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Wednesday, July 30, 1986

CALL TO ORDER

At 9:43 a.m., the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, called the session to order.

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mr. Efrain B. Treñas, to wit:

Heavenly Father, we humbly ask Thy Divine Guidance in our noble task to fulfill the sacred trust reposed in us to frame a fundamental law for our people.

Imbue us with Thy Holy Spirit to enable us to enshrine in a Constitution the principles of brotherhood, liberty, justice and democracy which You have so kindly restored to us in Your miracle last February.

Inspire us with the same fervor of Your Holy Passion of the Cross so that we may be able to overcome the hatred and vindictiveness that are the natural fruits of more than a decade of ruthless suppression and persecution.

Lead us along the path of forgiveness and reconciliation towards the altar of wisdom and statesmanship so that in the end we may achieve our solemn goal of providing our people with a framework of government that guarantees to us our human rights and fundamental freedoms, secure to us and our posterity our God-given resources, and find for us and the generations yet to come a respected place under the sun and among the family of nations.

This we ask You, Almighty Father, in the name of Jesus Christ, Your Son.

Amen.

ROLL CALL

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

Bengzon, J. F. S. Concepcion, R. R.

Bennagen, P. L. Davide, H. G.

Rosario Braid, F. Guingona, S. V. C.

Calderon, J. D. Jamir, A. M. K.

De Castro, C. M. Laurel, J. B.

Colayco, J. C. Monsod, C. S.

Nolledo, J. N. Rosales, D. R.

Padilla, A. B. Suarez, J. E.

Muñoz Palma, C. Sumulong, L. M.

Quesada, M. L. M. Tan, C.

Rama, N. G. Tingson, G. J.

Regalado, F. D. Treñas, E. B.

Rigos, C. A. Uka, L. L.

Rodrigo, F. A. Villegas, B. M.

Romulo, R. J.

With 29 Members present, the Chair declared the presence of a quorum.

The following Members appeared after the Roll Call:

Abubakar, Y. R. Lerum, E. R.

Alonto, A. D. Maambong, R. E.

Aquino, F. S. Natividad, T. C.

Azcuna, A. S. Nieva, M. T. F.

Bacani, T. C. Ople, B. F.

Bernas, J. G. De Los Reyes, R. F.

Brocka, L. O. Sarmiento, R. V.

Foz, V. B. Tadeo, J. S. L.

Garcia, E. G. Villacorta, W. V.

Gascon, J. L. M. C.

READING AND APPROVAL OF THE JOURNAL

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

REFERENCE OF BUSINESS

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

REFERRAL TO COMMITTEES OF COMMUNICATIONS

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

Communication No. 375 — Constitutional Commission of 1986

Letter from NCP Sgt. Tawasil A. Hataie, Bureau of Customs, Port of Zamboanga, proposing a constitutional provision requiring the government to extend humanitarian service to all departed government personnel/officials who died while in the government service regardless of position/designation

TO THE COMMITTEE ON SOCIAL JUSTICE

Communication No. 376 — Constitutional Commission of 1986

Letter from Ms. Ester B. Sy-Quimsiam, Commission on Population, Welfareville Compound, Mandaluyong, Metro Manila, transmitting a position paper submitted by a group of private organizations regarding population problem, saying that a people-oriented population welfare program has better and greater chances to bloom into full flowering if implemented along the lines of the new government's human concern and sincere call for self-renewal

TO THE COMMITTEE ON SOCIAL JUSTICE

Communication No. 377 — Constitutional Commission of 1986

Letter from Mr. Jeremias U. Montemayor and Mr. Democrito T. Mendoza for the Trade Union Congress of the Philippines (TUCP), submitting its position paper on the American military bases in the Philippines recommending that the present Philippine-U.S. Mutual Defense Treaty be respected until its expiration in 1991

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 378 — Constitutional Commission of 1986

Letter from the Olongapo Jaycees, Inc., No. 12 Aquarius St., Lower Kalaklan, Olongapo City, signed by its President, Mr. Johnny B. Choa, commending the retention of the United States bases in the Philippines after 1991

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 379 — Constitutional Commission of 1986

Letter from Stop Trafficking of Pilipinos Foundation, Inc. signed by its President, Minerva G. Laudico, and the other officers and members of the Board of Directors, calling attention to the alarming resurgence of indecency in mass media and entertainment and expressing alarm at the manner by which the courts have ruled in favor of those who have no apparent regard for the dignity of women and of decent family relationship

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 380 — Constitutional Commission of 1986

Communication signed by Ms. Elsa M. Gavino and one hundred fifty others, urging that regulations on foreign investments and the determination of the areas of investment should be left to the legislature

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

Communication No. 381 — Constitutional Commission of 1986

Letter from the Honorable Minister Candu I. Muarip of the Office of Muslim Affairs and Cultural Communities, transmitting proposals and resolutions drafted by a group of Muslim professionals, scholars and academicians, embodying the general sentiments and common aspirations of the Muslim Filipinos and the Tribal Communities

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 382 — Constitutional Commission of 1986

Communication from the Sangguniang Panlalawigan, La Trinidad, Benguet signed by its temporary Presiding Officer, Felix T. Cabading, transmitting Resolution No. 273, entitled: RESOLUTION THAT THE HONORABLE BODY ADOPT A STAND IN FAVOR OF ADMINISTRATIVE REGIONALIZATION AS AN ALTERNATIVE TO STATUS QUO

TO THE COMMITTEE ON LOCAL GOVERNMENTS

Communication No. 383 — Constitutional Commission of 1986

Communication from the Stop Trafficking of Filipinos Foundation, Inc. signed by its President Minerva G. Laudico, urging inclusion in the Constitution provisions mandating the state to ensure an out-of-school environment conducive to the moral education of the youth and reinforcing the right of children and young people to a sound intellectual and moral formation

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 384 — Constitutional Commission of 1986

Letter from Dr. Helen Agustin de Guzman of U.P. Medicine 1967, saying, that it would be a wiser and more prudent move for the Constitutional Commission not to make a final pronouncement on the U.S. bases issue at this time and at such a hurried pace

TO THE COMMITTEE ON GENERAL PROVISIONS

UNFINISHED BUSINESS: COMMITTEE REPORT NO. 26 ON PROPOSED RESOLUTION NO. 517 ON THE ARTICLE ON THE EXECUTIVE

On motion of Mr. Rama, there being no objection, the Body resumed consideration, on Second Reading, of Proposed Resolution No. 517, entitled:

Resolution to incorporate in the new Constitution an Article on the Executive.

Thereupon, the Chair recognized Mr. Regalado for the continuation of the period of amendments.

AMENDMENTS OF MR. DAVIDE

Thereupon, as proposed by Mr. Davide and accepted by the Sponsor, the Body approved the following amendments, one after the other:

1.

On page 1, reword the first sentence of Section 3 to read: THERE SHALL BE A VICE-PRESIDENT WHO SHALL HAVE THE SAME QUALIFICATIONS AND TERM OF OFFICE AND BE ELECTED WITH AND IN THE SAME MANNER AS THE PRESIDENT;

2.

On the same page, line 18, delete the phrase "as provided in the Constitution",

3.

On the same page, line 20, following the word "cabinet" and the period (.), add a new sentence, to wit: SUCH APPOINTMENT REQUIRES NO CONFIRMATION.

Mr. Davide explained that it would degrade the Office of the Vice-President if his appointment as a Member of

the Cabinet were to require confirmation by the Commission on Appointments, considering that even the members of the Judiciary and the Ombudsman would not require such confirmation.

4.

