

## R.C.C. NO. 64

*VOL. III, August 23, 1986*

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Saturday, August 23, 1986

### OPENING OF SESSION

At 9:37 a.m., the President, the Honorable Cecilia Muñoz Palma, opened the session.

THE PRESIDENT: The session is called to order.

### NATIONAL ANTHEM

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

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Honorable Ma. Teresa F. Nieva.

Everybody remained standing for the Prayer.

### PRAYER

MS. NIEVA: From the Twenty-Third Psalm: "The Lord is my Shepherd; I have everything I need. He lets me rest in fields of green grass and leads me to quiet pools of fresh water. He gives me new strength. He guides me in the right path, as He has promised. Even if I go through the deepest darkness, I will not be afraid, Lord, for You are with me. Your shepherd's rod and staff protect me. you prepare a banquet for me where all my enemies can see me. You welcome me as an honored guest and fill my cup to the brim. I know that Your Goodness and Love will be with me all my life and Your House will be my home as long as I live."

Almighty God, we, Your children, thank You for the privilege You have given us to be Your instruments in this Constitutional Commission; for the spirit of camaraderie even if sometimes strained by our different views and opinions; for the nationalism that inspires us in our work; and for the deep yearning in our hearts to be of service to You and our people.

Grant that we may continue to do our very best and that we may act in the light of our best judgment with charity in our hearts towards those who may not agree with us.

In Jesus' Name we pray. Amen.

### ROLL CALL

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

THE SECRETARY-GENERAL, reading:

Abubakar Present[\*] Natividad Present[\*]

Alonto Present Nieva Present

Aquino Present[\*] Nollado Absent

Azcuna Present Ople Present[\*]

Bacani Present[\*] Padilla Present

Bengzon Present[\*] Quesada Present

Bennagen Present Rama Present

Bernas Present[\*] Regalado Present

Rosario Braid Present Reyes de los Present

Brocka Absent Rigos Present

Calderon Present Rodrigo Present

Castro de Present Romulo Present

Colayco Present Rosales Absent

Concepcion Present Sarmiento Present

Davide Present Suarez Present

Foz Present Sumulong Present

Garcia Present[\*] Tadeo Present

Gascon Present Tan Present

Guingona Present Tingson Present

Jamir Present Treñas Absent

Laurel Absent Uka Present

Lerum Present[\*] Villacorta Present[\*]

Maambong Present[\*] Villegas Present

Monsod Present

The President is present.

The roll call shows 32 Members responded to the call.

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

MR. CALDERON: Madam President.

THE PRESIDENT: The Assistant Floor Leader is recognized.

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

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

### APPROVAL OF JOURNAL

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

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

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

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

The Secretary-General will read the Reference of Business.

### REFERENCE OF BUSINESS

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

### COMMUNICATIONS

Letter from Mr. Jovencio G. Bernardo of DYVL Radio Station, Tacloban City, transmitting a petition, signed by three hundred eleven residents of Leyte, seeking the exclusion from the new Constitution of Proposed Resolution No. 402 which bans foreign military bases in the Philippines and urging the Constitutional Commission to provide for the retention of the U.S. Military Bases in Clark Air Base and Subic Naval Base.

(Communication No. 614 — Constitutional Commission of 1986)

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

Communication from Dr. Philip S. Chua, President of the Association of Philippine Physicians in America, Inc., 8684 Connecticut Street, Merrillville, Indiana 46410, U.S.A., urging inclusion in the Constitution of a provision that would make a natural-born citizen of the Philippines who has lost his Philippine citizenship a transferee of private lands.

(Communication No. 615 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Telegram from Mr. P.E. Torres, Sr., Vice-President for Management Affairs, University of Mindanao, Davao City, saying that the students, faculty, and non-teaching personnel and administration of the University of Mindanao strongly endorse the amendments submitted by the Philippine Association of Colleges and Universities under Communication No. 572.

(Communication No. 616 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Telegram from one Keiko Ezaki, Japan, urging the Constitutional Commission to include in the Constitution the bases-free and nuclear-free provisions in order to see a demilitarized and nuclear-free world.

(Communication No. 617 — Constitutional Commission of 1986)

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

Communication from two thousand two hundred fifty-one signatories with their respective addresses, seeking inclusion in the Constitution of a provision to protect the life of the unborn from the moment of conception.

(Communication No. 618 — Constitutional Commission of 1986)

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

Communication from the Permanent International Conference for Judicial Review, Paris, France, signed by Dr. Morton F. Meads, submitting its observations and studies on the constitutional and judicial system of the Philippines, and its views and opinions in the writing of a constitution.

(Communication No. 619 — Constitutional Commission of 1986)

To the Steering Committee.

Communication from the Albay First District Inter-Evangelical Christian Church Fellowship, Tabaco, Albay, urging the Constitutional Commission to incorporate in the Constitution the provision on the inviolability of the separation of the Church and State as embodied in the 1973 Constitution.

(Communication No. 620 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from Mr. Roman L. Kintanar, Chairman of the Philippine National Committee on Man and the Biosphere, expressing full support to Proposed Resolution No. 222 — "Adopting Provisions on Science and Technology for Inclusion in the Proposed New Constitution of the Republic of the Philippines."

(Communication No. 621 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Communication from Mr. Romeo C. Balandra, Population Programs Coordinator, Commission on Population, transmitting the resolutions of the Philippine Hospital Association, Misamis Occidental Council; Philippine Medical Association, Oroquieta City Chapter; Whiz Family, Oroquieta City; Bai Lawanen Jaycees, Cagayan de Oro City; and Rotary Club of Oroquieta City, which resolutions seek to amend Section 4, Article II and Section 10, Article XV of the 1973 Constitution.

(Communication No. 622 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from Mr. Martin R. Reyes of 11 Forestry Street, Vasra Village, Quezon City, containing reaction to a reported inclusion in the new Constitution of an amendment providing for 10-20 years log ban, saying that such amendment should be reconsidered to make logging one of the ways of conserving the forest.

(Communication No. 623 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Communication signed by Mr. Fred M. Magbanua, Jr. and the other officers of the Christian Leaders Alliance of the Philippines, Valenzuela, Metro Manila, endorsing the position paper on "Religious Instruction in Public Schools," prepared by Dr. Isabelo F. Magalit, Chairman, Konsiyensiya ng Febrero Siete (KONFES) Con-Com Committee on Religious Instructions in Public Schools.

(Communication No. 624 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Communication signed by former Congressman Miguel Cuenco, containing a plea to the Committee on Human Resources and the Constitutional Commission of 1986 to consider favorably Proposed Resolution No. 451.

(Communication No. 625 — Constitutional Commission of 1986)

To the Committee on Human Resources.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Regalado be recognized for a parliamentary inquiry.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Thank you, Madam President.

When I came this morning, I found on my desk a joint Committee Report No. 39, submitted by the Committee on Social Justice and the Committee on Human Resources, which appears to bear the signatures of 21 Commissioners. I wish to state right at the outset that I am in favor basically of the provisions therein but my inquiry is as to the procedure, because under Rule II of our Rules, we have specified what are the organic committees and what are the matters that fall within their primary or secondary jurisdiction.

Here I have noticed that the matter of family rights — number one is the right of the parents to educate their children — was incorporated in the proposed article. And I suppose that is the justification for putting it under the sponsorship of the Committee on Human Resources. And then, the matter of the right of the family to a decent family living wage is I think the reason why it is supposed to be sponsored by the Committee on Social Justice. But my basic question is whether this procedure is authorized because under Rule II, it is specifically provided under Section 8 that:

Whenever a proposal covers subject matters falling within the jurisdiction of more than one committee, said proposal shall be referred to the committee within whose jurisdiction the principal subject matter falls. The committee which acquired original jurisdiction over any proposal shall be mainly responsible to submit a report to the Commission incorporating therein the appropriate recommendations of the other committee which has jurisdiction over the same proposal.

I find here that this is jointly sponsored by two committees. And even as a matter of pragmatic research — we have our resource materials here — we have difficulty finding out sometimes what were the antecedents. Did it come from the former Declaration of Principles? Did it come from the former Article on General Provisions? Did it come from the Article on Social Justice? But here we have a situation where a new article is now sponsored by two committees. And that was why yesterday I was asking how this could come about when there is no such mention in the Rules.

### **SUSPENSION OF SESSION**

THE PRESIDENT: The Chair will suspend the session for a few minutes in order to afford the Chair an opportunity to confer with the respective chairmen concerned.

It was 9:51 a.m.

### **RESUMPTION OF SESSION**

At 10:08 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: In connection with my parliamentary inquiry and it appearing that there will be a need for some discussions and conference between the chairmen of the two committees involved. I move that the matter be deferred until the next session and until they will have the opportunity to confer on the proper jurisdiction over the proposed article.

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

#### CONSIDERATION OF PROPOSED RESOLUTION NO. 496

(Article on National Economy and Patrimony)

Continuation

### PERIOD OF AMENDMENTS

MR. RAMA: Madam President, I move that we continue the consideration of Proposed Resolution No. 496 on the Article on National Economy and Patrimony.

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

May we request the honorable chairman and members of the committee to please occupy the front table now so that we may continue the consideration of the proposed Article on National Economy and Patrimony. We are in the process of settling amendments to the committee report. I believe we are through with Section 11.

MR. RAMA: Madam President, Commissioner Rosario Braid should be recognized. She was the one who had the last amendment yesterday.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Madam President, my amendment consists of a new provision.

THE PRESIDENT: What particular section?

MS. ROSARIO BRAID: After Section 11. It will be between Sections 11 and 12.

I have conferred with the chairman who is basically in agreement with the concept, and my amendment by addition is as follows: "RECOGNIZING THAT DEMOCRATIC COOPERATIVES ARE INSTRUMENTS FOR SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT, THE CONGRESS SHALL CREATE AN OFFICE WHICH SHALL TAKE CHARGE OF THE GROWTH AND EXPANSION OF COOPERATIVES."

There are 17 Commissioners who are coauthors of this amendment; namely, Commissioners Nollado, Natividad, Tan, Villacorta, Quesada, Sarmiento, Foz, Suarez, Tingson, Gascon, Azcuna, Davide, Rigos, Bennagen, Alonto, Nieva and Tadeo.

May I be allowed to explain my proposal?

THE PRESIDENT: Please proceed.

MS. ROSARIO BRAID: It is the creation of an office which shall take charge of the growth and expansion of cooperatives.

As we know, during the past years, the cooperatives scheme had been implemented with very little success by the Bureau of Cooperatives under the Ministry of Agriculture. But we are aware that several types of cooperatives have come up in various sectors as well as in industry. In addition to the usual credit, marketing, consumers,

producers, workers and service cooperatives, we now have fishery, electric, transport, media, and other emerging economic structures, as nucleus states. In short, Madam President, there is a felt need among many sectors, particularly in the private sector, that we do not have to conform with the usual structure that is mandated by the government now in terms of the pure type of cooperatives. In fact, we could have a combination and blend of cooperative principles in existing corporations. The problem, therefore, is found in the present structure.

According to the recommendations of the National Cooperatives Congress, a private multisectoral organization, during its last congress, cooperatives constitute a potential and practical vehicle for harnessing people power into a tangible and positive form for economic recovery and development. Cooperatives also constitute a long-range system for the social and economic amelioration of the masses and the democratization of the economy, with a more equitable distribution of economic wealth through better income for producers and greater buying power for the consumers.

We have of late been talking about concepts on decentralization and people's participation. Today, cooperatives are perhaps the most important mechanism for promoting the participation of people and for working towards self-management of groups.

In the past, cooperatives have suffered constraints such as negative image due to failures of past programs, such as the FACOMA and the Samahang Nayon, and the lack of public projection of successful cooperative ventures, such as those in the credit and producers sectors. Likewise, the lack of consistency in the promotion of cooperatives, the lack of orientation, experience, resources and manpower, the lack of appropriate legal mandate and a coordinating entity that could unify all cooperative efforts in both public and private sectors have hampered the growth of cooperatives in a country where bayanihan is a prevailing value. Perhaps, Congress could create a multisectoral office and can mandate where it could be situated and where it could function. My proposal, however, is that it be placed above a bureau level, with the following functions: it should encourage the growth of independent and voluntary cooperatives; it would assist in the registration and regulation of cooperatives, the formulation of cooperative development programs such as in the area of cooperative education and training, the coordination and implementation of such development programs; and to provide incentives and other forms of assistance to cooperatives. It could also prepare a cooperative code. The code should take into consideration the peculiarities of each type of cooperatives. As I said, it could be a blend of structures that could fit the prevailing Filipino values. I think the problem is that in the past, cooperatives were transferred with no adaptation. They were transferred from areas where they have been successful like Japan and Taiwan, but the conditions there are very different from the Philippines. This authority or office should work also towards the adaptation of cooperatives into the present sociocultural milieu.

So, I submit that we now have an infrastructure which is quite strong but which has to be strengthened. There are at present 23,000 cooperatives with 5 million members. There are 20,000 Samahang Nayon which could be restructured and strengthened. And there are 3,000 credit, consumers, producers and service cooperatives.

With this explanation, I hope the committee would consider this provision which is signed by 18 other fellow Commissioners.

Thank you.

MR. VILLEGAS: We would like to introduce some minor amendments to the amendment. Let me read the committee's suggestion: "RECOGNIZING THAT DEMOCRATIC COOPERATIVES ARE INSTRUMENTS FOR SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT, THE CONGRESS SHALL CREATE AN AGENCY WHICH WILL PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES." I think it is very important to emphasize what the proponent already said that the cooperative movement should be left very

much to individuals and groups in the private sector and what the State should do is to promote an atmosphere conducive to the growth of cooperatives. So that we think "PROMOTE" would be clearer than "TAKE CHARGE" because "TAKE CHARGE" might repeat the problems that were already enumerated. The government may keep thinking that it is the one that should take the lead in cooperative development.

MS. ROSARIO BRAID: The amendment is acceptable.

MR. VILLEGAS: So, we accept this amendment, as amended, by the committee.

MS. ROSARIO BRAID: Thank you.

THE PRESIDENT: Is the proposed amendment accepted without any change, Mr. Chairman?

MR. VILLEGAS: With the change that I indicated, Madam President. So, I will read the new text.

THE PRESIDENT: Yes, please.

MR. VILLEGAS: The amendment reads: "RECOGNIZING THAT DEMOCRATIC COOPERATIVES ARE INSTRUMENTS FOR SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT, THE CONGRESS SHALL CREATE AN AGENCY WHICH SHALL PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES."

MR. DE LOS REYES: Madam President.

THE PRESIDENT: Yes.

MR. DE LOS REYES: May I offer an amendment to that. Can we not delete the first part which says: "RECOGNIZING THAT DEMOCRATIC COOPERATIVES ARE INSTRUMENTS FOR SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT" and simply start from "CONGRESS SHALL CREATE AN AGENCY . . ." considering that this is already part of the explanation of the proponent? I think in constitution-making we do not place these preparatory statements in sections and articles.

MS. ROSARIO BRAID: I accept; I just wanted to emphasize the importance.

MR. VILLEGAS: Yes, it is accepted; anyway it is in the record. So the text shall be: "CONGRESS SHALL CREATE AN AGENCY WHICH SHALL PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES."

MR. PADILLA: Madam President.

THE PRESIDENT: We will eliminate "RECOGNIZING"?

