. Romulo answered in the affirmative.

At this juncture, Mr. David moved for consideration of the merits of the proposal. The Chair, however, invited attention to a pending motion that has to be voted upon.

INQUIRY OF MR. OPLE

In reply to Mr. Ople's query whether the formulation would grant constitutional authority to future governments to enter into treaties for foreign bases, Mr. Bernas answered in the affirmative.

Mr. Ople stated that he is in favor of Mr. Romulo's proposal because he does not want to authorize future governments to host other foreign military bases.

Mr. Bernas proposed "no foreign military troops or facilities shall be allowed in Philippine territory" as a general principle and stated that the U.S. bases would be in the Transitory Provisions.

Mr. Ople observed that there would be two choices — a blanket prohibition with a qualification in the Transitory Provisions or keeping out of the Constitution the provision that the future government could not host any foreign military base.

Thereupon, Mr. Bernas made a formal motion to make the prohibition explicit and to deal with the U.S. bases separately.

Mr. Romulo stated, however, that he had a pending motion which should be decided by the Body.

REMARKS OF MR. GARCIA

Mr. Garcia pointed out that Mr. Bernas' formulation should pertain to the Declaration of Principles and State Policies because it is a principle. He agreed that the matter of U.S. Military Bases should be dealt with separately in the Transitory Provisions.

Mr. Padilla expressed agreement that the matter of U.S. Military Bases should not be placed in the Declaration of Principles and State Policies and that it be discussed in the Transitory Provisions when said provision shall be considered to obviate the repetition of a sad experience when the phrase "imminent danger thereof" in relation to the suspension of the privilege of habeas corpus in the Article on the Executive was discussed.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 6:12 p.m.

RESUMPTION OF SESSION

At 6:21 p.m., the session was resumed.

APPROVAL OF THE AMENDMENT, AS AMENDED

Upon resumption of session, Mr. Romulo stated that he was modifying Mr. Bernas' amendment to read as follows:

AFTER THE EXPIRATION OF THE RP-US BASES AGREEMENT IN 1991, FOREIGN MILITARY BASES, TROOPS OR FACILITIES SHALL NOT BE ALLOWED IN PHILIPPINE TERRITORY EXCEPT UNDER THE TERMS OF A TREATY DULY CONCURRED IN BY THE SENATE, AND WHEN CONGRESS SO REQUIRES, RATIFIED BY A MAJORITY OF THE VOTES CAST BY THE PEOPLE IN A REFERENDUM HELD FOR THAT PURPOSE AND RECOGNIZED AS A TREATY BY THE OTHER CONTRACTING STATE.

Submitted to a vote, and with 26 Members voting in favor, 15 against and 2 abstentions, the Body approved Mr. Bernas' amendment as modified by Mr. Romulo. As agreed upon, Mr. Romulo stated that the provision would be placed in the Transitory Provisions.

PROPOSED AMENDMENT OF MR. BERNAS

At this juncture, Mr. Bernas proposed to insert VOTING JOINTLY between "Congress" and "so".

Mr. Bernas clarified that "voting jointly" would mean that Congress would vote as one body and not separately, as in the provision relating to martial law.

A bicameral body, Mr. Rodrigo commented, would have two Houses — the Senate and House of Representatives. He informed that the universal practice in a bicameral body is for the Houses to vote separately and that the Senate is the ratifying chamber. He noted that when the Senate ratifies the treaty and Congress decides, by a vote of the two Houses, to refer the Senate ratification to the people, the two Chambers must vote separately. Should they vote jointly, he observed, the Lower House can overwhelm the Senate by its sheer number.

Mr. Romulo did not accept Mr. Bernas' amendment.

Mr. Bernas, while agreeing that in the normal process of a bicameral body the two Houses would vote separately, noted that an exception should be made in recognition of the transcendence of the issue of military bases as what the Body has done on the issue of martial law. He argued that it would give a broader base for the decision whether the people should be allowed to participate or not.