On page 2, lines 5 and 6, and as modified by Mr. Padilla, reword the second sentence of Section 4 to read:
THE PRESIDENT SHALL NOT BE ELIGIBLE FOR ANY REELECTION.

Mr. Davide explained that the amendment would convey the earlier decision of the Body to disqualify the President from any reelection to said office, although he would still be able to run for a lower position.

5.

On the same page, line 6, after the preceding amendment, add the following sentences
NO VICE-PRESIDENT SHALL SERVE FOR MORE THAN TWO SUCCESSIVE TERMS. VOLUNTARY RENUNCIATION OF THE OFFICE FOR ANY LENGTH OF TIME SHALL NOT BE CONSIDERED AS AN INTERRUPTION IN THE CONTINUITY OF THE SERVICE FOR THE FULL TERM FOR WHICH HE WAS ELECTED.

Mr. Davide explained that the amendment would be consistent with what the Body had approved on the term of the Vice-President.

6.

On the same page, lines 9 and 10, substitute the phrase "seat of the National Government" with the word CONGRESS;

7.

On the same page, between lines 22 and 23, insert the following new paragraph:

CONGRESS SHALL PROMULGATE ITS RULES FOR THE CANVASSING OF THE CERTIFICATES.

Mr. Davide explained that the provision would authorize Congress to promulgate the necessary rules for the canvassing of the certificates of canvass for the Office of the President and the Vice-President and, in reply to Mr. Regalado's inquiry how the amendment would tie up with the provision on the "determination of the authenticity and due execution in the manner provided by law," Mr. Davide explained that the former would have reference to the rules of procedure while the latter would relate to rules concerning determination of authenticity and due execution.

8.

On the same page, line 25, after the word "Vice-President", add the clause AND MAY PROMULGATE ITS RULES FOR THE PURPOSE.

Mr. Regalado explained that the amendment would confer on the Supreme Court exclusive authority to enact the necessary rules while acting as sole judge of all contests relating to the election, returns and qualifications of the President and Vice-President. He stated that while he believes the rule-making power of the Supreme Court with respect to its internal procedure is implicit under the Article on the Judiciary, the purpose of the amendment is to indicate the sole power of the Supreme Court to promulgate its rules without intervention by the Legislature

REMARKS OF MR. MONSOD

At this juncture, Mr. Monsod, upon leave of the Chair, made of record some observations preparatory to the amendments he would propose later. He stated that some of the provisions and amendments already approved raised concern on the emasculation of the powers of the Executive department. He recalled that Mr. Bernas had earlier touched on what the Body is trying to do. He stated that the Body has set objectives and is trying to build structures and systems which would enable the government to operate and work towards achieving those objectives. He noted that Amendment No. 6, which was the source of many problems, had been eliminated.

On the Article on Accountability of Public Officers, he noted that the Body had done the reverse and took a 180-degree turn when it decided that the action to recover property unlawfully gained or acquired shall not prescribe and that prosecution for criminal offenses related thereto will not be barred by prescription, laches and estoppel.

Mr. Monsod also stated that the Commission had eliminated the Executive check from the Judiciary with the establishment of the Judicial and Bar Council, thus putting judicial appointments absolutely out of reach of the presidency.

With the bicameral legislature, Mr. Monsod contended that not only would the lawmaking and the appropriation functions go through Congress, but that there are special events and actions that would require the approval of both Houses, among them, the declaration of martial law. In this connection, he stated that in the system of checks and balances, the President has to contend with the approval of two other departments to check on him.

With respect to the Constitutional Commissions, Mr. Monsod observed that they have been given more independence, with the Commission on Elections given the power to initiate court proceedings and to deputize the military, which was previously the function of the President. In this regard, he stressed that all the Constitutional Commissions have been granted fiscal autonomy.

On the Bill of Rights, Mr. Monsod stated that the Commission had eliminated the words "insurrection" and "imminent danger thereof"; refined and put all the safeguards in seizures and searches, and warrants of arrest.

On the accountability of public officers, Mr. Monsod pointed out that the Commission had liberalized the procedure of impeachment and included "betrayal of trust" as a ground thereof; created a Constitutional Ombudsman; and declared imprescriptible the right to recover property. At the same time, he stressed that there would be great demands for funds and resources for the efficient management of government with proposals for socialized pricing, housing and education, agrarian reform requirements, national health care, all of which were meant as safeguards against abuse of power. While he was not against individual safeguards, which by themselves may look alright, looking at the total system, the Commission may be instituting too many safeguards that would render the Executive inutile.

Mr. Monsod also observed that the Commission had approved the system of initiative in amending the Constitution; it had deconstitutionalized the two party system and may allow the party list representatives and sectors to enter the Legislature. He stated that the Commission would also decentralize authority of local governments and constitutionalize the power of recall.

Calling attention to the fact that the Commission had chosen a presidential system in accordance with the preference of the people, he stated that as the w x name implies, the presidential system places responsibility and reliance on a chief executive to lead and act, but for the President to be effective, he must have adequate powers and flexibility to deal with problems which, at present, are enormous, one of which is the need for a new Constitution. He also contended that the Commission had decided to lessen the powers of the President by

subjecting him to more checks, both institutionally and directly, and taking away from him the possibility of returning to power. He stressed that a good president needs some leverage in order to be effective.

Mr. Monsod further observed that, much as the people would like to think that they have attained complete maturity, they still need time to be able to make sure that the presidency would work, with the hope that in the future the country would be able to attain such maturity, taking into account the continuing realities and the dynamics and imperfectibility of human institutions.

Having given the premises he had cited, he urged his Colleagues to ask themselves whether they have created a self-destructing presidency; and whether the safeguards, no matter how noble and uplifting, could effect a paralysis of the presidency.

Mr. Monsod then suggested amendments to the following provisions: 1) Section 15 on the declaration of martial law to give the President the flexibility to act in cases of invasion and rebellion; 2) Section 21 on the government budget by stating that an economic development framework should be made the basis of the appropriations act, 3) Section 18 on foreign loans by putting the power of concurrence in Congress and not in the Monetary Board; 4) Section 16 on the power of the Commission on Appointments, by limiting the same to department heads and ambassadors but not to the level of bureau heads and colonels; 5) a rediscussion on the question of immediate or future reelection for the President; and 6) applicability of the suspension of the privilege of the writ of habeas corpus not only to persons who are judicially charged for rebellion.

Thereupon, the Chair requested Mr. Monsod to submit his proposed amendments to the Committee.

PROPOSED AMENDMENT OF MR. RIGOS

Before proposing his amendment, Mr. Rigos inquired whether the Vice-President who was a former President could take the place of the President who becomes incapacitated, in reply to which, Mr. Regalado stated that as it stands, he could, because it is not reelection but succession by the Vice-President to the Office of the President.

Thereupon, on Section 5, on page 2, line 32, Mr. Rigos, with Mr. Nollado as coauthor, proposed to delete the words "The Congress shall" and in lieu thereof, to substitute the following:

WHERE NEITHER A PRESIDENT-ELECT NOR A VICE-PRESIDENT-ELECT SHALL HAVE BEEN CHOSEN OR SHALL HAVE QUALIFIED OR BOTH SHALL HAVE DIED AT THE TIME FIXED FOR THE BEGINNING OF THEIR TERMS THE SENATE PRESIDENT OR, IN HIS ABSENCE THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL THEN ACT AS PRESIDENT UNTIL A PRESIDENT OR VICE-PRESIDENT SHALL HAVE QUALIFIED.

Mr. Regalado suggested that Mr. Rigos coordinate with Messrs. Maambong and Davide who have proposed amendments on the same section.

SUSPENSION OF SESSION

Thereafter, on motion of Mr. Regalado, the Chair suspended the session.

It was 10:28 a.m.