MR. VILLEGAS: Yes, Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Do we have to create an agency? That might add to further bureaucracy. Why not just say "CONGRESS SHALL PROMOTE . . ." instead of mandating the creation of another agency?

THE PRESIDENT: What does Commissioner Rosario Braid say?

MS. ROSARIO BRAID: The various representatives of the cooperative sectors strongly feel that we should have an agency that should coordinate all the efforts of many agencies that are almost running helter-skelter. There is no coordination, and unless we have a body or an agency that shall handle this kind of coordination, I am afraid we will perpetuate the status quo where cooperatives will be left to tend for themselves without any legal

mandate. So this is the spirit of this proposal.

MR. PADILLA: Why not leave it to Congress whether it be necessary to create an additional agency? As the rephrasing goes, it mandates Congress to create another agency; and in my opinion, government should be as simple or as simplified as possible with less government bureaus, offices and agencies because sometimes there are so many agencies that are overlapping in their functions and even some people are perplexed to find which of the different government offices is the proper place or agency to go to. I have no objection to promoting and encouraging the cooperative movement. But should we mandate the Congress to create another agency? That is my inquiry, Madam President.

MS. ROSARIO BRAID: Madam President, if we do not explicitly state this, I am afraid we will go back to the situation where it will be the Bureau of Cooperatives under the Ministry of Agriculture that will handle the registration of all cooperatives. It is a very limited structure and this has hampered even the registration of private cooperatives which felt that the requirements are too rigid.

What I am saying is that all cooperatives have to be registered and they have to be registered under an agency that handles cooperatives and not the Securities and Exchange Commission. This agency that will be created will handle this but it should be placed not within the Ministry of Agriculture but as a separate agency which can also coordinate other efforts that are done in the Ministries of Agrarian Reform and Trade and Industry and in the many other private initiatives that are now working in this field. So I would maintain, Madam President, that if we do not specify this in the Charter, I am afraid that representatives of the cooperative movement will be again knocking at the halls of Congress wanting to be heard. We hope that we could attend to their problems through the fundamental law of the land.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: May I just address a query to the committee which has accepted the amendment? This agency sought to be created, would it be under the Office of the President under ministry level supervision or would it be an independent body?

MR. VILLEGAS: It would be under the Office of the President, as suggested in the Explanatory Note, and very much functioning like the National Economic and Development Authority but charged with the development of cooperatives in all phases of economic life. We agree with the observations of Commissioner Rosario Braid that cooperative development is so vital to the economic development of the Philippines. As we know, cooperatives have failed in the past because of a lack really of an atmosphere conducive to their growth. And I think this is a very welcome recommendation.

MR. MAAMBONG: Would it be a regular line agency, Madam President?

MR. VILLEGAS: Yes, it would be.

MR. MAAMBONG: Is this agency sought to be created the same as the agency which is now in operation in our government?

Let me explain. These cooperatives have been in existence way back in the early 1900s. I have here the Cooperative Marketing Law, Act No. 3425, as amended by Act No. 3872, RA 702, starting way back in 1927, and finally, we have P.D. No. 175 which was promulgated on April 14, 1973. So, this concept of cooperatives is alive and well in this country for a very long time. As a matter of fact, mechanisms for the creation of cooperatives have been published in several volumes of books. I was wondering if the concept in this Cooperative Law, which

is now in existence under P.D No. 175, as I said, promulgated on April 14, 1973, is the same concept that we are envisioning in the present formulation of this Constitution.

MS. ROSARIO BRAID: Madam President, I think that if such an office is mandated; it would review all existing laws. We are aware of the history of cooperatives in the country. It lacked the appropriate mandate which would locate it beyond the bureau structure in the government; the climate was not conducive to the growth of cooperatives. They became tools for politicians. As we know, the Samahang Nayon was used for that, and it never had enough leverage to really work towards the goals of cooperative development. Likewise, it hampered the growth of the cooperatives in the private sector which have refused to register with the Bureau of Cooperatives because the rules are so stringent and limiting. And because of this, we hope to really review all the cooperative laws and make them more responsive to present needs, like the need for greater private sector participation and to strengthen its organizational mechanisms.

MR. MAAMBONG: Madam President, I would like to inform the Commission that I am very much in favor of the cooperative movement. In fact, I notice that there are cooperatives sprouting all over the Philippines. And I think it is good for our country. We have electric cooperatives sewing us very well in the Province of Cebu. And I am very happy that the Commissioner is saying now that she will review these decrees and other laws on cooperatives that I have mentioned, and we will leave it at that. I understand the situation very well.

Thank you for the elucidation.

MS. ROSARIO BRAID: Yes.

MS. QUESADA: Madam President.

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

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: May I introduce an amendment to the accepted formulation by the committee? It will read: "CONGRESS SHALL CREATE AN AGENCY WHICH SHALL PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES WHICH SERVE AS INSTRUMENTS FOR SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT." I feel that this particular phrase need to be included because this is part of an article which should be recognized as such, that it is part of this consideration of the economic development and social justice.

MS. ROSARIO BRAID: Madam President, I will be very happy to have the phrases back again.

THE PRESIDENT: Is it acceptable? How about the committee?

MR. VILLEGAS: So, it is just a transposition.

MS. QUESADA: Yes, transposing the original prefatory statement which was eliminated by Commissioner de los Reyes.

MR. DE LOS REYES: Madam President, I have no objection to the transposition suggested by Commissioner Quesada.

THE PRESIDENT: What does the committee say?

MR. VILLEGAS: The committee accepts it.

THE PRESIDENT: The committee has accepted.

MS. QUESADA: Thank you.

MR. RAMA: Commissioner Colayco wants to be recognized.

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: One clarificatory question for Commissioner Rosario Braid. What is the principal purpose that is intended to be accomplished by this new office?

MS. ROSARIO BRAID: This new office will coordinate past efforts, streamline existing procedures which are really very limited, provide more training in professional development to cooperators and ensure that the private sector particularly becomes more actively involved, because the private sector, as a matter of fact, has been left out in many of the cooperative development efforts of the government.

MR. COLAYCO: But did I not hear the Commissioner say that there are about 25,000 cooperatives now existing?

MS. ROSARIO BRAID: Yes, there are 25,000.

MR. COLAYCO: And these are from the private sector?

MS. ROSARIO BRAID: No. Of the 23,000 cooperatives, 20,000 are Samahang Nayan, which are government cooperatives; only 3,000 are credit or producer or service cooperatives, which are both public and private. Perhaps, we do not have the accurate figures but I would expect that there are not more than 1,000 privately led or privately initiated cooperatives.

MR. COLAYCO: This progress and increase in the number of cooperatives took place under the old and existing laws.

MS. ROSARIO BRAID: Yes, Madam President.

MR. COLAYCO: I thank you.

MR. RODRIGO: Madam President.

MR. RAMA: Madam President, Commissioner Rodrigo would like to be recognized.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Just a question or two. Commissioner Rosario Braid mentioned the Bureau of Cooperatives. This is existing now. In case Congress creates this new agency, will the Bureau of Cooperatives continue to coexist with this agency or do we expect Congress to abolish the Bureau of Cooperatives?

MS. ROSARIO BRAID: I expect it would be phased out. This agency would take over most of its existing responsibilities. In other words, it would be an expanded Bureau of Cooperatives which would not fall within the present Ministry of Agriculture structure.

MR. RODRIGO: And, of course, we expect that the customary procedure will be followed, whereby the personnel of the Bureau of Cooperatives, as much as possible, will be absorbed in the new agency.

MS. ROSARIO BRAID: It may be so; yes.

MR. RODRIGO: Thank you.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: May I direct one or two questions to the distinguished proponent?

MS. ROSARIO BRAID: Certainly.

MR. GUINGONA: When the proponent refers to the establishment of this agency to promote the growth and viability of cooperatives, is she also thinking of the participation of this agency in the encouragement of the establishment of cooperatives?

MS. ROSARIO BRAID: Yes. Actually, that will be one of its most important functions.

MR. GUINGONA: And would this involve participation in assisting the cooperatives that will be established in obtaining financial assistance in the form of loans and other support?

MS. ROSARIO BRAID: Yes.

MR. GUINGONA: Thank you.

THE PRESIDENT: Are we ready now to vote on this proposed new section?

MR. VILLEGAS: May I read the new section, Madam President?

THE PRESIDENT: This will be Section 12 or still unnumbered?

MR. VILLEGAS: Still unnumbered, Madam President.

THE PRESIDENT: Please proceed.

MR. VILLEGAS: The new section reads: CONGRESS SHALL CREATE AN AGENCY WHICH SHALL PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES WHICH SHALL SERVE AS INSTRUMENTS FOR SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT."

THE PRESIDENT: Is there any objection to this particular proposed section which was read by the chairman and accepted by the committee?

MR. PADILLA: Yes, Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: My objection is regarding the creation of an additional agency.

### **VOTING**

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

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

The results show 29 votes in favor and 1 against; the proposed new section is approved.

MR. RAMA: Madam President, on the same Section 11, I ask that Commissioner Garcia be recognized.

THE PRESIDENT: Do we go back to Section 11? This was already approved yesterday.

MR. VILLEGAS: I think it is a new section.

THE PRESIDENT: Commissioner Garcia is recognized.

MR. GARCIA: Thank you, Madam President.

Yesterday there were two proposals that I made: the first regarding foreign loan policy, and the second regarding foreign trade policy. I discussed the proposals with the committee and they proposed a rewording of the foreign loan and also the foreign trade formulations. And I would also like to invite the other Members of the Commission, in case they have other suggestions regarding the two very important and critical areas of the national economy.

I would like to read the original proposal made yesterday and the suggestion which was made by the committee, in case others might wish to participate in the discussion of this particular amendment: "FOREIGN LOANS SHALL BE CONTRACTED ONLY TO FINANCE VITAL UNDERTAKINGS IN LINE WITH THE NATIONAL DEVELOPMENT PROGRAM. A CEILING ON FOREIGN BORROWING SHALL BE FIXED BY CONGRESS, AND FOREIGN LOANS OF THE PRIVATE SECTOR SHALL BE SUBJECT TO STATE REGULATION. CEILING ON INTEREST AND PRINCIPAL PAYMENTS AS A PERCENTAGE OF EXPORT SHALL BE IMPLEMENTED AND INFORMATION AS TO THE TERMS AND CONDITIONS OF FOREIGN LOANS OBTAINED BY THE GOVERNMENT SHALL BE MADE AVAILABLE TO THE PUBLIC."

The committee came back with a proposal regarding this same area on foreign loans which reads as follows:

"FOREIGN LOANS MAY ONLY BE INCURRED IN ACCORDANCE WITH LAW AND THE REGULATIONS OF THE MONETARY AUTHORITY. INFORMATION ON FOREIGN LOANS OBTAINED OR GUARANTEED BY THE GOVERNMENT SHALL BE AVAILABLE TO THE PUBLIC."

It can be observed that the committee's proposal takes into account two things: the regulation of foreign loans and public information — that the information regarding foreign loans be made public.

I will accept this proposal with the understanding that the section would treat as serious matters the nation's ability to pay and the fact that foreign borrowings are matters of interest to the majority, many of whom have to shoulder the actual payment. And, therefore, ceilings are being imposed on interest and principal payments so that the priority will be placed on economic development, unlike economies in the Third World which very often have to sacrifice the benefits, the goods, the productive growth of the economy for the sake of repayment and debt servicing.

So, that is the position I am taking regarding this particular amendment.

MR. MONSOD: We agree completely with the Commissioner's sentiment on this and, as a matter of fact, the present government is already implementing this kind of strategy and approach, as he well knows. We are only trying to say here that Congress will enact — they already have — a Foreign Borrowings Act, and put all the conditions under which loans may be incurred. We also added regulations of the monetary authority because this is the authority that imposes the economic criteria, the terms and conditions, and so on, on the loans.

With respect to linking it to the capacity to pay, that is the very essence of the regulations and the law on foreign borrowings, and we just wanted to say that there are many alternatives to implement that. We do not want to preempt Congress or the monetary authority on these alternatives, but we agree with the principles and we make it of record.

MR. GARCIA: Thank you, Madam President.

I simply would like to state this: The reason I believe this is important as a constitutional provision on the Article on National Economy and Patrimony is that this must be the guideline for all governments to come. This government we will not always have with us, so that no matter which government is here, the principle of a

country relying on itself more than on outside sources should be, I think, a very basic guideline for economic policy.

THE PRESIDENT: Are there any other comments on this?

So, is the proposed formulation by the committee acceptable to Commissioner Garcia?

MR. GARCIA: Yes, Madam President, I would like to invite the other Members of the Commission, if they have any other ideas, to strengthen this particular part.

THE PRESIDENT: In fact, the formulation of the committee already covers two principal things: regulation by the State and public information.

MR. GARCIA: Exactly, that is the intent of the original proposal.

THE PRESIDENT: Are there any other comments?

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: I just want an enlightenment from the committee. We have a Philippine Foreign Loan Guarantee Corporation created under P.D. No. 550, dated September 11, 1974. Will the committee enlighten me on the role of this Philippine Foreign Loan Guarantee Corporation because I am in the dark as to its role in the scheme of foreign loans?

Thank you, Madam President.

MR. MONSOD: It has quite a wide-ranging function. For example, it guarantees the performance of Philippine contractors abroad; it guarantees compliance with international agreements entered into by private enterprises. I understand that the functions and the scope of the PHILGUARANTEE are now being reviewed in this context because, as we well know, they were misused. The functions were misused and it guaranteed a lot of enterprises and a lot of contracts that were really crony contracts. Right now that institution is not operational in terms of additional or new guarantees because the entire institution is under review.

MR. MAAMBONG: In other words, this corporation will be affected in the totality of the provision that we are now formulating on foreign loans?

MR. MONSOD: Yes, Madam President.

MR. MAAMBONG: Thank you very much.

MR. RAMA: There are no more proponents, Madam President.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: May I ask for some clarification from the committee on the matter of foreign loans because in the Article on the Executive we also have a provision regarding the power of the President to contract foreign loans or to guarantee foreign loans, also with the prior concurrence of the Monetary Board. That is Section 20. I am making this inquiry not only in behalf of myself but of some Commissioners who would like to find out the Interdependence or the complementary application of this proposed section now under discussion because Section 20, under the Article on the Executive, says:

The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board and subject to such limitations as may be provided by law.

We understand that it may be a loan of the government itself for its use or a loan by a private borrower but with the guaranty of the government. In both cases, the concurrence of the Monetary Board is required subject, of course, to the quarterly reportorial duties under said section to Congress.

May we know what is the contemplation on foreign loans, that these can be incurred in accordance with law and the regulations of the monetary authority?

MR. MONSOD: Madam President, the section on the executive department refers to loans incurred or guaranteed by the President of the Philippines, whether for public or private purposes. The first sentence of this section refers to all loans, whether or not they are incurred by the President or by private companies. Actually this process is already in place right now. Private companies, even when they do not need a government guaranty, still have to comply with the provisions of the Foreign Borrowings Act. In effect, they cannot borrow once the ceiling is reached. And, secondly, they still have to go to the Central Bank in order to align the terms and conditions of the contracts to the guidelines of the Central Bank.

MR. REGALADO: So, even if it is a private corporation in the Philippines with no governmental intervention or exposure whatsoever, obtaining a foreign loan on its own undertakings and its own collaterals, does it still have to obtain the approval of the Monetary Board?