Mr. Regalado noted that while it is true that under the Article on the Executive, the Body provided for joint voting, this is only in circumstances when Congress has to concur, revoke or extend the proclamation of martial law. He opined that the very nature of the circumstance therein calls for urgency in action and immediacy in decision. He observed that with respect to the submission of an agreement or treaty to a referendum, the element of urgency is not involved. He pointed out that in this case, there would be prior ratification of the Senate and therefore, the rationale for following the steps done in the provision on martial law would not apply.

Mr. Rama concurred with Mr. Regalado's observation that there is no parallelism between the requirements in the Article on the Executive and the present provision. He argued that it is only the Senate which should ratify the treaty.

Mr. Azcuna informed the Chair that majority in the Committee had accepted the proposed amendment of Mr. Bernas and that the matter, therefore, should be decided by the Body.

VOTING ON MR. BERNAS' AMENDMENT

Submitted to a vote, and with 16 Members voting in favor, 24 against and one abstention, the amendment was lost.

PROPOSED AMENDMENT OF MR. DAVIDE

Mr. Davide proposed to substitute "Congress" with the words THE HOUSE OF REPRESENTATIVES such that the phrase would read "and, when THE HOUSE OF REPRESENTATIVES so requires, ratified by the people in a referendum or plebiscite called for the purpose."

Mr. Romulo rejected the amendment.

Mr. Davide explained that the idea is to allow the people's participation in a very crucial treaty affecting national

integrity. The proposal, he noted, seeks an act of the Lower House inasmuch as it is composed of representatives more attached to the people, elected by the people and therefore would reflect the genuine sentiments of the people. The Senate, he stated, while it may ratify the treaty may also be checked by the Lower House, this "check" being the main reason for the Body's adoption of a bicameral system. The Senators, he maintained, who are elected at large may not be able to telegraph the genuine sentiments of the people and it is the Lower House, therefore, that must determine the final effectivity or validity of the matter.

VOTING ON MR. DAVIDE'S AMENDMENT

Submitted to a vote, and with 15 Members voting in favor and 27 against, the proposed amendment was lost.

PROPOSED AMENDMENT OF MR. BERNAS

Upon Mr. Bernas' inquiry, the Chair affirmed that what the Body approved was a provision for the Transitory Provisions. Thereupon, for inclusion in the main body, Mr. Bernas proposed a general principle, to wit:

FOREIGN MILITARY BASES, TROOPS OR FACILITIES SHALL NOT BE ALLOWED IN PHILIPPINE TERRITORY.

He stated that this is on the understanding that what applies to the United States would be the provision just approved. He informed that this would follow the sentence, "The State shall pursue an independent foreign policy."

Mr. Ople remarked that he had earlier called attention to the danger of giving constitutional authority to future governments to contract with other states to host foreign bases on Philippine soil, as a general principle. He noted that it would be better to delete entirely from the Declaration of Principles any reference to foreign military bases. He stated that there is no authority at all to future governments to contract with foreign states to host military bases in the country.

Mr. Bernas called for a vote, adding that it is a principle accepted by everyone that no foreign military bases, troops or facilities shall be allowed in the Philippines. He maintained that what the Body has provided in the Transitory Provisions, with respect to the United States, is a clear exception.

NOMINAL VOTING ON MR. BERNAS' AMENDMENT

Upon request of Mr. Sarmiento, there being no objection, the Chair directed the Secretary-General to call, the Roll for nominal voting. Thereafter a second roll call was made.