RESUMPTION OF SESSION

At 10:35 a.m., the session was resumed.

PROPOSED AMENDMENT OF MR. DE LOS REYES

Upon resumption of session, Mr. de los Reyes proposed an amendment on Section 5, page 2, to delete lines 26 to 32, and in lieu thereof, to substitute the following:

SECTION 5. - THE PRESIDENT-ELECT SHALL QUALIFY AT THE BEGINNING OF HIS TERM. IF HE FAILS TO QUALIFY THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT. IF THE PRESIDENT-ELECT DIES OR BECOMES INCAPACITATED THE VICE-PRESIDENT-ELECT SHALL BECOME PRESIDENT.

Mr. de los Reyes stated that his proposal was coauthored by Messrs. Padilla, Nollado and Rigos.

INQUIRY OF MR. DAVIDE

In reply to Mr. Davide's contention that under the proposal, the Vice President would become a permanent President because of the President's failure to qualify, Mr. de los Reyes stated that the sentence is clear to the effect that if he fails to qualify, the Vice-President shall act as President.

Mr. de los Reyes informed the Body that the second part of the proposal would be introduced by Mr. Rigos.

Thereupon, the Chair requested the Members to consolidate their amendments for better understanding of the whole provision.

SUSPENSION OF THE SESSION

At this juncture, the Chair suspended the session.

It was 10:41 a.m.

RESUMPTION OF SESSION

At 10:58 a.m., the session was resumed.

PROPOSED AMENDMENT OF MR. JAMIR

On page 2, Mr. Jamir proposed the insertion of a new paragraph between the first and second paragraphs of Section 4 which shall read as follows:

NO PERSON WHO HAS SERVED MORE THAN THREE YEARS AS PRESIDENT SHALL BE QUALIFIED FOR ELECTION TO THE SAME OFFICE AT ANY TIME.

Mr. Jamir explained that his proposed amendment would take care of a situation when the Vice- President, taking over the presidency on account of death or permanent incapacity of the President, would serve an unexpired term of more than three years, in which case he should not be allowed to run and, on the other hand, if the Vice-President would serve an unexpired term of less than three years, then he should be allowed to run for election as President.

Mr. Regalado noted that while the proposed amendment is for permanent disqualification thereafter, it is similar to the 22nd Amendment of the United States Constitution which states that "No person who has held the office of President or acted as President for more than three years of a term to which some other person was elected President shall be elected to the office of the President in the next succeeding election."

Mr. Jamir pointed out that under the United States Constitution, the President has eight years to serve while under

the proposed Article on the Executive, the President is not allowed to run for reelection, to which Mr. Sumulong replied that there is a similar proposal made previously by Mr. Rodrigo.

Mr. Rodrigo confirmed that he presented a similar proposal when the Body was considering the Article on the Legislative and although it seemed acceptable to the Body he was prevailed upon to withdraw said proposal on the understanding that it would be taken up in the Article on the Executive, thus it would be timely for the Body to discuss said proposal.

Mr. Regalado, however, adverted to Mr. Monsod's proposal to reconsider the decision on the total prohibition on the President from running for reelection.

In view thereof, Mr. Jamir withdrew his proposed amendment with the reservation to present the same at the appropriate time.

PROPOSED AMENDMENT OF MR. RAMA

On Section 3, page 1, Mr. Rama proposed the deletion of the words "may be appointed as a member of the Cabinet" on lines 19 and 20 and in lieu thereof, to substitute the words SHALL BE THE EX-OFFICIO PRESIDENT OF THE SENATE.

Explaining his proposed amendment, Mr. Rama stated that his proposal would provide a constitutional function to the Vice-President who, in the past, had practically been jobless. He observed that the phrase sought to be deleted is a little bit derogatory to the Vice-President on the basis of the arguments advanced by the Committee that the President should not be compelled to appoint the Vice President to a Cabinet position because a Cabinet member is his alter ego.

In reply to Mr. Rodrigo's inquiry, Mr. Rama stated that the Vice-President, once he becomes the Senate President, may not be appointed to a Cabinet position because the Senate Presidency is already a very high position and the matter of appointing him as Cabinet member depends on the pleasure of the President.

Citing the case of Vice-President Laurel, Mr. Rodrigo pointed out that under the proposed amendment, the Vice-President, who already occupies a powerful position as Minister of Foreign Affairs, would be given the powerless position of Senate President.

In reply, Mr. Rama maintained that being a Senate President, he would be the head of a powerful body which plays a significant role in policy-making, and besides, a Cabinet position is subject to the pleasure of the President.

Mr. Rodrigo pointed out that the powerless nature of the position of the Vice-President is similar to that of the Senate President because he could neither vote nor participate in the deliberations, to which Mr. Rama replied that the position of Senate President carries tremendous prestige and is the launching pad to the Presidency.

Mr. Rodrigo stated that a Senate President elected from among the Senators is powerful because he could participate in the proceedings whereas a Vice-President, as an ex-officio Senate President, would just be occupying a purely honorary position.

Mr. Sumulong stated that the Committee would submit the proposal to the Body.

POINT OF ORDER

At this juncture, Mr. Davide raised a point of order on the ground that Mr. Rama should have first asked for a reconsideration of the approval of an amendment on the same sentence.

MOTION FOR RECONSIDERATION

Thereupon, Mr. Rama asked for reconsideration of the approval of the amendment on page 1, lines 19 and 20.

Mr. Davide objected on the ground that the amendment had already been approved, and relative to Mr. Rama's proposal, he stated that when the Vice-President becomes the ex-officio President of the Senate, and he succeeds the President, the Senate would be left without a head, in reply to which, Mr. Rama pointed out that the Senate could provide in its Rules a remedy for such situation.

Submitted to a vote, and with 25 Members voting in favor, 4 against, the motion for reconsideration was approved by the Body.

RESTATEMENT OF MR. RAMA'S PROPOSED AMENDMENT

Thereafter, Mr. Rama restated his proposed amendment on page 1, lines 19 and 20, to delete the phrase "may be appointed as a member of the Cabinet" and in lieu thereof, to substitute the phrase SHALL BE THE EX-OFFICIO PRESIDENT OF THE SENATE

Thereupon, Mr. Guingona proposed an amendment to the amendment by retaining the original sentence on lines 19 and 20 but adding the following sentence: IF BEFORE THE CONGRESS CONVENES FOR ITS REGULAR SESSION, THE VICE-PRESIDENT IS NOT NOMINATED OR, IF SO NOMINATED, HAS NOT ACCEPTED THE NOMINATION AS MEMBER OF THE CABINET, THEN HE WOULD BE EX-OFFICIO SENATE PRESIDENT.

He explained that Mr. Rama's original proposal would impeach the separation of the Executive from the Legislature, and with his amendment to the amendment, the President would be given the option to appoint the Vice-President as member of his Cabinet, and thereafter, the Vice-President would have the option to choose between being a member of the Cabinet or being Senate President, in reply to which Mr. Rama opined that the amendment to his amendment would destroy the intent of his proposal.

At this juncture, Mr. Tingson informed Mr. Rama that he would also propose an amendment on the additional power of the Vice-President, like being the Ombudsman, in reply to which Mr. Regalado observed that there would be three available positions for the Vice-President, namely, being member of the Cabinet, ex-officio President of the Senate and Ombudsman.

On the matter of being Ombudsman, Mr. Rigos pointed out the problem that the Vice-President might not meet the qualifications of an Ombudsman as defined by the Constitution.

Thereupon, Mr. Brocka observed that the Body had been preoccupied with giving the Vice-President another position because of the powerless position he occupies. In view thereof, he suggested that the Office of the Vice-President be abolished.