MR. MONSOD: Yes, Madam President, because even a private borrowing imposes foreign exchange burdens on the country as a whole. And, therefore, the present regulation includes the approval of the Monetary Board for all loans — foreign loans — whether incurred by the government or by the private sector. That is the present situation because there is a foreign exchange budget that the country must live with and any foreign loan imposes a burden on that foreign exchange budget.

MR. REGALADO: I recall, when we were discussing this in the Committee on the Executive with Deputy Governor Singson, his position was that the intervention of the Monetary Board and the subsequent reportorial requirements to Congress applied only to foreign loans which were contracted by the President for governmental guaranty and which would result in an increase in the foreign debt ceiling of the Philippine government.

MR. MONSOD: Yes, Madam President.

MR. REGALADO: But we were not made to understand that it applies even to a purely private transaction wherein the government has no exposure or liability whatsoever.

MR. MONSOD: Yes, Madam President. We have to distinguish between the first and the second sentence of the proposed article.

Under the first sentence, all foreign loans can only be incurred in accordance with law and regulated by the monetary authority. This applies to both public and private loans, guaranteed or not Guaranteed by the government.

The second sentence on information applies to loans obtained or guaranteed by the government which is in alignment with Section 20 of the Executive Department.

The reason we make this distinction is, in the case of private loans other than the general statistics on that, it might be unfair for the general public to have a full disclosure on what the Monetary Board requires of them because this could involve competitiveness of some companies.

MR. REGALADO: Under Section 20 of the Article on the Executive, there is a further requirement that the Monetary Board shall submit to the Congress a complete quarterly report of its decisions on applications for loans to be contracted or guaranteed by the government or government-owned and controlled corporation.

Does the reportorial requirement to Congress also apply with respect to purely private borrowings but which, although approved by the Monetary Board, are not guaranteed by government or government-owned or controlled corporations?

MR. MONSOD: The Monetary Board goes through all the loans.

We also added there, if the Commissioner will notice, the phrase "in accordance with law" because the data and the information to be made available should be consistent also with the principle of confidentiality on private information. But right now the statistics on our foreign debt are already being made public — how much we owe; how much is for commercial banks or for international organizations. They are classified according to function, source, terms and so on. These are already made available right now. And these include private debt.

MR. REGALADO: Under the Foreign Borrowings Act?

MR. MONSOD: Yes, Madam President.

MR. REGALADO: I am not aware that the reportorial requirements to Congress were included in the Foreign Borrowings Act. That was a proposed bill which was overtaken by the abolition of the Batasan.

MR. MONSOD: Yes.

MR. REGALADO: And which is now incorporated in Section 20 of the Article on the Executive.

MR. MONSOD: That is right, but this is being undertaken now by the Central Bank and the Philippine government and we are constitutionalizing the access to information.

MR. TINGSON: Madam President.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: May I ask two or three questions for my own information? Are foreign laws negotiated on the initiative of the President in consonance with the recommendation of, say, NEDA and also Congress as it takes into consideration the comprehensive and synchronized national economy and the needs of the country? Is this how it should be done?

MR. MONSOD: With respect to the loans obtained or guaranteed by the government, yes, Madam President. But with respect to private loans, they are negotiated by private companies. They are the ones who study their viability, and then bring these to the Central Bank for approval and harmonization with the rules and regulations of the Central Bank.

MR. TINGSON: I am referring to the big, big public debt or loans that we do get. These are initiated by the President primarily?

MR. MONSOD: Yes, Madam President.

MR. TINGSON: Thank you.

The second sentence reads: "INFORMATION ON FOREIGN LOANS OBTAINED OR GUARANTEED BY THE GOVERNMENT SHALL BE AVAILABLE TO THE PUBLIC." Does this mean that previous to this the statistics were not made available to the public at all, the \$26-billion debt that we have, for instance? Was that all

mysteriously negotiated? Is that what this means?

MR. MONSOD: Unfortunately, yes, Madam President.

MR. TINGSON: Thank you very much.

MS. QUESADA: Madam President.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: I would like to bring to the attention of the Commissioner that during the discussion on the Article on the Executive, we put into the record that Congress would conduct public hearings whenever the Monetary Board goes into such transactions. I remember it was Commissioner Natividad who cited the need for public hearing which the Congress should call before such foreign loans are entered into by the government. So, this information would be obtained when such public hearings are conducted by Congress. I just want to put that on record while we are discussing foreign loans.

THE PRESIDENT: Thank you.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: It is time to have a formal approval of this unnumbered section regarding foreign loans. May I ask that we submit it to a vote.

THE PRESIDENT: May we request Commissioner Garcia to read the new formula or new section?

MR. GARCIA: The proposed section will read: "FOREIGN LOANS MAY ONLY BE INCURRED IN ACCORDANCE WITH LAW AND THE REGULATIONS OF THE MONETARY AUTHORITY. INFORMATION ON FOREIGN LOANS OBTAINED OR GUARANTEED BY THE GOVERNMENT SHALL BE AVAILABLE TO THE PUBLIC."

### VOTING

THE PRESIDENT: As many as are in favor of this new section which has been accepted by the committee, please raise their hand. (Several Members raised their hand.)

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

The results show 33 votes in favor and none against; the proposed new section is approved.

MR. GARCIA: Madam President, yesterday, if the Chair recalls, there was a discussion also on trade policy. I would like to revise the proposal I made regarding trade policy. And there are two other separate sections following the trade policy proposal which I have distributed to the body. So, if I may, I would like to read the paragraph.

THE PRESIDENT: The Commissioner may proceed.

MR. GARCIA: It will read: "THE STATE SHALL ADOPT A TRADE POLICY BASED ON MUTUALLY BENEFICIAL EXCHANGE OF GOODS AND SERVICES. TOWARDS THIS END, THE STATE SHALL ENDEAVOR AT ALL TIMES TO REALIZE FAVORABLE TERMS OF TRADE BY MINIMIZING OVER RELIANCE ON THE EXPORT OF RAW MATERIALS AND ON THE IMPORT OF UNWANTED SURPLUS PRODUCTION AND INAPPROPRIATE TECHNOLOGIES."

This is the first section of this proposal.

THE PRESIDENT: Will this be another section?

MR. GARCIA: Yes, Madam President.

THE PRESIDENT: A proposed section.

MR. GARCIA: I would like to read additional sections regarding the same thing. I understand there are others who have made proposals which we must try to collate.

MR. MONSOD: Madam President.

THE PRESIDENT: We just want to say that the committee has a proposed amendment, which does not go into details of economic policy, that incorporates the ideas of Commissioner Garcia. Our proposal is: "THE STATE SHALL PROMOTE A TRADE POLICY THAT SERVES THE GENERAL WELFARE, IS OPEN TO ALL COUNTRIES ON THE BASIS OF EQUALITY AND RECIPROCITY AND UTILIZES ALL FORMS AND ARRANGEMENTS OF EXCHANGE."

Madam President, we would like to request a two-minute recess so that we can discuss and reconcile these proposals.

### **SUSPENSION OF SESSION**

THE PRESIDENT: The session is suspended.

It was 10:55 a.m.

### **RESUMPTION OF SESSION**

At 11:21 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

The Floor Leader is recognized.

MR. RAMA: Madam President, I ask that the committee be recognized.

MR. VILLEGAS: Commissioner Monsod will read the new section on trade policy that the committee has accepted.

MR. MONSOD: Madam President, I just want to say that it is proper to have a sentence or two on trade policy because we are silent about this matter. So we propose to say: "THE STATE SHALL PROMOTE A TRADE POLICY THAT SERVES THE GENERAL WELFARE AND UTILIZES ALL FORMS AND ARRANGEMENTS OF EXCHANGE ON THE BASIS OF EQUALITY AND RECIPROCITY."

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: For our information, may we request the committee to clarify us on the intention of the word "FORMS" in the phrase "ALL FORMS AND ARRANGEMENTS OF EXCHANGE."

MR. MONSOD: Here are some examples of "FORMS AND ARRANGEMENTS OF EXCHANGE." Other than normal trade would be countertrade, common market arrangements and multicountry arrangements. In some

cases, some countries which may be producing the same product get together to try to improve their terms of trade.

MS. AQUINO: So these are alternative modalities of trade that we can adopt according to this formula.

MR. MONSOD: Yes. Those options would be available both to the executive department of the government and to the legislature.

MS. AQUINO: Madam President, how about this concept of general welfare? Will this contemplate likewise the possibility of a policy that will prohibit the use of the Philippine market as a dumping ground for unwanted surplus production or also disallow obsolete, inappropriate and backward technology? Is that contemplated?

MR. MONSOD: Yes, and that is also covered by Section 1.

MS. AQUINO: And the "GENERAL WELFARE"?

MR. MONSOD: Yes, that would constitute unfair competition and unfair trade practice.

MS. AQUINO: Is it possible likewise to interpret "GENERAL WELFARE" as a policy of minimizing over-reliance on the export of raw materials?

MR. MONSOD: We think that what we should really promote is self-reliance.

MS. AQUINO: Yes, thank you.

MR. MONSOD: May I also add that "GENERAL WELFARE" includes national health, national safety and national security.

MR. BENNAGEN: Madam President.

THE PRESIDENT: Commissioner Bennagen is recognized.

MR. BENNAGEN: Will the committee please explain the contemplation on the use of "EQUALITY AND RECIPROCITY"? I ask that because "RECIPROCITY" could mean nothing more than exchange, unfair or fair, and other forms.

MR. MONSOD: Madam President, we have to read "EQUALITY AND RECIPROCITY" together.

MR. BENNAGEN: Could we just say "MUTUAL BENEFIT" to take care of the two?

MR. MONSOD: Actually, when we say "MUTUAL BENEFIT," we have to have another subject. And here we are talking about "TRADE POLICY," not trade between nations.

MR. BENNAGEN: But we will be trading with other nations and when we do that, the basis would be in terms of mutual benefit.

MR. MONSOD: Madam President, it means the same, and we prefer "EQUALITY AND RECIPROCITY."

MR. BENGZON: Madam President, may we call for a vote now?

MS. QUESADA: Madam President, may we still be clarified on some of the terms used here, because I feel that we have to explain these to people, and unless all of us are clear on what are the meanings behind words, then we might still be confused when we try to explain these to others. Earlier I learned that the word "SELF-RELIANCE" was included as part of the basis of arrangements of trade transactions. What happened to the word "SELF-RELIANCE"?

MR. MONSOD: It is an inappropriate term when talking about trade. There is no such thing as a "self-reliant" trade. Conceptually, Madam President, there is no such thing as a "self-reliant" trade. When we are trading, it is precisely because we need to exchange goods.

MS. QUESADA: But why is there a big objection to the term "mutually beneficial trade relationship"?

MR. MONSOD: There is no big objection, Madam President. All we are saying is that they mean the same thing, and the committee prefers the present wording.

MR. VILLEGAS: And the use of the term is ungrammatical if we are referring to all countries of the world.

MS. QUESADA: But is it not an objective in our trade policy that will benefit both parties?

MR. VILLEGAS: Which is expressed by "EQUALITY" and "RECIPROCITY."

MS. QUESADA: Is there going to be equality between unequals?

MR. VILLEGAS: There is always equality when it comes to our defending precisely our terms of trade against others.

MR. MONSOD: That is also the same idea in "mutual benefits," is it not?

MS. QUESADA: At least both parties are benefited by this kind of trade transactions.

MR. VILLEGAS: I think the phrase "GENERAL WELFARE" takes care of that.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

Fellow Commissioners, essentially I am only a lawyer; I am not an economist, and I appreciate the efforts of the committee in formulating economic principles for the Commission. I just would like to be comfortable about this particular section. Are we saying that the formulation of these trade policy principles for the Philippines is beneficial to the Filipinos?

MR. MONSOD: Yes, that is the meaning of "GENERAL WELFARE." It serves the general welfare — whether one is a producer, a consumer, a farmer or an industrialist. That is the meaning of "GENERAL WELFARE."

MR. SUAREZ: In other words, we are trying to protect both the domestic industries and also the domestic consumers?

MR. MONSOD: Yes.

MR. SUAREZ: Thank you very much.

MR. SARMIENTO: Madam President.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: I would like to address one question to the committee. Like Commissioner Suarez, I am not an economist but a lawyer, so I would like to be clarified on certain economic terms. Commissioner Monsod said that the phrase "THAT SERVES THE GENERAL WELFARE" would cover protection of Filipino enterprises against unfair foreign competition. Am I correct?

MR. MONSOD: I said "unfair foreign competition and unfair trade practices," which is in Section 1.

MR. SARMIENTO: So, this phrase covers Section 1 (2).

MR. MONSOD: It is consistent with Section 1.

MR. SARMIENTO: Madam President, with the kind indulgence of my fellow Commissioners, mine will be an unpopular move. I would like to request a deferment of our voting on this section. There are terms which to me need further clarification.

MR. MONSOD: Madam President, the committee would like to request that we take a vote on this section now.

MR. GARCIA: Madam President, before we take a vote, may I further clarify this phrase which I would like to add? Could we say "THE STATE SHALL PROMOTE A TRADE POLICY THAT SERVES THE GENERAL WELFARE, PROTECTS DOMESTIC ENTERPRISES, AND UTILIZES ALL FORMS AND ARRANGEMENTS OF EXCHANGE ON THE BASIS OF EQUALITY AND RECIPROCITY"?

MR. MONSOD: Madam President, the committee regrets it cannot accept the amendment because it is already covered by Section 1.

MR. GARCIA: Madam President, the phrase that was added here is to explicate that foreign trade must not, in any way, harm, hurt, diminish our efforts at industrialization.

MR. MONSOD: That is already covered in Section 1 which provides that the State shall protect Filipino enterprises against unfair foreign competition and trade practices and promote industries that are competitive in both domestic and foreign markets.

MR. GARCIA: Madam President, could we, therefore, seek deferment? I would like to join Commissioner Sarmiento.

MR. VILLEGAS: Madam President, we would insist on taking a vote right now.

MS. QUESADA: Madam President, I also would like to register a request that we defer. This is a very important provision, and I suppose that there are other sections that we can discuss without us being bogged down in this deferment.

MR. MONSOD: May we have a ruling from the Chair, Madam President?

### VOTING

THE PRESIDENT: The Chair rules that what we will submit to a vote is whether to defer or not because there is a motion to defer and also a motion to proceed to a vote.

As many as are in favor of deferring action on this proposed section on trade policy, please raise their hand. (Few Members raised their hand.)

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

The results show 13 votes in favor and 21 against; the motion to defer action is lost.

Let us proceed to vote on these few sections, and may we request Commissioner Villegas to read the committee amendment.

MR. VILLEGAS: "THE STATE SHALL PROMOTE A TRADE POLICY THAT SERVES THE GENERAL WELFARE AND UTILIZES ALL FORMS AND ARRANGEMENTS OF EXCHANGE ON THE BASIS OF EQUALITY AND RECIPROCITY."

MR. SARMIENTO: Madam President, before we vote, may I speak against this amendment?

THE PRESIDENT: Please proceed.

MR. SARMIENTO: To me, this amendment further strengthens Section 1 (2). In the words of Commissioner Monsod, this should be related or connected with Section 1, particularly on protecting Filipino enterprises against unfair foreign competition and the promotion of industries that are competitive in domestic and foreign markets.