RESULT OF THE VOTING

The result of the voting was as follows:

In favor:

Abubakar

Davide

Quesada

Aquino

Foz

Sarmiento

Azcuna

Garcia

Suarez

Bennagen

Gascon

Tan

Bernas

Nolledo

Villacorta

Rosario Braid

Muñoz Palma

Abubakar

Davide

Quesada

Aquino

Foz

Sarmiento

Azcuna

Garcia

Suarez

Bennagen

Gascon

Tan

Bernas

Nolledo

Villacorta

Rosario Braid

Muñoz Palma

Against:

Alonto

Lerum

Rigos

Bacani

Monsod

Rodrigo

Bengzon

Natividad

Romulo

Calderon

Nieva

Rosales

De Castro

Ople

Sumulong

Colayco

Padilla

Tingson

Concepcion

Rama

Treñas

Guingona

Regalado

Uka

Jamir

De los Reyes

Villegas

With 17 Members voting in favor and 27 against, the proposed amendment of Mr. Bernas was lost.

PROPOSED AMENDMENT OF MR. SUAREZ

Mr. Suarez manifested that he was bothered by the inclusion of the phrase "After the expiration of the RP-US Bases Agreement in 1991" which may be construed as putting a stamp of legality and validity on the Agreement. Thereupon, he moved that the phrase be deleted, irrespective of whether or not the particular provision would be transferred to the Transitory Provisions.

On the observation that the motion is in the nature of a reconsideration, and also in response to the inquiry whether he voted with the majority, Mr. Suarez stated that he did not vote with the majority and disagreed that his motion partakes of a motion for reconsideration. He observed that the Body has agreed that the Members would be free to introduce such amendments.

PARLIAMENTARY INQUIRY OF MR. DAVIDE

Mr. Davide noted that the report of the Committee on Transitory Provisions has not yet been taken up by the Commission and that the Committee has not yet even begun its sponsorship. He inquired whether the vote on Mr. Romulo's amendment can be considered merely as a recommendation to the Committee on Transitory Provisions.

Mr. Romulo replied that he is merely following the Committee Report on the Article on Declaration of Principles which has a provision for inclusion in the Transitory Provisions. He observed, moreover, that the Commission as a whole could transcend the Committee and has decided that the provision would go into the Transitory Provisions. He added that there is no substantial prohibition against this transfer.

POINT OF INFORMATION OF MR. BENGZON

Mr. Bengzon clarified that in the past when the Body voted on matters to be transposed to the Transitory Provisions, what it voted upon were concepts and ideas. On the matter at hand, however, he stated that the Body voted on the concepts and on the text itself.

Mr. Davide explained that he asked the question, inasmuch as the proposal of the Committee for transfer to the Transitory Provisions is actually a mere recommendation that it should be located therein. He noted that the Committee, when it presents its report, should take the provision into account in the totality of the discussion of the report.

Mr. Bengzon pointed out that the Body went into recess so as to allow Messrs. Romulo and Bernas to harmonize their amendments, and that when the session was resumed, the text of the amendment had been finished and harmonized although there were two or three areas on which the proponents disagreed and which were subsequently submitted to the Body for a vote. He underscored that what was voted upon was not only the concept but also the text of the provision itself and as it had been approved by the Body, it should go in toto into the Committee Report on the Article on the Transitory Provisions.

The Chair concurred with the manifestation of Mr. Bengzon that what had been approved was the text which should be placed in the Transitory Provisions.

INQUIRY OF MR. FOZ

Mr. Foz inquired as to what would be the meaning of the rejection of Mr. Bernas' amendment to the effect that no foreign military bases, troops or facilities shall be allowed in Philippine territory. He asked whether rejecting Mr. Bernas' amendment would mean that the Body is for maintaining the U.S. military bases.

In reply thereto, Mr. Romulo stated that it has just the opposite meaning and that what is provided in the

Transitory Provisions is that no other foreign military bases or troops shall be allowed in Philippine territory.

Mr. Ople, in affirming the statement of Mr. Romulo, noted that what the Body did was to remove any constitutional authority for future governments to contract with foreign states for the purpose of hosting military bases.