Thereafter, Mr. Jamir proposed an amendment to the amendment by adding the phrase WITH RIGHT TO VOTE IN CASE OF A TIE after the word "Senate" which, Mr. Rama did not accept on the ground that the Senate could provide the same in its Rules.

Mr. Rama restated his amendment on page 1, lines 19 and 20, to delete the phrase "may be appointed as a member

of the Cabinet" and in lieu thereof, to substitute the phrase SHALL BE THE EX-OFFICIO PRESIDENT OF THE SENATE.

Mr. Abubakar objected to the proposed amendment on the ground that the Vice-President could not be an effective President of the Senate because he has no right to vote, and he is not a member of the Senate, in reply to which Mr. Rama pointed out that it is the system in the United States and that it has shown satisfactory results.

Submitted to a vote, and with 10 Members voting in favor and 24 against, the proposed amendment was lost.

PROPOSED AMENDMENT OF MR. RODRIGO

On page 3, line 31, Mr. Rodrigo proposed to delete the phrase "and the House of Representatives."

He explained that the original Section 8 would provide that when the Vice-President dies, the successor would be nominated by the President from among the Members of the Senate and the House of Representatives. He opined, however, that the choice should be limited to the Members of the Senate, considering that the Vice-President is elected on a nationwide basis, so his successor should also come from the Senate whose Members are also elected on a nationwide basis, unlike the Members of the House of Representatives who are elected by district or province. He added that the term of the Vice-President is six years, which is the same as that of the Members of the Senate, while the term of the Members of the House of Representatives is three years.

Mr. de los Reyes objected on the ground that the proposal would limit the choice to only 24 Members of the Senate while the original proposal would give the President a wider choice.

Mr. Bernas added that there might be better and more experienced men in the House of Representatives, and, consistent with his position on unicameralism, the Members of the House of Representatives would be closer to the masses.

Submitted to a vote, and with 13 Members voting in favor and 18 against, the proposed amendment was lost.

PROPOSED AMENDMENT OF MR. TINGSON

On page 1, line 20, Mr. Tingson proposed to add the following sentence: THE VICE-PRESIDENT SHALL HEAD THE NATIONAL ADVISORY COUNCIL.

Mr. Tingson explained that the Vice-President should be vested with a definite function that would not encroach on the duties and functions of the President. He stated that a National Security Council in the United States is headed by the President, together with the Vice-President, Secretaries of State and Defense, the Director of the Office of Civil and Defense Mobilization and other heads of agencies as may be appointed by the President. He added that the Council is tasked with clarifying issues, presenting possible alternative courses of action, and handling questions of policy in international relations, such that it is more an advisory than a decision-making body.

In our case, he opined that it should be headed by the Vice-President to give him definite functions, and with other sectoral representatives as members thereof.

He stated that although the National Security Council of the United States was created by statute, the National Advisory Council he had in mind could be constitutionalized like the Monetary Board or the National Economic and Development Authority.

Mr. Tingson, however, clarified that he was referring to a body known as the National Advisory Council with full-time staff and planning board wherein the Vice-President could undergo actual leadership training. He

stressed that this would upgrade the Office of the Vice-President.

Mr. de Castro invited attention to- the fact that there is no National Advisory Council.

Mr. Bernas observed that the Body's effort to elevate the position of Vice-President had resulted, in fact, to its detriment for he would be made a constitutional head of a non-existent advisory body.

Mr. Tingson explained that he presented the proposal even if he did not know whether the creation of the council was already incorporated in one of the Committee Reports, in his desire to give the Vice- President responsibility since he would become President in case of the latter's death or incapacity.

At this juncture, Mr. Maambong, on behalf of the Committee, informed the Body that under Executive Order No. 708 which was promulgated in 1981, the President of the Philippines had the chairmanship of the following bodies and entities: The Council of Leaders; Foreign Policy Council; General Military Council; National Security Council; Special Presidential Reorganization Committee and 18 other agencies under the Office of the President. He added that the National Advisory Council mentioned by Mr. Tingson does not exist and there is no information whether the present government reorganization under Minister Luis Villafuerte has already effected its creation.

Mr. Tingson insisted that the National Advisory Council would fit into any government reorganization and if ever it would be created, it should be headed by the Vice-President.

Thereafter, Mr. Tingson's proposal was submitted to a vote, and with only 1 Member voting in favor and 26 against, the proposal was lost.

PROPOSED JOINT AMENDMENT OF MESSRS. PADILLA, NOLLEDO, RIGOS, DE LOS REYES, MAAMBONG AND DAVIDE AS MODIFIED BY MR. REGALADO

Mr. de los Reyes, jointly with Messrs. Padilla, Nollado, Rigos, Maambong and Davide proposed to reword the entire Section 5 to read as follows:

SECTION 5. — THE PRESIDENT-ELECT SHALL QUALIFY AT THE BEGINNING OF HIS TERM. IF HE HAS NOT BEEN CHOSEN OR IF HE FAILS TO QUALIFY, THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT UNTIL A PRESIDENT SHALL HAVE BEEN CHOSEN AND QUALIFIED. IF THE PRESIDENT-ELECT DIES OR BECOMES PERMANENTLY DISABLED, THE VICE-PRESIDENT-ELECT SHALL BECOME PRESIDENT. WHERE NEITHER A PRESIDENT-ELECT NOR VICE-PRESIDENT-ELECT SHALL HAVE BEEN CHOSEN OR SHALL HAVE QUALIFIED OR BOTH SHALL HAVE DIED OR BECOME PERMANENTLY DISABLED AT THE THE FIXED FOR THE BEGINNING OF THEIR TERMS, THE SENATE PRESIDENT OR, IN HIS ABSENCE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL THEN ACT AS PRESIDENT UNTIL A PRESIDENT OR VICE-PRESIDENT SHALL HAVE BEEN ELECTED AND QUALIFIED.

Mr. de los Reyes explained that although "assumed office" is more specific, it is very unlikely for a President-elect and a Vice-President-elect to qualify and then not assume the office, for which reason the word "qualified" was used which is similar to that used in the 1935 and 1973 Constitutions and the Election Code.

Mr. Maambong opined that "assumed office" is better since there is a possibility that an official who had taken his oath and is therefore technically considered as qualified, would not be able to assume the office because of sickness or death.

Mr. Bernas explained that under our political and administrative laws the word "qualify" has two meanings: the first, to have the qualifications; and the second, to assume the office by taking the oath or posting a bond

depending upon the nature of such office. He stressed that both terminologies have clear meanings in jurisprudence, and that the word "qualify" may be maintained since it clearly means assumption of office.

Mr. Regalado suggested that "or" in the phrase "until a President shall have been chosen or qualified" should be changed to AND.

Mr. de los Reyes agreed. He also agreed with Mr. Regalado's suggestion to change "or" in the phrase "Where neither a President-elect nor Vice-President- elect shall have been chosen or shall" to AND.

Thereupon, Mr. Regalado proposed to substitute "in his absence" with IF HE IS UNABLE.

At this juncture, Mr. Foz proposed to substitute "qualify" in the first sentence with TAKE HIS OATH OF OFFICE.

Mr. de los Reyes rejected the proposal stating that "qualify" is more embracing and has an established meaning in jurisprudence.

Mr. Regalado added that Mr. Foz' proposal was already taken care of in Section 6.

Mr. Davide commented that changing "or" to AND would destroy the distinction in the concepts of being chosen and being qualified which refer to two different situations.

Mr. Bernas explained that the office would not be filled until the official is both chosen and qualified, hence if one is missing the office remains vacant.