Madam President, I will not repeat the arguments we raised against Section 1 (2). On that basis, I object vehemently to this proposed amendment.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: It might assuage the apprehension of some of our colleagues if we put on record that the polar star in expounding the concept of general welfare in foreign trade includes, among others, 1) the general concept of police power which would contemplate national health, ecology, balance and order; the specific and definitive economic policy towards the drift of self-reliance, as previously mentioned, might present a conceptual imbalance if we put it in the formula so let it be put on record to be that; 2) minimization of over-reliance on export of raw materials; 3) prohibition of the use of the Philippine market as a dumping ground for unwanted surplus production and inappropriate and obsolete technology; and 4) protection of local enterprise.

MR. MONSOD: And that is against unfair competition and trade practice.

MR. BENGZON: And by agreement, we mean that it means all that.

### VOTING

THE PRESIDENT: As many as are in favor of the proposed amendment of the committee which has been read by the honorable chairman, please raise their hand. (Several Members raised their hand.)

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

As many as are abstaining, please raise their hand. (Two Members raised their hand.)

The results show 31 votes in favor, 2 against and 2 abstentions; the amendment is approved.

MR. RAMA: Madam President, I ask that Commissioner Aquino be recognized to amend Section 12.

THE PRESIDENT: Commissioner Aquino is recognized.

MR. BENGZON: We are in Section 12 of the draft.

MS. AQUINO: Do we proceed according to the draft? I was informed that there is a second paragraph.

MR. BENGZON: Yes. Let us proceed according to the draft so we will not get lost.

MS. AQUINO: In that case, Madam President, I propose to delete from lines 1 and 2 of Section 12 the phrase "the common good and the people's security against external aggression" and in its place to use the phrase "NATIONAL WELFARE OR DEFENSE." In other words, I propose a reversion to the formulation in the 1935 and 1973 Constitutions.

THE PRESIDENT: May we ask Commissioner Aquino to repeat her proposal.

MS. AQUINO: If the amendment is accepted, the section will now read: "The State may, in the interest of

NATIONAL WELFARE OR DEFENSE, establish and operate vital industries, and upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the government."

Madam President, in this section, the right of eminent domain is utilized by the Constitution for a purpose and objective distinct from those recognized under the inherent right of the State to expropriate private property. Now, the phrase "NATIONAL WELFARE OR DEFENSE" as it appears in the 1935 and 1973 Constitutions has already acquired a settled usage, such that it has become well-established in law that the phrase "NATIONAL WELFARE OR DEFENSE" is beyond the competence of judicial interpretation. In other words, "NATIONAL WELFARE OR DEFENSES" is entirely a political question left to the wisdom of the executive and the legislative for that matter. I am afraid that if we change the formulation as it is being proposed by the committee now, it might disturb the settled usage and might even allow the possibility of judicial interpretation of these concepts.

THE PRESIDENT: What does the committee say?

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

THE PRESIDENT: Commissioner Bennagen is recognized.

MR. BENNAGEN: Madam President, just a little footnote to that. I was the one who suggested that we use "PEOPLE'S SECURITY" instead because during the discussion, something came out about the use of "NATIONAL SECURITY" and I argued that "NATIONAL SECURITY" has been so used to refer to the security of a few. But with the explanation, I think the committee is accepting the use of "NATIONAL DEFENSE" instead, with the understanding that what we are trying to protect is the security of the people and not a few individuals or families.

MS. AQUINO: Yes.

MR. BENNAGEN: Thank you, Madam President.

MR. CONCEPCION: Madam President.

THE PRESIDENT: Commissioner Concepcion is recognized.

MR. CONCEPCION: The Article on the Judiciary has determined that nothing involving abuse of discretion amounting to lack or excess of jurisdiction is beyond judicial review. I cannot accept the interpretation that anything related to national defense or national security is beyond the jurisdiction of the courts. That was always the main argument of Marcos — national interest, national welfare, national security, national defense. That was the reason Section 1 of the Article on the Judiciary specifies that judicial power includes the power to settle all controversies involving abuse of discretion amounting to lack of jurisdiction or excess of jurisdiction. The judicial power is meant to be a check against all powers of the government without exception, except that the judicial power must be exercised within the limits confined thereto. A matter of national defense, national interest, national welfare is not necessarily beyond the jurisdiction of a judicial power.

MS. AQUINO: Madam President.

THE PRESIDENT: May we hear Commissioner Suarez first?

MR. SUAREZ: Thank you, Madam President.

I was about to speak up, little realizing that the former Chief Justice had already picked up the issue. Indeed, it is rather alarming to attach to the use of the phrase "NATIONAL WELFARE OR DEFENSE" the interpretation that this is beyond the power of judicial review because under the Article on the Judiciary, we saw to it that the

Supreme Court is vested with the power to review these arbitrary exercises in the event there is abuse of discretion amounting to lack or excess of jurisdiction.

So, if that is the interpretation to be attached to the utilization of the phrase "NATIONAL WELFARE OR DEFENSE," I would be compelled to object to the insertion or substitution of this phrase, Madam President.

THE PRESIDENT: What does Commissioner Aquino say?

MS. AQUINO: With all due deference to Commissioner Concepcion, I think I was misinterpreted. My clarification was to affirm that judicial review will lie on the matter of arbitrariness, but not on the wisdom. It was well-settled in the case of *City of Baguio vs. NAWASA* where the ruling was that the courts can inquire into the arbitrariness of the act which is the proper province of judicial review, but not the wisdom of the act. I do not see any issue on this point, Madam President.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: With regard to the proposal of Commissioner Aquino to restore the term "NATIONAL WELFARE OR DEFENSE" as it was under Section 6, Article XIV of the 1973 Constitution, I speak in support of the same because the phrase, in the light of the provision here on just compensation, was construed by the Supreme Court, for purposes of just compensation, as equivalent to the term "public use." In the case of *Republic of the Philippines vs. Philippine Long Distance Telephone Company* in the Supreme Court Reports Annotated, Vol. 26, page 620, the Supreme Court stated that the term "NATIONAL WELFARE OR DEFENSE" was the proper term because in effect, it was equivalent to "public use" and justifies the just compensation mentioned in Section 12.

THE PRESIDENT: Has this been accepted by the committee?

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

MR. SUAREZ: Madam President, before we vote, it is the understanding that the use of the phrase "NATIONAL WELFARE OR DEFENSE" is in accordance with the interpretation clarified by Commissioner Aquino.

MR. VILLEGAS: Yes, that is the interpretation.

MR. SUAREZ: Thank you.

## VOTING

THE PRESIDENT: As many as are in favor of this proposed amendment of Commissioner Aquino on lines 1 and 2, Section 12, please raise their hand. (Several Members raised their hand.)

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

The results show 35 votes in favor and none against; the proposed amendment is approved.

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

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Madam President, that was the very same amendment that Commissioner Aquino already proposed, and that is why I spoke in support of it — the restoration of the phrase "NATIONAL WELFARE OR DEFENSE."

THE PRESIDENT: So then, for the record, will Commissioner Aquino have any objection to have Commissioner Regalado as a cosponsor? (Silence)

Can we now approve the whole Section 12?

MR. RAMA: Yes, Madam President. There are no more proponents of amendments, so we can vote on Section 12.

THE PRESIDENT: May we ask the chairman to read Section 12 with the amendments.

MR. VILLEGAS: "The State may, in the interest of NATIONAL WELFARE OR DEFENSE, establish and operate vital industries and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the government."

### VOTING

THE PRESIDENT: As many as are in favor of Section 12, as amended, please raise their hand. (Several Members raised their hand.)

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

The results show 35 votes in favor and none against; Section 12, as amended, is approved.

MR. RAMA: Madam President, I ask that Commissioner Jamir be recognized on Section 13.

THE PRESIDENT: Commissioner Jamir is recognized.

MR. JAMIR: Madam President, my proposed amendment to Section 13 is on line 7. Between the words "may" and "temporarily," insert a comma (,) and the words "UNDER REASONABLE TERMS PRESCRIBED BY IT" and another comma (,). The entire section will now read: "In times of national emergency, when the common good so requires, the State may, UNDER REASONABLE TERMS PRESCRIBED BY IT, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest."

MR. VILLEGAS: The amendment is accepted by the committee Madam President.

MR. JAMIR: Thank you.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Madam President, may I know what is meant by "IT" in the phrase "PRESCRIBED BY IT"?

MR. JAMIR: I refer to the State. The State will determine the reasonable terms upon which it will take public utilities temporarily.

MR. RODRIGO: But how will the State act? Will it be through the Congress and the President?

MR. JAMIR: I suppose it will be through an appropriate agency of the government.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: May we just clear up a few matters with my distinguished colleague from Cavite?

MR. JAMIR: I will try to do so.

MR. SUAREZ: Under Section 13, what is contemplated is a time of national emergency, with emphasis on national emergency, and that is the character of the exercise of the power.

MR. JAMIR: That is correct.

MR. SUAREZ: Does not the Gentleman believe that if we insert the phrase "UNDER REASONABLE TERMS PRESCRIBED BY IT," this might serve as a limitation rather than a free exercise of this authority demanded under a state of national emergency? It might enable the privately owned public utility or business affected to take up this matter with the judicial authorities and claim that the terms are not reasonable and, therefore, they can successfully resist the exercise of this authority.

MR. JAMIR: I do not think so, because under my proposal the State can temporarily take over and then prescribe the terms under which it will take over. The owner may contest that later on but cannot prevent the takeover during the period of emergency.

MR. SUAREZ: That is exactly what I am trying to say. Therefore, as envisioned by the Commissioner, the phrase "UNDER REASONABLE TERMS PRESCRIBED BY IT" would not serve to stop the State from taking over the operation of any privately owned public utility or business.

MR. JAMIR: That is correct.

MR. SUAREZ: Thank you for the clarification.

MR. JAMIR: Thank you.

MR. BENGZON: There are no more proponents.

THE PRESIDENT: Is the proposed amendment accepted by the committee?

MR. VILLEGAS: Yes, Madam President.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Just one question. The section uses the phrase ". . . public utility for business affected with public interest." Just what is meant now by "business affected with public interest"?

MR. VILLEGAS: It means business that has a lot of repercussions on the public, whether it be public utility or other businesses which may partake of the characteristics of public utility but which is not yet considered public utility.

FR. BERNAS: The phrase seems to have a history in jurisprudence. In early American jurisprudence, business affected with public interest was a very limited concept. They included such things as railroads and public utilities, lotteries, billiard parlors, liquor stores, ferries, wharves, carriers, practically equivalent to public utilities. In subsequent decisions, however, this very limited concept of public utilities has been expanded so that in the later decisions it was said that the notion that the business is clothed with the public interest and has been devoted to public use is a little more than fiction intended to beautify what is disagreeable to the sufferers. In other words, business affected with public interest is any business that is subject to police power which really means any business.

So, are we saying here that the State may take over any business when the State thinks that it is necessary?

MR. VILLEGAS: I do not think that is the interpretation of the committee. But I think any business that has the

characteristics of a public utility, which concerns a mass-based consumer group, would be included under the phrase ". . . business affected with public interest." Entire business operations which are not treated as public utilities do not fall under the public utility regulation, but may already be so massive in terms of its consumption, especially as regards the low-income groups, that they should also be subject of the specific section.

FR. BERNAS: So, is this intended to be a limited concept?

MR. VILLEGAS: It is.

FR. BERNAS: Thank you.

MR. TINGSON: Madam President, may I ask one question?

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: May I ask the committee if "national emergency" refers to military national emergency or could this be economic emergency?

MR. VILLEGAS: Yes, it could refer to both military or economic dislocations.

MR. TINGSON: Thank you very much.

MR. RAMA: Madam President, Commissioner Davide seeks to be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Madam President, this is a very simple amendment to Section 13, lines 6 and 7. I propose to change the phrase "the common good" with "PUBLIC INTEREST."

THE PRESIDENT: On line 9, there is also the phrase "public interest." Is this all right?

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

MR. BENGZON: When we say "PUBLIC INTEREST," we really mean the common good, do we not?

MR. VILLEGAS: Yes.

MR. DAVIDE: This is even less broader than "common good" because if the basis will be "common good," it might be an undue restriction.

MR. VILLEGAS: The amendment is accepted.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: Madam President, I have some perfecting amendments. I propose to delete the sentence beginning with the word "Such," and on line 7, after the amendment of Commissioner Jamir, insert the phrase "FOR THE DURATION OF THE EMERGENCY." The section, as amended, would now read: "In times of national emergency, when the PUBLIC INTEREST so requires, the State may FOR THE DURATION OF THE EMERGENCY AND UNDER REASONABLE TERMS PRESCRIBED BY IT take over or direct the operation . . ."

THE PRESIDENT: Is the amendment accepted?

MR. VILLEGAS: It is accepted, Madam President.

THE PRESIDENT: So, will the chairman please read now Section 13 with the proposed amendments so that we can submit the entire section to a vote?

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: May I just say that the Davide amendment which was accepted by the committee restores the term "public interest" as provided in Section 7 of the 1973 Constitution. Similarly, the term "public utility or business affected with public interest" is the same expression in said Section 7 of the 1973 Constitution. Now, the term "public interest" appears on line 7 and again on line 9. Probably, the reason the committee changed the first "public interest" to "common good" is to distinguish it from the "public interest" in the phrase "or business affected with public interest." I am calling attention to the use of the term "public interest" twice but, perhaps, not exactly synonymous.

MR. VILLEGAS: In order to avoid a repetition, would the phrase "GENERAL WELFARE" on line 7 be acceptable to Commissioner Davide, since there is a "GENERAL WELFARE" clause?

MR. DAVIDE: It can be, but I should only like to state for the record that even in the 1973 Constitution, the words "public interest" appears twice.

MR. VILLEGAS: Yes.

MR. DAVIDE: It was precisely because of the different meaning given to either.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Madam President, just one final clarificatory question. Does this section have anything to do with the power of sequestration?

MR. VILLEGAS: We do not think so, Madam President.

FR. BERNAS: Does this not authorize sequestration?

MR. BENGZON: No.

MR. VILLEGAS: No, that is covered by another section, if ever, in the Transitory Provisions.

MR. TINGSON: Madam President.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: May I suggest to the committee that we delete the phrase "when the common good so requires" or "when the PUBLIC INTEREST so requires," so that the section will read: "In times of national emergency, the State may temporarily take over or direct the operation of any privately owned public utility or business affected with public interest." The reason for this is that national emergency would naturally also mean that the interest of the public is at stake. So, in order to avoid repeating those two phrases, I move that we delete said phrase.

MR. MONSOD: Madam President, we are sorry we cannot accept the proposed amendment.

THE PRESIDENT: Does the Gentleman insist on his amendment?

MR. BENGZON: We insist, Madam President.

THE PRESIDENT: I mean, does Commissioner Tingson insist on his proposed amendment?

MR. TINGSON: I wanted the committee to accept, Madam President.

MR. BENGZON: No, we are not accepting, Madam President.

THE PRESIDENT: The committee does not accept.

MR. TINGSON: Therefore, I withdraw my proposed amendment.

THE PRESIDENT: Thank you.

MR. VILLEGAS: Thank you.

MR. RAMA: We are now ready to vote, Madam President.