Mr. Romulo observed that such would be the case had the Body approved Mr. Bernas' amendment. He noted that with the rejection of the amendment, the Commission had taken a position that the country cannot survive without military bases.

The Chair pointed out that there was a provision already approved related to the expiration of the RP-US Bases Agreement in 1991.

In reply, Mr. Foz noted that as he understood it, the Transitory Provisions apply only to the Military Bases Agreement and will not govern as a permanent provision in the main body of the Constitution.

Mr. Romulo pointed out that during the interpellation of Mr. Bernas, he made it very clear that the provision applies, firstly, only as a temporary provision for the U.S. military bases; and, secondly, to any other foreign military bases in Philippine territory.

Mr. Foz raised the question as to why the Commission is reluctant to provide anything at all in the body of the Constitution when it has provided something in the Transitory Provisions.

In answer to Mr. Romulo's inquiry whether Mr. Foz was suggesting an amendment or a reconsideration, the Chair observed that the latter was merely seeking clarification. She noted that Messrs. Romulo and Ople had already clarified the matter.

Mr. Bennagen observed that the confusion arose from the fact that while the Body maintained that there shall be no more foreign military bases in Philippine territory, it voted down Mr. Bernas' amendment.

PARLIAMENTARY INQUIRY OF MR. SUAREZ

Mr. Suarez inquired whether the inclusion of Mr. Romulo's amendment in the Transitory Provisions would preclude an amendment thereto during the period of amendment. He manifested that he had submitted a formal motion to delete a particular phrase in the amendment.

Mr. Suarez, as Chairman of the Committee on Amendments and Transitory Provisions, observed that quite a number of the provisions which had been approved in the respective Committees and on the floor had been referred to it. He then inquired whether the Committee would do it only in a mechanical manner without giving the Members an opportunity to propose appropriate amendments thereto, to which Mr. Bengzon replied that the matters which were referred to the Committee were only approved as concepts and, therefore, when the report of said Committee is presented in plenary session, those concepts could still be crafted by the Commission, except the provision on the military bases.

INQUIRY OF MR. OPLE

In reply to Mr. Ople's query on whether the Committee is being directed by the Commission to receive the transitory provision and act simply as a mechanical conduit for bringing it back to the floor which is equivalent to discharging said Committee, Mr. Bengzon stated that, firstly, the Commission decided on the text of this concept and, therefore, has approved not only the concept but also the text and wording which shall be included in the provision in the Article on Transitory Provisions. He stressed that insofar as this particular matter is concerned,

the whole thing is foreclosed; and secondly, this should not be considered as a discharge of the Committee's responsibility, because it is just this particular text that was approved unlike the other concepts which were just thrown to the Committee to craft the words and later bring it back to the floor for discussion. Mr. Bengzon gave the assurance that the Committee is not being discharged of its task, except that the Commission is giving its final imprimatur not only insofar as the concept is concerned but also as to the text.

On whether the action of the Commission would be taken as a precedent that would apply to other Committees, Mr. Bengzon stated that it is the decision of the Commission as a Body that prevails.

Mr. Ople then expressed reservations on the right of the Commission to override a Committee without prior notice and consultation. Although accepting the superior authority of the Commission, he expressed the hope that prior consultations be effected in the future so that the integrity of the Committees under the Rules would be properly safeguarded.

REMARKS OF MR. SUAREZ

Thereupon, Mr. Suarez, for purposes of record, took strong exceptions to the observations made by Mr. Bengzon. He then reserved his right to ventilate the matter anew at the proper time when the proposal is submitted for consideration by the Committee on Amendments and Transitory Provisions.

REMARKS OF MR. NOLLEDO

Mr. Nollado expressed support for Mr. Suarez in view of the observations of Mr. Foz that the provision is not clear. He contended that the second part of the provision of Mr. Romulo's amendment is tailored to lay down the terms and conditions under which the RP-US Bases Agreement may be extended, aside from the fact that the provision would be included in the Transitory Provisions. In view of the observations raised by Mr. Foz, Mr. Nollado opined that Mr. Suarez would be justified in ventilating the issue anew in the Committee level.