INQUIRY OF MR. SUAREZ

On Mr. Suarez' query on the meaning of "permanent disability", Mr. de los Reyes replied that the disability refers to all kinds of disabilities whether they be mental or physical the determination of which is already provided in the subsequent articles.

As to whether the Vice-President should assume the presidency if the President had been permanently disabled, Mr. de los Reyes stated that there would be two situations, first, when the President-elect has not been chosen or has failed to qualify, in which case, the Vice-President-elect shall act as President and an election for the latter's position would ensue; and second, when the President-elect, who had been chosen and qualified, dies or becomes permanently disabled, in which case, the Vice-President-elect shall become the permanent President up to the expiration of the term.

INQUIRY OF MR. BERNAS

On Mr. Bernas' query whether, on the assumption that "shall" in the first sentence is mandatory, the action of a President who does not qualify would be considered as an abandonment of or refusal to assume office, Mr. de los Reyes stated that if the President- elect fails to assume his office at the beginning of his term, the Vice-President-elect could start acting as President but he opined-that this could not be taken as an abandonment of office because the President- elect may have the intent to assume the office later on.

Mr. Maambong pointed out that if the President- elect fails to qualify then the Vice-President-elect would act as President as provided for in the second sentence of the proposal. He added that as to the reason why the President-elect failed to qualify is another matter.

Mr. Bernas maintained that the phrase "until a President shall have been chosen and qualified" would open the possibility of a permanent vacancy in the position of the President.

Mr. Maambong opined, however, that since the President had already been chosen, the only problem being that he failed to qualify, the second sentence would apply.

Mr. Bernas opined that the original language would avoid the problem.

On Mr. Rodrigo's query whether the Senate and the same interpretation would apply to the Speaker of the House of Representatives.

Mr. Foz observed that a President who fails to qualify would not be considered as having abandoned his office because of the express provisions of the proposed amendment.

At this juncture, Mr. Bernas stated that "chosen" in the second sentence should be deleted so that there would be no need for an election of a new President since it would just be a matter of waiting for the one who had already been chosen to qualify. He stated that the matter of election of a new President would fall under the subsequent sentences.

Mr. de los Reyes agreed.

On Mr. Maambong's query whether "chosen" actually refers to proclamation, Mr. de los Reyes answered in the affirmative.

Mr. Regalado opined that a President could not be called President-elect unless he had been pro- claimed.

Mrs. Rosario Braid pointed out on line 7, paragraph 4, that the phrase "at the time fixed for the beginning of their terms" is a bit ambiguous, for which she proposed a rewording, to read ON OR BEFORE THE BEGINNING OF THEIR TERMS. Mr. de los Reyes observed that the proposal is just a matter of style and that previous Constitution have always been worded in that manner.

Mr. Padilla proposed to delete "has not been chosen or if he" stating that if the President fails to qualify, the Vice-President-elect shall act as President until the President-elect shall have qualified. He stated that his original proposal did not include the phrase he sought to be deleted.

In explaining the retention of the word "chosen", Mr. Davide stated that two situations are envisioned in the provision: 1) the mere failure to qualify; and 2) when there is failure to choose a President.

Mr. Padilla observed that on Section 4, the President and the Vice-President shall have been elected with the election returns already verified, and the elected officials having been proclaimed. On Section 5, he observed that it refers to the President-elect and to the Vice-President-elect, where in case the President-elect fails to qualify, the Vice- President-elect shall act as President until the President-elect shall have qualified.

In reply to the Chair's query referring to Mr. Davide's comment in case there is failure of election and that no one has been chosen, Mr. Padilla stated that such situation is taken care of by the second sentence.

Mr. de los Reyes stated that in the light of all the views presented, the proposed amendment shall read:

THE PRESIDENT-ELECT SHALL QUALIFY AT THE BEGINNING OF HIS TERM. IF HE HAS NOT BEEN CHOSEN, OR IF HE FAILS TO QUALIFY, THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT UNTIL THE PRESIDENT-ELECT SHALL HAVE QUALIFIED. IF THE PRESIDENT-ELECT DIES OR BECOMES PERMANENTLY DISABLED, THE VICE-PRESIDENT SHALL BECOME PRESIDENT. WHERE NEITHER A PRESIDENT-ELECT NOR A VICE-PRESIDENT-ELECT SHALL HAVE BEEN CHOSEN AND HAVE QUALIFIED, OR WHERE BOTH SHALL HAVE DIED OR BECOME PERMANENTLY DISABLED AT THE TIME FIXED FOR THE BEGINNING OF THEIR TERMS, THE SENATE PRESIDENT, OR IF HE IS UNABLE, THE

SPEAKER OF THE HOUSE OF REPRESENTATIVES, SHALL THEN ACT AS PRESIDENT UNTIL A PRESIDENT OR VICE-PRESIDENT SHALL HAVE BEEN ELECTED AND QUALIFIED.

Mr. Padilla reiterated his suggestion to delete the phrase "has not been chosen or if he."

Speaking as one of the proponents, Mr. Maambong stated that, after some thought, he is inclined to adopt Mr. Davide's observation to retain the phrase sought to be deleted by Mr. Padilla.

Mr. Regalado, on behalf of the Committee, stated that to retain the phrase would not change the substance of the provision and that it may even provide a remedy for any future contingency as envisioned by Mr. Davide.

In reply to Mr. Rodrigo's query on whether the President-elect and Vice-President-elect are deemed chosen for which reason they are called "elect", the Chair opined that the second sentence refers to a President-elect who has not been chosen, in which case, the situation is not covered by the succeeding sentences.

Reacting thereto, Mr. Rodrigo stated that he was looking at the Section as a whole to determine his vote on the matter.

The Chair stated that the varying opinions on Section 5 calls for a suspension of the session to thresh out the matter among the Members.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, the Chair acknowledged the presence of guests who are on a fact-finding goodwill mission to the country. She invited them for lunch so that they could meet the Members of the Body.

SUSPENSION OF SESSION

On motion of Mr. Sarmiento, the Chair suspended the session until two-thirty in the afternoon.

It was 12:27 p.m.

RESUMPTION OF SESSION

At 2:38 p.m. the session was resumed.

AMENDMENT OF MR. DAVIDE

On page 4, line 1, Mr. Davide proposed to substitute the word ASSUME in lieu of "take"; and on line 2 after the word "Congress", to add the words VOTING SEPARATELY, which amendments were accepted by the Committee.

Mr. de los Reyes stated that the situation could be that the Senate would have its own candidate but the President would prefer a Member of the House of Representatives who would not be confirmed by the Senate and that a reverse situation could happen. He inquired as to what would happen if the House of Representatives confirms the nomination and the Senate does not, in reply -to which, Mr. Davide stated that in such case the nominee for Vice-President would not be able to assume office. Mr. Davide then inquired as to what Mr. de los Reyes had in mind, to which the latter replied that he would prefer to have a joint session.

Thereupon, Mr. Rodrigo interposed the observation that such had never been done in the twelve years he had been in the Senate. He noted that during the joint sessions, the House and the Senate would vote separately, otherwise, the Senators would be outnumbered by the Members of the House of Representatives. Mr. Davide clarified that under his proposal, if one House cannot give a concurrence by majority vote of all its Members for a

confirmation, then the President will have to submit another nominee, the contemplation being that each House shall vote separately. Mr. de los Reyes stated that if the purpose is to find an acceptable Member of either House until both Houses agree, he would have no objection to the amendment.

There being no objection, the amendment was approved by the Body.

PROPOSED AMENDMENT OF MR. DAVIDE

On page 4, line 9, between the words "President" and "or", Mr. Davide proposed to insert the clause: AND SUCH OFFICER SHALL ACT ACCORDINGLY, UNTIL THE DISABILITY OF THE PRESIDENT OR VICE-PRESIDENT BE REMOVED, OR UNTIL THE ELECTION OF THE PRESIDENT OR THE VICE-PRESIDENT.