THE PRESIDENT: Will the chairman please read Section 13, embodying the proposed amendments of Commissioners Davide, Aquino and others.

MR. VILLEGAS: "In times of national emergency, when the PUBLIC INTEREST so requires, the State may, FOR THE DURATION OF THE EMERGENCY AND UNDER REASONABLE TERMS PRESCRIBED BY IT, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest."

### VOTING

THE PRESIDENT: As many as are in favor of Section 13, as amended, please raise their hand. (Several Members raised their hand.)

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

The results show 38 votes in favor and none against; Section 13, as amended, is approved.

MR. RAMA: Madam President, I ask that we approve Section 14, since nobody has registered to comment or to amend said section.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: I would like to seek clarification on this which, if satisfactorily answered, may avoid any further amendment. The progenitor of this is Section 2 of Article XIV of the 1973 Constitution which provided that "The State shall regulate or prohibit private monopolies." May I know from the committee why the word "private" was deleted here, so that this now refers to all kinds of monopolies, public or private, as the case may be?

MR. VILLEGAS: Madam President, it has been the experience that some government monopolies, like the National Power Corporation, should also be regulated by the equivalent regulatory body of the government. So, all monopolies, whether they be run by the private sector or by the government, should be subject to regulation for the good of the consumers.

MR. REGALADO: Thank you.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: I have just one clarification to make, Madam President. During the period of interpellations, the committee answered my query to the effect that the words "monopolies," "restraint of trade or unfair competition" are to be understood according to their definition in the Revised Penal Code. Is the answer of the committee to this query still the same?

MR. VILLEGAS: Yes.

MR. RAMA: We are ready to vote, Madam President.

THE PRESIDENT: Will the chairman please read Section 14.

MR. VILLEGAS: "The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed."

### VOTING

THE PRESIDENT: As many as are in favor of Section 14, please raise their hand. (Several Members raised their hand.)

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

The results show 39 votes in favor and none against; Section 14 is approved.

MR. RAMA: Madam President, I ask that Commissioner Jamir be recognized to propose an amendment to Section 15.

THE PRESIDENT: Commissioner Jamir is recognized.

MR. JAMIR: Madam President, my proposed amendment on lines 20 and 21 is to delete the phrase "two-thirds of whose voting stock or controlling interest," and instead substitute the words "SIXTY PERCENT OF WHOSE CAPITAL" so that the sentence will read: "No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least SIXTY PERCENT OF WHOSE CAPITAL is owned by such citizens."

MR. VILLEGAS: Madam President, the committee is divided on this specific issue and I would like to have the body vote on it.

THE PRESIDENT: Does Commissioner Jamir desire to explain his proposed amendment?

MR. ROMULO: Madam President.

THE PRESIDENT: Commissioner Romulo is recognized.

MR. ROMULO: After Commissioner Jamir, I was one of those in the committee who voted for a 60-40 ratio, so I would support the amendment, Madam President.

THE PRESIDENT: Will Commissioner Jamir first explain?

MR. JAMIR: Yes, in this Article on National Economy and Patrimony, there were two previous sections in which we fixed the Filipino equity to 60 percent as against 40 percent for foreigners. It is only in this Section 15 with respect to public utilities that the committee proposal was increased to two-thirds. I think it would be better to harmonize this provision by providing that even in the case of public utilities, the minimum equity for Filipino citizens should be 60 percent. At any rate, I understand that there are utility companies in the Philippines which are not in favor of two-thirds because they would be compelled to pay off foreign equity holders upon the ratification of this Constitution, and that amounts to quite a sizeable sum of money. I understand that it is about P1.2 billion and their idea is that instead of paying off foreign equity holders, why do we not keep the money here and invest it in some other profitable undertaking for the welfare of the Filipinos? That is my reason for this amendment.

MR. ROMULO: Madam President.

THE PRESIDENT: Commissioner Romulo is recognized.

MR. ROMULO: My reason for supporting the amendment is based on the discussions I have had with representatives of the Filipino majority owners of the international record carriers, and the subsequent memoranda they submitted to me. I would, therefore, like to share their views with the Commission inasmuch as it seems to me they are the ones who will be most affected.

Their first point is that they reject the argument that the international telecommunications industry is controlled by their foreign partners because such a proposition is based on the gratuitous assumption that they are either dummies or spineless. They make the further point that if they are dummies and spineless, giving them another six and two-thirds percent will not remedy the situation. In any case, they point to the fact that the fourth member of the international record carrier, Capitol Wireless, is wholly owned by Filipinos. So, they reject the basic premise that the industry is controlled by foreigners.

If I may read from a letter sent by the Philippine Global Communications, signed by all the Filipino directors of the company:

We wish to emphasize that management is not in the hands of foreign investors. No management contract exists. The positions of the President and of the Senior Vice-Presidents in charge of finance and treasury, engineering and planning, and marketing are all held by Filipinos. In PhilCom, there is only one non-Filipino and his office principally relates to the technical aspects of the operations of our firm.

It might be relevant at this point to mention who are the Filipino stockholders of these companies so we may better judge if these Filipino stockholders are mere dummies. In PhilCom, it is the Siguion-Reyna Group, the Yuchengco Group and the PhilCom employees. In Globe Mackay, it is the Ayala Group, the Globe employees and the public through the stock exchange. As I understand it, not from firsthand, with regard to Eastern Communications, the 60 percent is presently under the control of the PCGG.

Their second point is that under the Corporation Code, the management and control of a corporation is vested in the board of directors, not in the officers but in the board of directors. The officers are only agents of the board. And they believe that with 60 percent of the equity, the Filipino majority stockholders undeniably control the board. Only on important corporate acts can the 40-percent foreign equity exercise a veto, such as in the case of increases or decreases of capital stock, sale of substantially all of the assets and voluntary dissolution of the corporation. Again, I will quote from the memorandum of PhilCom:

These are the only areas where the ratification by the shareholders representing at least two-thirds of the outstanding capital stock is required. If our country, however, expects to invite foreign investors to come in and remain, such foreign investors should be given the minimal veto power vis a-vis the major corporate acts abovementioned. Any investor, irrespective of race or nationality, is entitled to at least this minimum say in the protection of his investment.

Their third point, Madam President, is that their partnership has worked well and they prefer that their foreign partners own a substantial minority position because their input and their interest to protect the business will be commensurate to their investment stake. In this regard, the Ayala Group has submitted the following memorandum and I would like to quote from it with the indulgence of the group:

Considering the foregoing circumstances, we find no compelling reasons to disturb the equity participation of Filipinos in Globe Mackay. In fact, we honestly believe that we need our foreign partners now more than ever during this time when international telecommunication is undergoing fast and comprehensive modernization, requiring technology transfer, technical training abroad, equipment upgrade and capital assistance. To reduce the foreign participation now would entail divestment and could very well result in a disincentive for our

foreign partners to make their invaluable contribution in technology and advancement. In short, we believe that this proposed change in the equity ratio will do more harm than good for the industry.

The fourth point is that they do not believe it is prudent policy at this time to divert either their funds or those of another group to an industry that does not need it. Capital being scarce at this particular time, it should be employed to create new investments and not just to augment an old one. Again, my understanding is that an increase would mean an additional investment of about P1 billion based on current market price as estimated by them. The Eastern Telecommunications Company has this to say, and I quote:

We are apprehensive not only on how to replace it, meaning the additional investment, but also that the company will not be able to sustain the growth both within the company and as a contributor to the industry and the country. Enormous equity which may not be available locally for the purpose would be required to finance future investments of the company that it may cope with the latest state-of-the-art's development.

Fifth, they say that there is no danger to national security because these carriers deal only with commercial messages and not government messages involving matters of state security. Moreover, in times of emergency, the government can take over these public utilities and it should also be borne in mind that these carriers are supervised and regulated by the National Telecommunications Commission.

Finally, Madam President, they point out that under Section 9 of the Article on National Economy and Patrimony, Congress, in the national interest, can increase the 60-40 ratio in favor of Filipinos in the future if necessary.

Before I close, I only wish to emphasize that what I reflect are the sentiments of the 60-percent Filipino owners who feel that their partnership has been mutually beneficial and they want it to remain on a 60-40 basis.

Thank you, Madam President.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Is there any other registered speaker, Mr. Floor Leader?

MR. RAMA: Yes, Commissioner Padilla.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Madam President, this Section 15 is substantially the same as Section 5 of the 1973 Constitution. In the 1973 Constitution, at least 60 percent of the capital is owned by such citizens. So, the Jamir amendment is a return or a restatement or a reversion to the 1973 Constitution.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Yes, in the interest of equal time, may I also read from a memorandum by the spokesman of the Philippine Chamber of Communications on why they would like to maintain the present equity, I am referring to the 66 2/3. They would prefer to have a 75-25 ratio but would settle for 66 2/3. They also like to suggest that we amend this provision by adding a phrase which states: "THE MANAGEMENT BODY OF EVERY CORPORATION OR ASSOCIATION SHALL IN ALL CASES BE CONTROLLED BY CITIZENS OF THE PHILIPPINES." I have with me their position paper.

THE PRESIDENT: The Commissioner may proceed.

MS. ROSARIO BRAID: The three major international record carriers in the Philippines, which Commissioner Romulo mentioned — Philippine Global Communications, Eastern Telecommunications, Globe Mackay Cable —

are 40-percent owned by foreign multinational companies and 60-percent owned by their respective Filipino partners. All three, however, also have management contracts with these foreign companies — PhilCom with RCA, ETPI with Cable and Wireless PLC, and GMCR with ITT. Up to the present time, the general managers of these carriers are foreigners. While the foreigners in these common carriers are only minority owners, the foreign multinationals are the ones managing and controlling their operations by virtue of their management contracts and by virtue of their strength in the governing bodies of these carriers.

This unfortunate situation where the country was led to allowing foreign multinational companies to own, manage and control international record communications has resulted in the following:

a. The Philippines has lost, perhaps forever, its role as the hub or the center of international communications in the region to a territory which is the seat of power of a giant which, through its part-ownership and management of a Filipino common carrier, appears to have allowed the Philippines to lose its role as the hub. This has resulted in huge, albeit unquantifiable, losses in potential foreign currency earnings to the Philippines. This alone, to our minds, has caused irreparable damage to the nation.

b. All the international cable systems terminating in Currimao, Ilocos Norte are presently owned by a common carrier also acting as a carrier's carrier but which is owned 40-percent and managed by a multinational company. Even the domestic common carrier which is responsible for all internal facilities from the cable station is also owned by this giant multinational.

In effect, our international cable facilities are controlled not by Filipinos, but by a foreign multinational company. This is a serious threat to our national security and to our sovereignty as a nation.

c. These international record common carriers are losing foreign currency revenues due to their control by the giant corporations. Traffic from the Philippines is being transited through the foreign carriers even if there are other transit centers offering the Philippine carriers better rates or even if direct circuits are feasible. Since these carriers are among the most profitable enterprises in the country, the foreign multinational carriers are raking in huge profits and earnings from transit business. This has resulted in revenue losses in the country.

In international conferences, the Philippines is, more often than not, represented by foreign executives of these foreign-managed carriers. Furthermore, this situation opens the possibility that PLDT, PAL, MERALCO, PNR, LRT, shipping lines, even the Post Office, and other vital public utilities will eventually fall into the hands of foreigners or of foreign multinational companies. This is particularly true when some of these public utilities are "privatized." Please note that Philippine Airlines and other utilities are among those which are to be sold by the government under its privatization program.

Under modern technology, is the monitoring of communications text possible? Yes, it is possible particularly when foreigners control the country's communications. During a national emergency, such as war or revolution, our international telecommunications may be subject to tapping, monitoring or "eavesdropping" by the foreign multinationals because foreign interests may be involved.

There are many precedents here and abroad which involve foreign countries listening in on the telecommunications between other countries. For instance, communications of the Ministry of Foreign Affairs from Manila to a Philippine embassy in another country can easily be listened to by a third country that has control over our international communications facilities. The argument that this can be done even if Filipinos control and manage these communications facilities is true, but it is apparent that it is a lot easier and all the more risky if non-Filipinos are in control. In fact, modern technology has made these "monitoring" activities easier to do and more efficient.

Therefore, the argument is that communications facilities are a danger to security considering the fact that communications facilities such as remote sensing can even monitor resource-rich areas of the Philippines. Thus, other multinational agencies, which are ahead in terms of knowledge about the natural resources of the country, pose a threat to our national security as well as economic sovereignty.

I would like to submit this position paper for the record, Madam President.

Thank you.

THE PRESIDENT: Just to clarify, would Commissioner Rosario Braid support the proposal of two-thirds rather than the 60 percent?

MS. ROSARIO BRAID: I have added a clause that will put management in the hands of Filipino citizens.

MR. VILLEGAS: We can take that amendment at the proper time.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

We are still on the Jamir amendment.

MR. DAVIDE: Yes, Madam President. I also have a proposal to change the ratio to 75-25.

MR. COLAYCO: Madam President.

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: Thank you, Madam President.

I understand there are many other speakers, for and against.

THE PRESIDENT: This is the Jamir amendment.

MR. COLAYCO: Yes. I notice that we have a tendency of repeating the same arguments. I would like to invite the attention of the body to Section 26 of the Rules:

After the close of debate the Constitutional Commission shall proceed to the consideration of Committee amendments subject to the five-minute rule. A Member who desires to speak against an amendment shall also have five minutes.

The five-minute rule shall apply, likewise, in the consideration of an amendment to an amendment, or an amendment by substitution.

I move, therefore, that this rule be observed strictly so that we can finish our debates on time.

THE PRESIDENT: The Chair will abide strictly, although if I remember correctly, we even reduced the five minutes to three minutes at the caucus.

MR. COLAYCO: Thank you, Madam President.

THE PRESIDENT: We now have the Jamir amendment before us. Those who wanted to speak in favor of the amendment, Commissioners Jamir and Romulo, are through.

Has anybody registered to speak against the Jamir amendment?

MR. RAMA: Madam President, Commissioner Aquino would like to speak en contra.

THE PRESIDENT: Commissioner Aquino is recognized to speak against the Jamir amendment.

May I ask the timekeeper to please put on the timer.

MS. AQUINO: I will not last that long.

Section 15 contemplates the grant of franchise, certificate or other forms of authorization for the operation of public utilities. What is vital here is that what the section contemplates is public utilities; in other words, services which are vital for the delivery of services for the public.

Throughout history, preferential attention has been given to foreign investors, and they have been enjoying a prolonged Indian summer. All of these clamor for the shifting of the corporate structure to adjust it to give more preference to the Filipino investors has been enjoying nothing more than just a nine-day wonder.

I was inclined to propose a readjustment in the same way that Commissioner Davide proposed a 75-25 percentile arrangement in favor of the Filipinos.

In reply to the argument of Commissioner Jamir, and without intending to cause any personal offense, we should now rid ourselves of our neurosis that the welfare of the Filipino depends on the smile or on the frown of foreign investors. When we deal with public utilities, I think the primordial concern should be public utilities for the benefit of the Filipinos which are effectively controlled by the Filipinos. Would it cause a cataclysmic consequence if we readjust the formula to a 75-25 percentile instead of a 60-40?

As it is, the committee report is already noteworthy in proposing a two-thirds formula — 66 and two-thirds effectively — but a 60-40 percentile would be some kind of a short-lived atavism.