Reacting thereto, Mr. Rama stated that the Commission had ignored the nature of the Committee on Transitory Provisions which, he stressed, is different from the rest of the Committees in that said Committee should take care of contingencies that arise from the discussion of the other Articles. He maintained that it is the business of the Committee on Transitory Provisions to accept those contingencies which arose from some provisions of the Article on Declaration of Principles and State Policies which should be transferred thereto.

Mr. de Castro then cited a concrete example of a decision by the Commission of referring provisions to another Committee. He adverted to Resolution No. 121 on graft and corruption which, on First Reading, was referred to the Committee on Accountability of Public Officers and, thereafter, referred to the Committee on Declaration of Principles and, again, for a discussion on the merits, to the Commission as a whole. He opined that relative to the amendment of Mr. Davide substituting the word "Congress" with "the House of Representatives", there is no more discretion on the part of the Committee on Transitory Provisions consisting of only 11 Members as against those who voted in favor. He maintained the Committee having voted on the merits of the whole provision and referred the same to the Committee on Transitory Provisions, said Committee should not add anything to it but include the same in its report.

RULING OF THE CHAIR

The Chair explained the parliamentary situation by stating that what was submitted to a vote was the text and the Article where it should be placed, which had already been settled.

On the question whether any amendment to the report of the Committee on Amendments and Transitory

Provisions would be in order when the report shall have been submitted with the particular text, the Chair ruled that it would not make any commitment but would reserve its ruling at the proper time.

REMARKS OF MR. ROMULO

Mr. Romulo stated that the Transitory Provisions are precisely designed to protect and not to give the Executive Department an unconditional discretion, in which case, the Commission would want a new treaty, not an extension of the old one, which must be ratified by the Senate and, if Congress so decides, ratified by the people and, finally, it must be recognized as a treaty by the other party.

In reply to Mr. Nollado's query, Mr. Romulo affirmed that the conditions on the second part necessarily referred to the present RP-US Bases Agreement in view of the introductory part of the provision.

AMENDMENT OF MR. ROMULO

Mr. Romulo then proposed the second sentence after the first sentence which had already been approved by the Body, to wit:

WHEN ENTERING INTO ANY TREATY THE PARAMOUNT CONSIDERATIONS SHALL BE NATIONAL SOVEREIGNTY, NATIONAL INTEREST AND THE RIGHT OF SELF DETERMINATION.

In reply to Mr. Azcuna's query, Mr. Romulo stated that his proposal would exclude treaties granting foreign states military bases.

In reply to Mr. Bennagen's query, Mr. Romulo denied that the treaty contemplated in the proposal would include agreements that have to do with the exploitation of natural resources.

Mr. Azcuna accepted the amendment.

MR. DAVIDE'S AMENDMENT TO THE AMENDMENT

Mr. Davide proposed an amendment to the amendment by adding after "sovereignty" the words AND TERRITORIAL INTEGRITY.

Mr. Romulo accepted the amendment to his amendment, and Mr. Azcuna likewise did the same, on behalf of the Committee.

Submitted a vote, and there being no objection, the amendment was approved by the Body.

SUGGESTION OF MR. TINGSON

At this juncture, Mr. Tingson suggested that the Body take up Section 9 first; in the next session, to which suggestion the Chair acceded.

ADJOURNMENT OF SESSION

Thereafter, on motion of Mr. Rama, there being no objection, the Chair declared the session adjourned until nine-thirty in the morning of the following day.

It was 7:12 p.m.

I hereby certify to the correctness of the foregoing.

(SGD.) FLERIDA RUTH P. ROMERO

Secretary-General

ATTESTED:

(SGD.) CECILIA MUÑOZ PALMA

President

Approved on September 19, 1986.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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