Mr. Suarez inquired whether the amendment would be necessary it appearing that the provision assumes a permanent disability, death, removal from office or resignation in which case the vacancy would be permanent. Mr. Suarez further asked if the proposal contemplates the return of a permanently disabled President. Mr. Davide, thereafter, agreed to drop the phrase "until the disability of the President or Vice-President be removed." Mr. Davide restated the provision to wit: "The Congress shall by law provide for the case of permanent disability, death, removal from office or resignation of both the President and Vice-President, declaring which officer shall then become Acting President AND SUCH OFFICER SHALL ACT ACCORDINGLY UNTIL THE ELECTION OF THE PRESIDENT OR VICE-PRESIDENT, OR THE MANNER IN WHICH ONE SHALL BE SELECTED."

PROPOSED AMENDMENT OF MR. RIGOS

Mr. Rigos interposed an anterior amendment to delete the entire Section 9 and substitute in its place a new provision. Mr. Maambong informed that the Committee had received the proposed amendment of Mr; Rigos and asked the indulgence of Mr. Davide and permission of the Chair to allow Mr. Rigos to introduce his amendment.

The Chair recognized Mr. Rigos.

Mr. Rigos read his proposed substitute provision; to wit: IN CASE OF PERMANENT DISABILITY, DEATH REMOVAL FROM OFFICE OR RESIGNATION OF BOTH THE PRESIDENT AND VICE-PRESIDENT, THE SENATE PRESIDENT OR, IN HIS ABSENCE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL THEN ACT AS PRESIDENT UNTIL THE PRESIDENT AND VICE- PRESIDENT SHALL HAVE BEEN ELECTED AND QUALIFIED. Mr. Rigos stated that his proposal is related to the proposed amendment to Section 5 which the Commission would have to act upon and that the members of the Committee have copies of the said proposed amendment.

Mr. Regalado informed the Body that the Committee had reformulated Section 5 with the help of the other Sponsors, copies of which would be distributed to the Members to enable them to follow the discussion. He requested deferment of consideration of any proposed amendment to Section 9 until after the Body had considered and voted on Section 5. He requested Messrs. Rigos and Davide to get together and harmonize their amendments.

PROPOSED AMENDMENT OF MR. BACANI

On page 3, line 21, Mr. Bacani proposed to substitute the word "fixed" with DETERMINED, the reason being that the salary of the President should not be fixed to take into account future inflation. He also proposed that the following sentence be deleted and be placed in the Transitory Provisions. The amended provision would now read as follows: "The President and Vice-President shall receive a salary to be DETERMINED by law." He noted that

in countries like Italy there are automatic salary adjustments among government employees when there is an inflation. He added that it would not be good to fix the salary of the President which can be determined by law and that law may then provide that for such rate of inflation there will be no such an increase in the salary of the President.

Mr. Monsod advised the Body that in connection with the salary of the President there was an omnibus motion to correct sections which specify salaries and precisely to place therein the phrase "shall be determined by law." He added that it was his understanding that the Body had agreed that the Transitory Provisions would provide for starting salaries so as to resolve the remuneration issues in the Constitution.

The Committee accepted the first amendment of Mr. Bacani to substitute DETERMINED in lieu of "fixed."

In reply to the inquiry of Mr. Bernas as to whether Mr. Bacani is proposing to delete the clause "which shall not be increased or decreased during their term", Mr. Bacani answered in the affirmative and added that it was his understanding that the law itself will later on provide for an automatic increase or decrease in case of inflation or deflation.

Mr. Sumulong did not accept the second amendment. Mr. Bacani clarified that he was only referring to the phrase "or decreased." Mr. Bernas stated that the limitation on the power to decrease was placed in the provision to protect the independence of the President from the Legislature.

Mr. Monsod explained that in the omnibus resolution, such salaries shall not be decreased although any increase would not be applicable to the incumbent. He added that the matter was left to the Committee on Style which was supposed to harmonize all the resolutions to this effect.

Mr. Rodrigo, Chairman of the Committee on Style, manifested that he was not aware that the matter shall be left to the discretion of the Committee. He noted that it would involve substance. He stated that to delete "which shall not be decreased during his term" which does not appear in the text, would change the substance which is not within the power of the Committee. He pointed out that the amendment would involve salaries of high ranking officials and asked that a general rule for all be adopted. He asked whether the salaries of high ranking officials be left entirely to Congress to determine and provide if such can be increased or decreased during their tenure or term of office or whether the Body should maintain the present provisions of the Constitution restricting such salaries.

Mr. Regalado informed that Mr. Monsod was the original proponent of the uniform rule with respect to salaries and that would be placed in the Transitory Provisions. He asked Mr. Monsod if he had a copy of the original proposal and the formulation. Mr. Monsod asked for a deferment for a few minutes.

AMENDMENT OF MR. JAMIR

On line 8 of Section 6, Mr. Jamir proposed to change the word "he" to THEY, delete the letter "s" in the word "enters", and substitute the word THEIR in place of "his"; and on line 9 after the word "President" to put a comma (,) and add the phrase THE VICE-PRESIDENT OR THE ACTING PRESIDENT before the word "shall"; and thereafter add the word VICE-PRESIDENT to the pertinent portions of the Section so that the oath provided for herein should be used by all three officers-the President, the Vice-President and the Acting President.

Section 6 will now read as follows: "Before they enter on the execution of THEIR office, the President, or Vice-President or Acting President shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or Vice-President or Acting President) of the Philippines, preserve and defend its Constitution . . ."

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

AMENDMENT OF MR. RIGOS

Mr. Rigos proposed to delete the entire Section 10 and in lieu thereof to substitute the following provisions, to wit: IN CASE OF VACANCY IN THE OFFICE OF THE PRESIDENT OCCURRING AT LEAST EIGHTEEN MONTHS BEFORE THE REGULAR ELECTION, THE SAME SHALL BE FILLED BY SPECIAL ELECTION TO BE CONDUCTED BY THE COMMISSION ON ELECTIONS IN ACCORDANCE WITH LAW AND THE PRESIDENT THUS ELECTED SHALL SERVE FOR THE UNEXPIRED TERM.

Mr. Regalado advised that the proposed amendment be reproduced and distributed to the Members.

MANIFESTATION OF MR. JAMIR

Mr. Jamir made a slight correction on the approved amendment on Section 6. He explained that the portion of the "oath" on line 15 to wit, "execute its laws"; would not apply to the Vice-President until he assumes the office of the President. The Committee did not object.

AMENDMENT OF MR. RODRIGO

Mr. Rodrigo stated that in Section 11, it is not clear as to who would act as President during the time that Congress is making the investigation and arriving at a decision. He noted that it would appear that the Vice-President would also be the one in charge during this period although during his interpellation the Committee stated that the intention of the Committee is to have the President during this period.

Thereupon, on page 5, line 21, Mr. Rodrigo proposed after the words "duties of his office" to place a period (.) and delete "unless" and place in lieu thereof the words MEANWHILE, SHOULD, on line 26, after the word "office" change the period (.) to a comma (,) and delete "Thereupon"; and on page 6, line 3 to delete the words "continue to discharge" and in lieu thereof place the word ASSUME; and on line 4 to delete the word "resume" and substitute with the word CONTINUE.