So, may I inquire from Commissioner Romulo if a 75-25 arrangement would really cause that much consequence that will destabilize the operation of public utilities and rendering of public services?

MR. ROMULO: For the reasons I have stated — and I only reflect the opinions of the majority Filipino owners — they feel very comfortable with the present situation and the 75-25 ratio would diminish their minority partners to practically nothing. They do not believe that minority interest would be substantial enough to sustain the kind of cooperation and growth which both partners have achieved. This has been going on since the middle 70's. So, they asked that this Commission maintain what has been a good relationship for them, both from the technical, the managerial and investment point of view.

Globe Mackay, for example, is one of the most popular stocks in the stock exchange, presumably because of the success that this partnership has had.

MS. AQUINO: Madam President, am I correct in understanding that the vital aspect in public utility is the delivery of public services, not so much the accumulation of surplus and profit for investment? In that case, I would submit that the primary concern here is not really the comfort or the discomfort of the investors in the public utility corporation, but the imprint of the "Filipino-First" policy in the delivery of public services.

MR. ROMULO: Madam President, my reaction there is, precisely, they have delivered very good, if not superior, services in this field, as compared, for example, to others who may be 100-percent, 80-percent or 70-percent controlled. They do feel that the superiority of their services is the result of this happy union between local capital and foreign technology.

MR. BENGZON: Madam President, under the Rules, I think there are two speakers in favor and two speakers against.

THE PRESIDENT: Who is the next speaker?

MR. RAMA: Commissioner Davide, but he is introducing another amendment.

MR. BENGZON: But it is an amendment of the 75-25 ratio we are talking about.

MR. DAVIDE: It is an amendment to the proposed amendment, which is proper.

THE PRESIDENT: Commissioner Garcia is recognized.

MR. GARCIA: Thank you, Madam President.

I would like to summarize briefly the arguments why we are against the Jamir amendment. Basically, public utilities, as already stated by Commissioner Aquino, must be viewed as public service and not as a profit-oriented enterprise.

Secondly, it is definitely a strategic industry. It is one area where the concept of mixed economy can come in where, for the public good, both the public and the private sectors can work together to bring or deliver the goods to the people.

Thirdly — and this is very important — it touches the area of national security. We should be very conscious and aware regarding internal security. And here our security, as was stated by Commissioner Rosario Braid, is very important. We must protect this at all times and not only during an emergency period.

I would like to state the case of the ITT. In the "Senator Frank Church Committee Report" published in December 1975, it was proven beyond doubt that ITT was very much a participant in the coup attempts in Santiago, Chile in September 1973. And I think this is a very important item to consider — their participation and destabilization of a Third World government which they might find unfriendly at times.

I would also like to mention the fact that when the 40 percent is a solid block, it is tantamount to control. Sometimes, it does not matter whether one is in the minority position or not because when the 40 percent conforms to a solid block, it can be the dominant bloc, the decisive factor, the controlling factor.

Finally, I think it is, in fact, a desired objective that in due time the public utilities should be 100-percent Filipino-owned. I do not see why we should constitutionalize the 60-40 arrangement when, in fact, being such a vital industry, a strategic industry, one of public service and one that concerns national security, they shall be a hundred percent Filipino in due time.

THE PRESIDENT: We are ready to vote. I think the arguments are clear.

MR. DE LOS REYES: Madam President.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: I would just like to ask the committee. We are made to choose between the 60-40 and the two-thirds arrangements.

MR. BENGZON: As it stands, 66 2/3.

MR. DE LOS REYES: Yes. Assuming that the 66 2/3 arrangement prevails, will that apply only to future public utility corporations or will it affect also existing public utility corporations?

MR. VILLEGAS: It will affect existing public utilities.

MR. DE LOS REYES: But that will be taken care of supposedly in the Article on Transitory Provisions.

MR. VILLEGAS: Yes, they have to divest.

MR. BENGZON: The 40 percent will have to divest.

MR. DE LOS REYES: Thank you.

MS. AQUINO: Madam President.

THE PRESIDENT: What is the pleasure of Commissioner Aquino?

MS. AQUINO: On the query of Commissioner de los Reyes, the existing jurisprudence on public utilities is still *People vs. Quasha*. Commissioner Villegas was correct that the prohibition against the grant of a franchise applies not only to the creation of a corporation that violates the required proportion but also to the grant of franchise to corporations that are already existing.

BISHOP BACANI: Madam President.

THE PRESIDENT: Is Commissioner Bacani speaking for or against?

BISHOP BACANI: No, I would like to ask a question of Commissioner Garcia so I may be able to vote intelligently on this matter.

THE PRESIDENT: The Gentleman may proceed.

BISHOP BACANI: Since 1973, the 60-40 ratio has been observed in the Constitution. Have there been actually effects detrimental to the Filipino people that we can demonstrate, that we can show of which we have evidence? I would like to ask whether with the 60-40 ratio, as it is now, there have been any cases in the Philippines that have shown that this has not been beneficial to the Filipino people but has, in fact, been harmful to Filipino interests?

MR. GARCIA: I think the position paper read by Commissioner Rosario Braid states some of those harmful effects. Secondly, it is very clear that in the delivery of public services, there is much room for improvement, there is a lot to be desired for improvement. And precisely when there is sufficient motivation, when there is perhaps public subsidy, when there is public effort, together with a broader-based participation of people, this can be realized.

BISHOP BACANI: In the paper read by Commissioner Rosario Braid, there were dangers pointed to but no actual detrimental effect so far as I remember. From the observation of Commissioner Romulo, it would seem that those that have the 60-40 arrangement have been faring quite well in delivering the services.

MR. GARCIA: Just to give the Gentleman one very brief example: the Philippines has lost perhaps forever its role as the hub or the center of international communications in the region to another territory which is the seat of power of a giant carrier which partly owns and manages a well-known Filipino carrier. This has resulted in huge, albeit unquantifiable, losses in potential foreign currency earnings to the Philippines. This alone, to our mind, has caused irreparable damage to the nation, a country which needs foreign exchange so badly because of our debt situation and other crises.

BISHOP BACANI: I notice the words "may, perhaps." Those were used by the writers themselves. "May have lost its possibility of being the hub of communication in Asia, and this is perhaps due . . ."

MR. GARCIA: No. But regarding the actual losses of foreign exchange earnings which could have accrued to the Philippines because of the fact that the control and ownership were not in Filipino hands is very clear. I am reciting to the Gentleman only one of the examples they give but there are other examples which the writers provide.

THE PRESIDENT: May we now proceed to vote?

BISHOP BACANI: Thank you.

MR. RAMA: Yes, the Rules call for a vote now, Madam President.

MR. MAAMBONG: Madam President.

THE PRESIDENT: The Chair rules that we are now ready to vote.

MR. MAAMBONG: Madam President.

THE PRESIDENT: The only matter presented before the body is whether or not the proposed amendment of Commissioner Jamir on the 60-40 ratio is acceptable to the body.

MR. MAAMBONG: Madam President, I have an amendment to the amendment, which I hope will solve this bind that we are in, if it is acceptable to the committee or to the original proponent. May I proceed, Madam President?

THE PRESIDENT: Is it another percentage?

MR. MAAMBONG: No, Madam President.

THE PRESIDENT: We will take it up later on.

MR. MAAMBONG: Not another percentage, Madam President.

I propose an amendment that after the word "citizens" on line 21, we add "OR SUCH HIGHER PERCENTAGE AS CONGRESS MAY PRESCRIBE."

So, it will not foreclose the present percentage being suggested by Commissioner Jamir, and probably that will solve the problem that we are in.

MR. VILLEGAS: Madam President, we think that is already subsumed in Section 9 because Congress may, at any time, reserve to Filipinos areas of investment that could be one hundred percent.

THE PRESIDENT: All that this amendment calls for is a change from two-thirds to 60 percent.

MR. MAAMBONG: Yes, but Section 9 speaks of areas of investment.

THE PRESIDENT: Does Commissioner Jamir accept this proposed amendment?

MR. JAMIR: No, I regret I cannot accept the amendment.

MR. MAAMBONG: Just one point for clarification.

On this phrase "areas of investment" in Section 9, is it the thinking of the committee that this includes public utilities?

MR. VILLEGAS: Exactly.

MR. BENGZON: Yes.

MR. MAAMBONG: Thank you, Madam President.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Parliamentary inquiry. Is it still proper to introduce an amendment to the Jamir amendment?

THE PRESIDENT: If Mr. Jamir is agreeable to accept the amendment.

MR. DAVIDE: I have a proposal to amend the Jamir amendment.

THE PRESIDENT: Is it the percentage?

MR. DAVIDE: It is the percentage.

THE PRESIDENT: Will the Gentleman please state his amendment for Commissioner Jamir?

MR. DAVIDE: The percentage will be 75-25 where 75 percent is Filipino.

THE PRESIDENT: Is the amendment acceptable?

MR. JAMIR: It is not acceptable, Madam President.

MR. DAVIDE: May I be allowed to explain, Madam President?

THE PRESIDENT: It is not accepted by the committee.

But the Chair will again propose to the body another percentage.

MR. DAVIDE: And I can propose it later.

THE PRESIDENT: That will be the time.

MR. DAVIDE: Thank you.

### **VOTING**

THE PRESIDENT: As many as are in favor of the proposed amendment of Commissioner Jamir to change the percentage to 60 percent, please raise their hand. (Several Members raised their hand.)

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

The results show 20 votes in favor and 19 against; the Jamir amendment is approved.

MR. GASCON: Madam President, may I request a nominal voting because of the closeness of the vote.

MR. SARMIENTO: May I second the motion, Madam President?

### **NOMINAL VOTING**

THE PRESIDENT: There is a call for nominal voting.

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

The body will now vote on the amendment, and the Secretary-General will call the roll.

### **FIRST ROLL CALL**

THE SECRETARY-GENERAL, reading:

Abubakar Yes Laurel

Alonto Yes Lerum Yes

Aquino No Maambong Yes

Azcuna No Monsod Yes

Bacani No Natividad Yes

Bengzon Yes Nieva No

Bennagen No Nolloredo

Bernas No Ople Yes

Rosario Braid No Padilla Yes

Brocka Muñoz Palma

Calderon Yes Quesada

Castro de Rama Yes

Colayco Yes Regalado Yes

Concepcion No Reyes de los No

Davide No Rigos Yes

Foz No Rodrigo Yes

Garcia No Romulo Yes

Gascon No Rosales

Guingona No Sarmiento

Jamir Yes

MR. SARMIENTO: May I explain my vote, Madam President?

THE PRESIDENT: Commissioner Sarmiento may proceed.

#### **COMMISSIONER SARMIENTO EXPLAINS HIS VOTE**

MR. SARMIENTO: For reasons of public interest and common good, I vote against the amendment.

THE SECRETARY-GENERAL, reading:

Suarez No Tingson Yes

Sumulong Yes Treñas

Tadeo No Uka Yes

Tan No Villacorta

MR. VILLACORTA: May I explain my vote, Madam President?

THE PRESIDENT: Commissioner Villacorta may proceed.

#### **COMMISSIONER VILLACORTA EXPLAINS HIS VOTE**

MR. VILLACORTA: I vote no because most of the testimonies presented by the Honorable Romulo were in reference to the immediate present. The terms he used or the letters used were at this point in time. I think it is unfair for the Constitution to perpetually bind Filipino participation to only 60 Percent, especially because Section

1 says:

The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.

THE SECRETARY-GENERAL, reading:

Villegas

THE PRESIDENT: Commissioner Villegas is recognized.

### **COMMISSIONER VILLEGAS EXPLAINS HIS VOTE**

MR. VILLEGAS: I vote yes because under Section 9, if in the future it is going to be considered for the general welfare, it can be increased by Congress to 100 percent.

### **SECOND ROLL CALL**

THE PRESIDENT: The Secretary-General will conduct a second call for those who have not registered their votes.

THE SECRETARY-GENERAL, reading:

Brocka Muñoz-Palma

Castro de Quesada

Laurel Rosales

Nolledo Treñas

THE PRESIDENT: The results show 21 votes in favor and 19 against; the amendment is approved.

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

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President.

I rise to present an amendment even with fear and trembling, but I hope the body would reconsider. It is just to change the ratio to 75-25, meaning, no franchise certificate or any other form of authorization for the operation of public utilities shall be granted except to citizens of the Philippines or to corporations or associations, 75 percent of the capital stock of which shall be owned by such citizens. I am proposing this despite the vote to retain the 60-40 ratio.

THE PRESIDENT: The committee report states two-thirds.

MR. DAVIDE: Sixty-six and two-thirds.

THE PRESIDENT: Yes.

MR. DAVIDE: Yes, Madam President. I was very glad that the original committee report was to increase the present ratio, 60-40, to 66  $\frac{2}{3}$  as against 33  $\frac{1}{3}$ . It was already a step forward for the Filipinos. Yet earlier there was a voting to retain the provision of the existing Constitution, the possible reason being the position paper read into the record by Commissioner Romulo. I would say, Madam President, that the Constitution we are framing today is not for Siguion-Reyna nor for Ayala and not for the present time. (Applause)

It may be recalled that as early as 1935, the Constitution already allowed the 60-40 ratio. The 1971 Constitution also allowed a 60-40 ratio. But what happened to the Filipinos? They became the victims of multinational corporations to the detriment, therefore, of the economy of the Philippines. Let us consider the public service rendered; we may say that they have. But what about the security of the country, the integrity of the country and, above all, the interest of the Filipinos? I would say, Madam President, that the whole trouble with our discussion on Section 15 is that we took time for, we gave more time to, telecommunications. It must be borne in mind that Section 15 relates to all public utilities, not just the telecommunications. The arguments of Commissioner Romulo were only on telecommunications. What about the other public utilities which should be in the hands of Filipinos now? Simply because the proponents of the telecommunications want to maintain the present level of 60-40; will we also surrender our interest in respect to the other public utilities?

To me, we have not progressed since 1935, if that be so. We already improved somehow the national economy by providing in Section 1 of the proposed article that the national economy must be effectively in the control of the Filipinos. Yet, simply because of the demands of a few corporations in telecommunications controlled by multinational corporations we have to downgrade all the other public utilities? That, to me, cannot be accepted.

Perhaps, Madam President, it is high time now that if we take a step forward to protect the interests of the Filipinos, it must be a bigger leap, not only from 60 to 66 2/3 but a little beyond. It makes no difference. The committee recommended 66 2/3; it rejected my original proposal of a 75-25 ratio pursuant to my resolution. It was a little accommodation but if we really have to have a Constitution that shall take into account and consider as paramount the interest of the Filipinos, let us, even in the matter of public utilities to which area I fully believe the Filipinos have the capacity and have the capital, go somehow beyond. And I think the best compromise is 75-25.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President. Will the Honorable Davide answer a few clarificatory questions?

MR. DAVIDE: Willingly and gladly, Madam President.

MR. SUAREZ: Thank you.

The Gentleman is espousing a 75-25 upward percentage involving interest in public utilities. I assume he wants that effective control by Filipinos of public utilities be ensured in the espousing of such a percentage basis?

MR. DAVIDE: Yes, Madam President.

MR. SUAREZ: The Gentleman finds that it is more difficult to use dummies when the difference is more than 35 percent as a control against dummies rather than when the Gentleman speaks in terms of only a difference of 20 percent?