The whole paragraph shall read as follows: "Thereafter, when the President transmits to Congress his written declaration that no inability exists, he shall resume the powers and duties of his office. MEANWHILE, SHOULD a majority of all the members of the Cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Congress shall decide the issue, of the cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Congress shall decide the issue convening within forty-eight hours for that purpose, if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if not in session, within twenty-one days after it is required to assemble, determines by a two-thirds vote of both Houses of Congress that the President is unable to discharge the powers and duties of his office, the Vice-President shall ASSUME the same as Acting President; otherwise, the President shall CONTINUE the powers and duties of his office."

At this juncture, Mr. Regalado invited Mr. Rodrigo's attention to the voting of the two Houses of Congress, to which Mr. Rodrigo modified his amendment by inserting, on page 6, line 1, a comma (,) and the words VOTING SEPARATELY and another comma (,) between "Congress" and "that."

MR. JAMIR'S PROPOSED AMENDMENT TO THE AMENDMENT

Mr. Jamir proposed an amendment to the amendment by changing the word "meanwhile" to HOW EVER.

Mr. Rodrigo pointed out that "however" seems to denote a contrary opinion, such that following closely the sentence where the President is the Acting President, it might denote that the President would no longer be the one continuing to act, but the Vice-President.

APPROVAL OF MR. RODRIGO'S AMENDMENT

Thereupon, Mr. Rodrigo restated his amendment starting from line 18 of page 5 to line 5 of page 6, to read as follows:

THEREAFTER WHEN THE PRESIDENT TRANSMITS TO THE PRESIDENT OF THE SENATE AND TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES HIS WRITTEN DECLARATION THAT NO INABILITY EXISTS, HE SHALL RESUME THE POWERS AND DUTIES OF HIS OFFICE. MEANWHILE, SHOULD A MAJORITY OF ALL THE MEMBERS OF THE CABINET TRANSMIT WITHIN FIVE DAYS TO THE PRESIDENT OF THE SENATE AND TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES THEIR WRITTEN DECLARATION THAT THE PRESIDENT IS UNABLE TO DISCHARGE THE POWERS AND DUTIES OF HIS OFFICE, THE CONGRESS SHALL DECIDE THE ISSUE, CONVENING WITHIN FORTY-EIGHT HOURS FOR THAT PURPOSES IF NOT IN SESSION IF THE CONGRESS, WITHIN TWENTY-ONE DAYS AFTER RECEIPT OF THE LATTER WRITTEN DECLARATION, OR, IF NOT IN SESSION, WITHIN TWENTY-ONE DAYS AFTER IT IS REQUIRED TO ASSEMBLE, DETERMINES BY A TWO-THIRDS VOTE OF BOTH HOUSES OF CONGRESS, VOTING SEPARATELY, THAT THE PRESIDENT IS UNABLE TO DISCHARGE THE POWERS AND DUTIES OF HIS OFFICE, THE VICE-PRESIDENT SHALL ASSUME THE SAME AS ACTING PRESIDENT; OTHERWISE THE PRESIDENT SHALL CONTINUE EXERCISING THE POWERS AND DUTIES OF HIS OFFICE.

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

PROPOSED AMENDMENT OF MR. GUINGONA

On Section 10, page 5, line 4, Mr. Guingona proposed to change the word "seventy" to ONE HUNDRED EIGHTY.

Mr. Guingona stated that his proposal was co-authored by Messrs. Maambong, Davide, Ople and Rodrigo.

At this juncture, Mr. Rigos pointed out that there was a pending motion to delete the entire paragraph.

Thereupon, the Chair requested that the amendment be deferred.

PROPOSED AMENDMENT OF MR. OPLE

On page 6, between lines 5 and 6, Mr. Ople pro- posed to insert a new Section to read as follows:

SEC. — . IN CASE OF SERIOUS ILLNESS OF THE PRESIDENT THE PUBLIC SHALL BE INFORMED OF THE STATE OF HIS HEALTH THROUGH THE MINISTER OF HEALTH OR OTHER APPROPRIATE AUTHORITY. THE CABINET MEMBER IN-CHARGE OF NATIONAL SECURITY AND FOREIGN RELATIONS AND THE CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES DURING SUCH TIMES SHALL NOT BE DENIED ACCESS TO THE PRESIDENT AS COMMANDER-IN-CHIEF.

Explaining his amendment, Mr. Ople stated that throughout history, there had been many recorded instances when

the actual state of health of the President had been concealed from the public. He pointed out that the illness could occur during an awkward moment in the life of a nation when national survival ought to be secured in the face of a major threat of the proclamation of martial law or the suspension of the writ of habeas corpus, so that Congress could come into exercise a monitoring and, perhaps, a remedial function. He stated, however, that although the country has yet to attain that level of seriousness of the situation, the fact remains that national security might be at stake. He stressed that national survival could hang in the balance and, therefore, the right of the people to know should be included in this Article.

He stated that delegating this provision to Congress might lead to situations of embarrassment considering that many of those who would compose the Legislature would be very deferential towards those in power and may not bother to mention this at all in the agenda.

Mr. Ople reiterated that there should be a constitutional cognizance of that danger and that the right of the people to know should be built into this Article on the Executive.

INQUIRY OF MR. NOLLEDO

In reply to Mr. Nollado's query, Mr. Ople affirmed that his proposal would apply to a situation when the President is absent because he claims to be writing a book, in which case, the Constitution places the burden on him to tell the truth.

MR. RIGOS' PROPOSED AMENDMENT TO THE AMENDMENT

Mr. Rigos proposed an amendment to the amendment by deleting the word "serious".

Mr. Ople, however, did not accept the amendment on the ground that if the President is merely down with influenza, then this safeguard would not operate.

MR. ABUBAKAR'S AMENDMENT TO THE AMENDMENT

Mr. Abubakar proposed an amendment to the amendment by deleting the phrase "through the Minister of Health or other appropriate authority".

Mr. Abubakar stated that the state of health or an analysis as to the actual condition of the President should be left to the President himself and his physician.

Mr. Ople accepted the amendment to his amendment.

INQUIRY OF MR. SUAREZ

In reply to Mr. Suarez' query on the definition of the phrase "serious illness", Mr. Ople stated that, in layman's language, a serious illness would refer to one that almost but not quite incapacitates the President for a certain period of time.

INQUIRY OF MR. ROSALES

In reply to Mr. Rosales' query, Mr. Ople agreed that a President undergoing dialysis treatment would be considered seriously ill because the ailment is an organic and systemic disease.

INQUIRY OF MR. SUAREZ

Mr. Suarez opined that in fairness to future interpreters of the Constitution, the Commission should give examples of what would constitute serious illness on the part of the President that would necessitate the issuance of a medical bulletin.

Replying thereto, Mr. Ople pointed out that there are infinite examples, although the standard would be that illness where the President is not really incapacitated but only seriously inconvenienced in the conduct of his urgent duties as President.

Mr. Ople agreed with the Chair that the trust of his proposal is the right of the public to know and to safeguard our national survival and security which could be irretrievably impaired if the access of those in-charge of national security and foreign relations are cut off, thereby keeping the President ignorant of a national danger.

On who would be authorized to inform the public of the President's temporary incapacity, Mr. Ople stated that the burden could be better left to the Office of the President to choose the appropriate means of releasing information to the public.

MR. GUINGONA'S PROPOSED AMENDMENT TO THE AMENDMENT

Mr. Guingona proposed an amendment to the amendment by leaving the details of the provision to Congress to determine by law.

Mr. Ople accepted the amendment to his amendment but later changed his mind, stating that the Office of the President would be in a better position to release information for public consumption.

Mr. Guingona pointed out that his amendment would negate any possibility of not informing the public, to which, Mr. Ople replied that the Body should leave something for people power to do.