MR. DAVIDE: The Gentleman is absolutely correct, Madam President.

MR. SUAREZ: The Gentleman wants to ensure that the strategic situation of public utilities both in our country's economy and security be guaranteed?

MR. DAVIDE: Definitely, Madam President.

MR. SUAREZ: The Gentleman also wants that the assumption of control of public utilities may, in the future, prove to be inimical to public interest and he would like to avoid this.

MR. DAVIDE: Certainly, Madam President. As a matter of fact, it is not only in the future; it is even applicable today. The danger to our national security is there, clear and present, in the light of the disquisitions of Commissioners Garcia and Rosario Braid.

MR. SUAREZ: I thank the Commissioner very much.

MR. DAVIDE: May we know the reaction of the committee?

MR. VILLEGAS: The committee would like to leave it again to the body for voting.

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: I would like to ask a few clarificatory questions of the proponent. By the term "public utilities," to what are we referring? Will the Gentleman give some examples?

MR. DAVIDE: Not only these commercial telecommunications, but corporations supplying electric power, transportation, and even ice. Those are public utilities. So, even in this regard, we will now allow aliens. Even if it is only 40 percent, that is still alien control. I know it is alien control.

MR. FOZ: At present, are these public utilities required by law to be Filipino-owned? The examples that the Gentleman gave — ice plants, transportation — what is the statutory requirement as regards ownership?

MR. DAVIDE: I am not very familiar with special laws, but under the Constitution as worded in Section 15, all public utilities will be included.

MR. FOZ: Is shipping a public utility?

MR. DAVIDE: It is a public utility. Transportation, air transportation, is a public utility. So, foreign capital, foreign interest, may now come into PAL to control 40 percent of PAL.

MR. FOZ: But in the case of shipping, if I remember right, there is a special law providing that at least 75 percent of the capital should be owned by Filipinos.

MR. DAVIDE: That, therefore, would be in harmony with my proposal, 75-25.

MR. FOZ: But I am not sure now in the case of other means of transportation, such as land carriers, land transportation, also airlines.

MR. DAVIDE: I am not very sure about land transportation.

MR. FOZ: I thank the Gentleman.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. BENGZON: Madam President, could the committee have a chance to reply to Commissioner Davide?

THE PRESIDENT: We will hear Commissioner Maambong first.

MR. MAAMBONG: Just one question, Madam President.

In answer to my query, the honorable chairman of the committee said that Congress can always change the percentage to a higher percentage in favor of Filipinos. Is Commissioner Davide not comfortable with that answer?

MR. DAVIDE: I will not be satisfied with that because while Congress can change it any time, depending on whatever would be its perception, we know for a fact that Congress may not act.

MR. MAAMBONG: I will call the Gentleman's attention to the fact that the change is towards a higher percentage, not to a lower percentage. Would the Gentleman's answer be the same?

MR. DAVIDE: If we approve the 75-25 ratio, Congress may increase. I would be very willing to agree to any increase because my original intention is to make it a 100-percent requirement as was also the proposal of Commissioner Garcia. But in order to allow Congress some flexibility to attain to a higher level of Filipinization, then we should have an irreducible minimum which is higher than what is being proposed, much less the proposal of Commissioner Jamir.

MR. MAAMBONG: Last question, Madam President. Does the Gentleman's answer perhaps reflect the distrust on the future Congress of this nation as to their sense of patriotism?

MR. DAVIDE: I really do not have that in mind. But my point is that we should fix a higher irreducible minimum. So, 60-40 is the irreducible minimum, according to the Jamir proposal. According to my proposal, the maximum is 25 percent for foreign interest. So, Congress, under Section 9, may increase this requirement by reducing the foreign participation, thereby increasing the Filipino participation.

MR. MONSOD: May the committee now reply?

THE PRESIDENT: Yes, please. Who will respond?

MR. VILLEGAS: Commissioner Monsod, Madam President.

MR. MONSOD: There is the suggestion that those who want to increase the minimum to 75 percent are pro-Filipino; and those who want to keep it at 60 percent are anti-Filipino. There is also the suggestion that if one agrees with the letter of the stockholders, he is not pro-Filipino, he is pro-Ayala or pro-Siguion-Reyna. This committee is not pro-Ayala or pro-Siguion-Reyna; neither is it pro-Santiago, Madam President. I do not know much about the business of the ones who are proposing the 100 percent or 70 percent. I just know that the ultimate judge is the user. It is the Filipino that we primarily want to protect; the user, not the investors.

THE PRESIDENT: Will Commissioner Monsod explain how the user is affected by this percentage?

MR. MONSOD: That is what I mean; the ultimate judge of whether the company should be patronized whether it is efficient, should be the user. It has nothing to do with the ownership. We are already guaranteeing a 60-percent ownership of the Filipino. Many of us have been in business. If we own 60 percent of a company and we are competent, I have no fear of any foreigner taking over. As a matter of fact, even if we have less than 50 percent, if we are competent and patriotic, there is no fear of foreign dominance. And increasing it from 60 percent to 75 percent will not eliminate dummies. If there are people who are willing to be dummies, they will be dummies at 51, 60, 75, 90 and 100 percent.

Thank you.

MR. DAVIDE: Madam President, may I be allowed to react?

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: I did not telegraph a message that those in favor of the 60-40 ratio are less Filipino than those who would be opting for the 75-25 ratio. All of us are Filipinos. My only point in making a reference to the position paper read by Commissioner Romulo is that we are not making a Constitution for any of these groups batting for the retention of the 60-40 ratio. As correctly pointed out by Commissioner Villacorta in that position paper, they

were talking about the present; they were talking about now; they were talking about their own interests. To me, we should not be guided by that particular position paper if it is the quality of the service to be rendered, which is to be considered. The proponents of that position paper are not the consumers.

MR. MONSOD: We agree with the Gentleman that it is the quality of the service that counts. What we are saying is that perhaps the position paper was one of the considerations, but the ultimate criteria are the service and the quality of the service.

MR. DAVIDE: Yes, Madam President.

MR. MONSOD: What we are saying is that it is up to the users to decide who to patronize. The issue here is whether increasing it from 60 percent to 75 percent will improve the quality of the service or not.

MR. DAVIDE: We will give the Filipinos a chance. If they have a 75-percent equity in a corporation, we will give them a chance. They may not have that right probably, but I am sure they will. There was mention of an all-Filipino corporation, and I think there has not been any complaint against the service delivered by that particular corporation.

MR. MONSOD: We submit to the vote of the body, Madam President.

MR. RAMA: Madam President, the body is ready to vote on the amendment to the amendment.

MR. BENGZON: No, it is an amendment now.

THE PRESIDENT: It is an amendment to the committee report.

MR. RAMA: It is a separate amendment.

THE PRESIDENT: The committee report states "two-thirds" and the proposed amendment of Commissioner Davide is 75-25.

MR. MONSOD: Madam President, may we restate that the committee is against the Davide amendment.

MR. BENGZON: May we call the attention of the Chair that the paragraph, as it stands now, is no longer for two-thirds but 60 percent.

MR. VILLEGAS: That is the Jamir amendment.

MR. VILLACORTA: I have a prejudicial question, Madam President. I do not know on what basis Commissioner Monsod decided that the committee is against the Davide amendment. About five of us here are members of the committee but we were not consulted, so can he really, without blinking an eyelash, say that the committee is against the Davide amendment?

MR. MONSOD: The committee members who are sitting here have been appealing and begging the other members of the committee to sit with us here in front.

MR. VILLACORTA: The Commissioner has not made that appeal today and I do not think that there was any attempt to consult the other members of the committee on whether we are in favor or against the Davide amendment.

THE PRESIDENT: The Chair understands that the committee is against, because the body had already approved the 60 percent amendment. I suppose they are abiding by this 60 percent that has been approved by the committee. The Chair interprets it that way.

But then we will submit the proposed amendment of Commissioner Davide because a few points have also been

raised in that the "public utility" mentioned here does not refer only to communications but to all public utilities.

MR. BENGZON: Madam President, this is just a prejudicial question. Is it the understanding of the committee that after this issue is voted upon, the issue is foreclosed?

THE PRESIDENT: Yes, the issue is foreclosed.

MR. VILLEGAS: Yes, Madam President.

MR. BENGZON: Thank you.

THE PRESIDENT: So, will there be a nominal voting?

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: In our conversation with some members of the committee, I was made to understand that they would be open to treating telecommunications separately. So I hope that while this may foreclose the question of public utilities in general, it will not be without prejudice to reopening the matter with respect to telecommunication.

MR. ROMULO: No, it is the other way around.

MR. VILLEGAS: Telecommunication is part of public utility.

MR. ROMULO: Telecommunication was settled this morning. If the Commissioner wants to raise separate issues with regard to other utilities, that is up to him.

FR. BERNAS: I would like to raise questions on the issue of telecommunication as soon as we vote on this matter.

THE PRESIDENT: That would mean a motion for reconsideration.

MR. VILLEGAS: But it is no longer about the ratio; it could be something else like management.

FR. BERNAS: It will be about the ratio in telecommunication.

MR. VILLEGAS: Our view is that it has been decided during the voting on the Jamir amendment.

### **SUSPENSION OF SESSION**

THE PRESIDENT: The session is suspended.

It was 1:08 p.m.

### **RESUMPTION OF SESSION**

At 1:18 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

May we request the Commissioners to please take their seat.

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

FR. BERNAS: Madam President, we can proceed to a vote on the understanding that the vote on the Davide

amendment will not close the issue of management.

MR. VILLEGAS: Thank you.

MR. BENGZON: Thank you.

MR. GUINGONA: Madam President, may I respectfully offer an amendment to the amendment of Commissioner Davide. We substitute the 75-25 ratio with 70-30.

MR. DAVIDE: Madam President, I sincerely feel that the 75-25 ratio is very reasonable, justifiable and it would bring luck to the Filipinos.

MR. GUINGONA: Thank you.

THE PRESIDENT: So, we will submit it to a vote; and we request silence from our guests in the gallery.

I think the issue is clear. The Davide amendment is 75-25 ratio.

MR. GASCON: Madam President, will it be a nominal voting?

MR. BENGZON: Is Commissioner Davide asking for a nominal voting?

THE PRESIDENT: Commissioner Davide is not asking for a nominal voting.

MR. DAVIDE: I am not asking for a nominal voting.

THE PRESIDENT: It is just a voting by raising of hands.

MR. DAVIDE: But may I just request the teller to be very slow in counting.

MR. GASCON: Therefore, I would like to make a motion for a nominal voting if Commissioner Davide is not making that motion.

THE PRESIDENT: We might as well have a nominal voting just to have it clear, but I would ask each Member to please give his answer audibly. One cannot just presume or assume . . .

MR. RODRIGO: Madam President, since the subject has been discussed sufficiently, may I suggest that an explanation of votes be no longer allowed.

THE PRESIDENT: We may now proceed. The Secretary-General will please call the roll.

MR. VILLACORTA: With the Chair's indulgence, may I just be briefly recognized?

THE PRESIDENT: Commissioner Villacorta, if it has anything to do with the manifestation of Commissioner Rodrigo, the Chair did not make any ruling. It is up to the Chair whether to give three minutes or not to those who would want to explain their votes.

MR. VILLACORTA: Madam President, it is on another matter somewhat related, if I may just speak. I was just going to say that since the matter of whether this issue has to do with being pro-Filipino or anti-Filipino was brought up in the debate between the proponent, Commissioner Davide and some members of the committee. May this humble Representation encourage our colleagues in the Commission to explain their votes, because I think this is a very crucial vote that we are going to make on an issue of far-reaching importance.

THE PRESIDENT: But we will not impose upon anyone. Everybody is free to do as he pleases according to the Rules.

MR. VILLACORTA: It is just a hortatory statement, Madam President.

MR. RODRIGO: I have enough trust in the Members of this Commission, and I do not think anybody here has to explain whether he is pro-Filipino or anti-Filipino. Everybody here is pro-Filipino.

### **NOMINAL VOTING**

THE PRESIDENT: The body will now vote on the proposed amendment of Commissioner Davide. The Secretary-General will call the roll.

### **FIRST ROLL CALL**

THE SECRETARY-GENERAL, reading:

Abubakar

### **COMMISSIONER ABUBAKAR EXPLAINS HIS VOTE**

MR. ABUBAKAR: I vote no and I will explain my vote.

Sixty percent in the hands of Filipinos is more than enough. If I am a corporate manager or a President of a corporation, I would even take 56-54 ratio. I can say that we must define the policy, define the objectives, as well as reach the goal for which the business stands for. Are we afraid that we cannot compete on a 60-40 percent basis and control the policy of the company? Does the Filipino manager lack the confidence and the courage that he will not be able to control the direction of the company or manage the operation of any business on the basis of the 60-40 ratio? I think many of us, even on a 65-45 basis, can still reach the goal that we have marked for the Filipino. The management in the hands of the Filipino, the direction, as well as the objectives to be reached, will be attained by Filipinos. Why then are we afraid to stand on a 60-40? We have already a 10-percent advantage in this respect. I have faith that the Filipinos, even if they have only a 5-percent advantage on any enterprise, could still reach the goal for which the Filipino enterprise is marked. Are we not, therefore, contented with 10 percent on a 60-40 basis? Are we afraid that we have to reach 75-25 to control the direction of an enterprise, the profit to be divided, the goal of Filipinism to be achieved? I believe that each Member of the Commission here would assert his faith in the Filipinos and would go for the 55-45 percent in any enterprise.

THE SECRETARY-GENERAL, reading:

Alonto No Azcuna Yes

Aquino Yes Bacani

BISHOP BACANI: I vote no. May I explain my vote, Madam President.

THE PRESIDENT: The Commissioner may proceed.

### **COMMISSIONER BACANI EXPLAINS HIS VOTE**

BISHOP BACANI: Madam President, first, the Members of the Commission would seem ridiculous because we voted on the 60-40 ratio previously and now, after a few minutes, we will vote again on the 75-25 ratio. Second, it seems that it may not be helpful anymore to the Filipinos if we adopt the 75-25 although the 66 2/3 percent may be still helpful and may not discourage foreign capital.

Thank you.

THE SECRETARY-GENERAL, reading:

Bengzon No Bennagen

#### **COMMISSIONER BENNAGEN EXPLAINS HIS VOTE**

MR. BENNAGEN: Madam President, I am voting in favor of the Davide amendment in the hope that a greater share in the equity will enhance Filipino control.

Thank you, Madam President.

THE SECRETARY-GENERAL, reading:

Bernas Yes Castro de

Rosario Braid Yes Colayco No

Brocka Concepcion

Calderon No

#### **COMMISSIONER CONCEPCION EXPLAINS HIS VOTE**

MR. CONCEPCION. I am in favor of increasing the participation of the Filipinos but gradually. I do not want any change that will further dislocate our economy. So my vote is no.

THE SECRETARY-GENERAL, reading:

Davide Yes Jamir No

Foz Yes Laurel

Garcia Yes Lerum No

Gascon Yes Maambong

Guingona Yes

#### **COMMISSIONER MAAMBONG EXPLAINS HIS VOTE**

MR. MAAMBONG: I vote against the amendment, Madam President. I would have voted yes for the amendment if it were not sufficiently explained by the honorable Chairman that under Section 9, Congress has the power to increase the percentage if it feels that there is a need for such increase. Likewise, I have trust in our legislators.

Thank you, Madam President.

THE SECRETARY-GENERAL, reading:

Monsod No

Natividad

MR. NATIVIDAD: Madam President, may I explain my vote?

THE PRESIDENT: The Commissioner may proceed.

### COMMISSIONER NATIVIDAD EXPLAINS HIS VOTE

MR. NATIVIDAD: We have 60 percent already. We are in our own country. We have the government in favor of the Filipino interests; we have the implementing agencies. If there is a case, we have the Supreme Court. Everybody and all agencies are in favor of the Filipino interest. We should be able to manage 60 percent. If we do not welcome any foreign investment, we should have 100 percent. But if we will allow for only 25 percent, we might as well not allow them at all, because that is a sign that they are not welcome. If we welcome them, we should give 40 percent. So I vote no.

THE SECRETARY-GENERAL, reading:

Nieva

### COMMISSIONER NIEVA EXPLAINS HER VOTE

MS. NIEVA: I vote no. I would like to explain because originally, I voted also against the 60-40. I was absent during most of the deliberations of this committee last week. I was originally in favor of the committee report that provided for 66 2/3 percent. I thought that that was a real step forward from the 1973 Constitution and a gradual improvement, as pointed out by former Chief Justice Concepcion, of the Filipino position. But upon discussion and further clarification, it was explained that a one-third percent only would not give the foreign investor any kind of effective voice in the management of a corporation and, hence, would send out signals that would completely discourage foreign investments. At this stage, I think we are completely prostrate and need everything that we can at this time. So we would not want to send this kind of a signal to foreign investors. Furthermore, on the information that there will be an amendment presented later on that will provide for the effective Filipinization of management, then I vote against giving a 75-percent share to the Filipino.

THE SECRETARY-GENERAL, reading:

Nolledo Ople

### COMMISSIONER OPLE EXPLAINS HIS VOTE

MR. OPLE: Madam President, may I explain my vote briefly. I vote no because I can see the need for real flexibility for this policy on Filipino shares of equity in public utilities at this time. The immediate implication in one sector of public utilities in communications, of proving 75-25, is a divestment of foreign equity in some of these existing companies upon the adoption of this Constitution in the magnitude of probably about P1.5 billion and, in the face of the protestations of those directly concerned that they could not raise this capital now and that if there were available means of raising this capital, it would be more rational to put this in another job-creating project. Instead of paying for foreign equity that would be converted into foreign exchange and loss to the country, I think some pragmatic wisdom urges us to be flexible about this and give to Congress, as this article does in Section 9, the absolute flexibility to increase to 100 percent, if necessary.

I look to the day, which is probably very soon, when Filipino shares in public utilities can rise to 100 percent. The MERALCO is now 100-percent Filipino. The PLDT, I think, is approaching 100 percent, the Philippine Air- lines is 100 percent and this is not because of any legal fiat but because the capital became available and the motivation of our entrepreneurs rose to a level that made it possible for them to capture 100-percent Filipino ownership. I think it is just a matter of time, because in telecommunication, Filipino ownership rises to 100 percent through Section 9 of the same article that is under consideration of this body.

Thank you very much, Madam President.

THE SECRETARY-GENERAL, reading:

Padilla

#### **COMMISSIONER PADILLA EXPLAINS HIS VOTE**

MR. PADILLA: Madam President, I vote no to the Davide amendment of 75-25. I share the view of Commissioner Bacani, that after the majority had voted to reduce the committee report from 66 2/3 — 33 1/3 to 60-40, we may appear ridiculous in voting for a higher percentage of 70-30. To me, it appears illogical, if not absurd.

THE SECRETARY-GENERAL, reading:

Muñoz-Palma Rama No

Quesada Regalado

#### **COMMISSIONER REGALADO EXPLAINS HIS VOTE**

MR. REGALADO: Madam President, I vote no aside from the other reasons already given here but because at this present stage of our national life, emotional, intellectual or economic xenophobia, we cannot but have a pejorative effect upon our economy.

THE SECRETARY-GENERAL, reading:

Reyes de los

#### **COMMISSIONER DE LOS REYES EXPLAINS HIS VOTE**

MR. DE LOS REYES: Madam President, during the voting on the Jamir amendment, I voted for two-thirds because that was the original proposal of the Committee, and I saw no compelling reason why it should change its stand. But after that voting, I think it will be sheer stubbornness on our part to insist on diminishing even more the percentage of foreign interest. Anyway the situation can still be remedied by giving the executive, managing and governing positions of public utility corporations exclusively to Filipino citizens.

Thank you, Madam President, I vote no.

THE SECRETARY-GENERAL, reading:

Rigos No Rosales

Rodrigo No Sarmiento Yes

Romulo No Suarez

#### **COMMISSIONER SUAREZ EXPLAINS HIS VOTE**

MR. SUAREZ: I vote yes to the proposal, Madam President. The proposal is protective of Filipino interests in public utilities which occupy strategic positions in our country's economy and security. Besides, Madam President, it makes it more difficult for foreign companies to gain effective control of public utilities with a possible subtle violation of the Anti-Dummy Law.

Thank you, Madam President.

THE SECRETARY-GENERAL, reading:

Sumulong No Tan

Tadeo Yes

### **COMMISSIONER TAN EXPLAINS HER VOTE**

SR. TAN: Perhaps I do not have any pragmatism in my life; perhaps I also do not have logic. But with the victims of foreign investors, I vote yes.

THE SECRETARY-GENERAL, reading:

Tingson

### **COMMISSIONER TINGSON EXPLAINS HIS VOTE**

MR. TINGSON: Madam President, I vote no because no country can be an island unto itself these days. I also vote no simply because to me, at this stage of our national economic, national posture and predicament, 75-25 is not too materially different from the 60-40 we have already approved. Besides, we are asking for educational and scientific aid from our friends abroad. So why should we not welcome them in the economic realm? We allow our fair daughters to marry foreigners resulting in handsome grandchildren, with 60-40 blood proportion. Seventy-five: twenty-five on this score is all right with me, too. So, I vote no.

THE SECRETARY-GENERAL, reading:

Treñas Uka

### **COMMISSIONER UKA EXPLAINS HIS VOTE**

MR. UKA: Madam President, I love the million Filipino users and consumers who will be most affected as a result of this amendment. And because of this, I vote no.

THE SECRETARY-GENERAL, reading:

Villacorta

### **COMMISSIONER VILLACORTA EXPLAINS HIS VOTE**

MR. VILLACORTA: Ginang Pangulo, ako ay sumasang-ayon sa Davide amendment sapagkat isa ako sa naniniwalang ang Pilipino ang may-ari ng Pilipinas. Ang Pilipinas ay para sa Pilipino. Nagtataka ako kung bakit kailangan sa Komisyonang itong magmanikluhod ang Pilipino sa bawat isang porsiyento ng partisipasyon at kontrol ng ating ekonomiya. Nagtataka ako kung bakit para pang dapat tayo ang magpasalamat kung may sienta porsiyento ang ating mga kababayan sa public utilities na napakahalaga sa buhay at seguridad ng ating bansa.

Ginang Pangulo, nagluksa na naman ang bayan. Nadurog na namang muli ang kanilang pangarap na nabuhay nitong huling himagsikan.

Mabuhay ang mga multinationals! Binabati ko ang mga tagapagtanggol nito. Big brother is happy! (Applause)

MR. OPLE: I protest, Madam President.

THE PRESIDENT: The body will now continue voting.

THE SECRETARY-GENERAL, reading:

Villegas No

## SECOND ROLL CALL

THE PRESIDENT: The Secretary-General will conduct a second call for those who have not registered their votes.

THE SECRETARY-GENERAL, reading:

Brocka Muñoz-Palma

Castro de Quesada

Laurel Rosales

Nolledo Treñas

BISHOP BACANI: Madam President, I protest against the outburst of Commissioner Villacorta.

THE PRESIDENT: The results show 15 votes in favor of the Davide amendment, 25 against, and no abstention; the Davide amendment is lost.

MR. BENGZON: Madam President.

THE PRESIDENT: We would like to refer what has transpired here to the Committee on Privileges.

MR. ABUBAKAR: The Committee on Privileges will meet at lunchtime.

MR. OPLE: Madam President.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: I think a number of us have agreed to ask Commissioner Rosario Braid to propose an amendment with respect to the operating management of public utilities, and in this amendment, we are associated with Fr. Bernas, Commissioners Nieva and Rodrigo. Commissioner Rosario Braid will state this amendment now.

Thank you.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: This is still on Section 15.

MS. ROSARIO BRAID: Yes.

MR. VILLEGAS: Yes, Madam President.

MS. ROSARIO BRAID: Commissioner Guingona is also a cosponsor of this amendment.

MR. BENGZON: Madam President, may we ask for an order on the floor to listen to Commissioner Rosario Braid? May we request those who are not Members of the Commission to stay in their proper places.

THE PRESIDENT: Those who are not Commissioners will please clear the floor of the session hall. Will they please return to the gallery seats. The Sergeant-at-Arms is directed to enforce the Rules. We are in session.

MS. ROSARIO BRAID: Madam President, I propose a new section to read: "THE MANAGEMENT BODY OF EVERY CORPORATION OR ASSOCIATION SHALL IN ALL CASES BE CONTROLLED BY CITIZENS OF THE PHILIPPINES."

This will prevent management contracts and assure control by Filipino citizens. Will the committee assure us that this amendment will insure that past activities such as management contracts will no longer be possible under this

amendment?

MR. ROMULO: Madam President if I may reply.

THE PRESIDENT: Commissioner Romulo is recognized.

MR. ROMULO: May I ask the proponent to read the amendment again.

MS. ROSARIO BRAID: The amendment reads: "THE MANAGEMENT BODY OF EVERY CORPORATION OR ASSOCIATION SHALL IN ALL CASES BE CONTROLLED BY CITIZENS OF THE PHILIPPINES."

MR. DE LOS REYES: Madam President, will Commissioner Rosario Braid agree to a reformulation of her amendment for it to be more comprehensive and all-embracing?

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: This is an amendment I submitted to the committee which reads: "MAJORITY OF THE DIRECTORS OR TRUSTEES AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATION OR ASSOCIATION MUST BE CITIZENS OF THE PHILIPPINES."

This amendment is more direct because it refers to particular officers to be all-Filipino citizens.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: The committee sitting out here accepts the amendment of Commissioner de los Reyes which subsumes the amendment of Commissioner Rosario Braid.

THE PRESIDENT: So this will be a joint amendment now of Commissioners Rosario Braid, de los Reyes and others.

MR. REGALADO: Madam President, I join in that amendment with the request that it will be the last sentence of Section 15 because we intend to put an anterior amendment. However that particular sentence which subsumes also the proposal of Commissioner Rosario Braid can just be placed as the last sentence of the article.

THE PRESIDENT: Is that acceptable to the committee?

MR. VILLEGAS: Yes, Madam President.

MS. ROSARIO BRAID: Thank you.

MR. RAMA: The body is now ready to vote on the amendment.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Will the committee accept a reformulation of the first part?

MR. BENGZON: Let us hear it.

FR. BERNAS: The reformulation will be essentially the formula of the 1973 Constitution which reads: "THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ANY PUBLIC UTILITY ENTERPRISE SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF AND . . ."

MR. VILLEGAS: "ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATIONS AND ASSOCIATIONS MUST BE CITIZENS OF THE PHILIPPINES."

MR. BENGZON: Will Commissioner Bernas read the whole thing again?

FR. BERNAS: "THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ANY PUBLIC UTILITY ENTERPRISE SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF . . ." I do not have the rest of the copy.

MR. BENGZON: "AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATIONS OR ASSOCIATIONS MUST BE CITIZENS OF THE PHILIPPINES." Is that correct?

MR. VILLEGAS: Yes.

MR. BENGZON: Madam President, I think that was said in a more elegant language. We accept the amendment. Is that all right with Commissioner Rosario Braid?

MS. ROSARIO BRAID: Yes.

THE PRESIDENT: The original authors of this amendment are Commissioners Rosario Braid, de los Reyes, Regalado, Natividad, Guingona and Fr. Bernas.

MR. DE LOS REYES: The governing body refers to the board of directors and trustees.

MR. VILLEGAS: That is right.

MR. BENGZON: Yes, the governing body refers to the board of directors.

MR. REGALADO: It is accepted.

MR. RAMA: The body is now ready to vote, Madam President.

### VOTING

THE PRESIDENT: As many as are in favor of this proposed amendment which should be the last sentence of Section 15 and has been accepted by the committee, please raise their hand. (All Members raised their hand.)

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

The results show 29 votes in favor and none against; so the proposed amendment is approved.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: I still have one minor amendment on Section 15, line 21. After the word "citizens" add a comma (,) and then the following: "NOR SHALL SUCH. FRANCHISE, CERTIFICATE OR AUTHORIZATION BE EXCLUSIVE IN CHARACTER OR FOR A PERIOD LONGER THAN TWENTY-FIVE YEARS RENEWABLE FOR NOT MORE THAN TWENTY-FIVE YEARS."

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

THE PRESIDENT: The committee has accepted the amendment.

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

MR. DAVIDE: Thank you.

MR. RAMA: Madam President, before we adjourn, may I ask that the entire Section 15 be voted upon as amended?

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: Commissioner de Castro had to leave. I withdraw, Madam President.

THE PRESIDENT: Is there any other amendment to Section 15?

MR. GASCON: We have some additional sections.

MR. VILLEGAS: Additional sections can be taken up on Monday.

MR. RAMA: There will be additional sections as far as Section 15 is concerned; it is all finished.

MR. OPLE: Madam President, may I just make a manifestation again that a number of amendments submitted a week ago to the committee of which some had been accepted should have been presented today, but for lack of time, may I manifest my desire to have them taken up on Monday morning.

Thank you, Madam President.

THE PRESIDENT: But how about Section 15? Does it not refer to Section 15?

MR. OPLE: No, subsequent sections, Madam President.

THE PRESIDENT: All right. Can we proceed now to vote on Section 15?

MR. RAMA: Yes, Madam President.

THE PRESIDENT: Will the chairman of the committee please read Section 15?

MR. VILLEGAS: The entire Section 15, as amended, reads: "No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least 60 PERCENT OF WHOSE CAPITAL is owned by such citizens." May I request Commissioner Bengzon to please continue reading.

MR. BENGZON: "THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ANY PUBLIC UTILITY ENTERPRISE SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATIONS OR ASSOCIATIONS MUST BE CITIZENS OF THE PHILIPPINES."

MR. VILLEGAS: "NOR SHALL SUCH FRANCHISE, CERTIFICATE OR AUTHORIZATION BE EXCLUSIVE IN CHARACTER OR FOR A PERIOD LONGER THAN TWENTY-FIVE YEARS RENEWABLE FOR NOT MORE THAN TWENTY-FIVE YEARS. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public."

### VOTING

THE PRESIDENT: As many as are in favor of the entire Section 15, please raise their hand. (Several Members raised their hand).

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

The results show 29 votes in favor and 4 against; Section 15, as amended, is approved.

### **ADJOURNMENT OF SESSION**

MR. RAMA: Madam President, I move that we adjourn until Monday at nine-thirty in the morning.

THE PRESIDENT: The session is adjourned until Monday at nine-thirty in the morning.

It was 1:52 p.m.

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[\*] Appeared after the roll call

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