INQUIRY OF MR. RODRIGO

On Mr. Rodrigo's query whether noncompliance with this provision would constitute culpable violation of the Constitution which is a ground for impeachment, Mr. Ople stated that he was not inclined to say that it has attained the level of a culpable violation of the Constitution.

Additionally, Mr. Bernas stated that, since the provision does not state clearly as to who would make the revelation, the intention of the proponent was merely to establish a principle in general terms.

APPROVAL OF MR. OPLE'S AMENDMENT

The Sponsor accepted Mr. Ople's amendment, as amended, and there being no objection, the same was approved by the Body.

PROPOSED AMENDMENT OF MR. DAVIDE

On Section 10, page 4, line 20, between "vacancy" and "occurs", Mr. Davide proposed to insert the words IN THE OFFICE OF THE PRESIDENT AND THE VICE PRESIDENT.

At this juncture, Mr. Rigos stated that the Body has a pending amendment on Section 10, copies of which had been previously distributed.

Explaining his amendment, Mr. Davide stated that Section 10 was lifted from the 1984 Amendments to the

Constitution which related precisely to the situation then obtaining when the country did not have a Vice-President. In this connection, he stressed that Section 10 was inserted into the 1973 Constitution pursuant to the 1984 Amendments that took care of a rule on succession before the mandated election of the President in 1987, so much so that the situation contemplates a vacancy in the office of the President and the Vice-President.

Mr. Davide agreed with Mr. Bernas that his proposal was just a clarificatory amendment.

Mr. Rigos maintained, however, that the vacancy in the office of the Vice-President was taken care of in Section 8.

Thereupon, Mr. Davide agreed to a deferment of his amendment.

SUSPENSION OF SESSION

At this juncture, The Chair suspended the session.

It was 3:38 p.m.

RESUMPTION OF SESSION

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

Upon resumption, Mr. Regalado informed that the proponents; Messrs. Rigos and Nolledo, had agreed to withdraw their proposed amendments to Section 10 after it was explained to them that said Section refers to the election of the President and the Vice-President.

AMENDMENT OF MESSRS. NOLLEDO AND GUINGONA

As proposed by Mr. Nolledo, jointly with Mr. Guingona, and accepted by the Sponsor, the Body approved the substitution of the word "seventy" on page 5, line 4 with ONE HUNDRED EIGHTY

Mr. Guingona manifested for the record that the other proponents of the amendment were Messrs. Maambong, Davide, Ople and Rodrigo.

AMENDMENT OF MESSRS. BACANI AND MONSOD

On Section 7, page 3, Mr. Bacani, jointly with Mr. Monsod, proposed the rewording of the sentences after the first sentence thereof but before the last sentence which was agreed to be transferred to the Transitory Provisions, to read as follows: THE SALARIES OF THE PRESIDENT AND VICE-PRESIDENT SHALL BE DETERMINED BY LAW AND SHALL NOT BE DECREASED. NO INCREASE IN SAID- COMPENSATION SHALL TAKE EFFECT UNTIL AFTER THE EXPIRATION OF THE TERM OF THE INCUMBENT DURING WHICH SUCH INCREASE WAS APPROVED. THEY SHALL NOT RECEIVE DURING THEIR TENURE ANY OTHER EMOLUMENT FROM THE GOVERNMENT OR ANY OTHER SOURCE.

The Committee accepted the proposed amendment with the reservation that the last sentence of Section 7 would be transferred to the Transitory Provisions.

Mr. Guingona raised the possibility that an extra ordinary inflation might occur at the beginning of the term of the President and the Vice-President and for this reason, he suggested that the matter of salaries be left to the Committee- on Amendments and Transitory Provisions for further study, to which Mr. Regalado replied that the observation may be valid to Constitutional Commissioners but with respect to the President and the Vice-President, they have allowances to possibly make up for whatever effects inflation may bring.

There being no objection, the Body approved the amendment.

AMENDMENT OF MR. DAVIDE

Mr. Davide adverted to his pending amendment to Section 1-0, page 4, to insert between the words "vacancy" and "occur" on line 20 the words IN THE OFFICES OF THE PRESIDENT AND THE VICE-PRESIDENT.

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

MODIFIED AMENDMENT OF MR. DE LOS REYES

As proposed by Mr. de los Reyes and accepted by the Sponsor, the Body approved the reformulation of Section 5 to read as follows:

SECTION 5. THE PRESIDENT-ELECT AND THE VICE-PRESIDENT-ELECT SHALL ASSUME OFFICE AT THE BEGINNING OF THEIR TERMS.

IF THE PRESIDENT-ELECT FAILS TO QUALIFY, THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT UNTIL THE PRESIDENT-ELECT SHALL HAVE QUALIFIED.

IF A PRESIDENT SHALL NOT HAVE BEEN CHOSEN, THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT UNTIL A PRESIDENT SHALL HAVE BEEN CHOSEN AND QUALIFIED.

IF, AT THE BEGINNING OF THE TERM OF THE PRESIDENT, THE PRESIDENT-ELECT SHALL HAVE DIED OR SHALL HAVE BECOME PERMANENTLY DISABLED, THE VICE-PRESIDENT-ELECT SHALL BECOME PRESIDENT.

WHERE NO PRESIDENT AND VICE-PRESIDENT SHALL HAVE BEEN CHOSEN OR SHALL HAVE QUALIFIED, OR WHERE BOTH SHALL HAVE DIED OR BECOME PERMANENTLY DISABLED, THE SENATE PRESIDENT, OR IN CASE OF HIS INABILITY, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL ACT AS PRESIDENT UNTIL A PRESIDENT OR A VICE-PRESIDENT SHALL HAVE BEEN CHOSEN AND QUALIFIED.

THE CONGRESS SHALL PROVIDE BY LAW FOR THE CASE OF DEATH, PERMANENT DISABILITY OR INABILITY OF THE OFFICIALS MENTIONED IN THE NEXT PRECEDING PARAGRAPH AND THE MANNER IN WHICH ONE WHO IS TO ACT AS PRESIDENT SHALL BE ELECTED UNTIL A PRESIDENT OR VICE-PRESIDENT SHALL HAVE QUALIFIED.

Mr. de los Reyes manifested for the record that his amendment is in consolidation with the amendments of Messrs. Padilla, Nollado, Rigos, Maambong, Davide, Guingona and with the collaboration of Mr. Regalado.

On Mr. Suarez' query as to who would assume the presidency in the event the President-elect would not assume office at the beginning of his term, Mr. de los Reyes explained that the Vice-President would permanently assume the presidency if the President's failure to assume office is such that it would constitute abandonment of office.

Additionally, Mr. Bernas explained that if the failure to assume office is a clear abandonment of office, Section 5 would not apply because the second paragraph adverted to contemplates a temporary situation.

There being no objection, the proposed amendment was approved by the Body.

Thereafter, on page 4, Section 9, Mr. de los Reyes proposed the deletion of the sentence starting from the words "The Congress" on line 6 up to line 18 inclusive, and in lieu thereof, to substitute the following sentence: THE RULES SET FORTH IN SECTION 5 HEREOF SHALL APPLY ALSO IN CASE OF PERMANENT DISABILITY, DEATH, REMOVAL FROM OFFICE OR RESIGNATION OF BOTH THE PRESIDENT AND

VICE-PRESIDENT.

Mr. Bernas pointed out that Section 5 refers to a situation before the beginning of the term of office of the President, while Section 9 refers to the period when the President is already in office.

However, Mr. de los Reyes stated that the intent of the proposal is to provide for the Senate President or the Speaker of the House of Representatives to succeed the President or the Vice-President as the case may be, in case of permanent disability, death, removal from office, or resignation of the latter, in reply to which Mr. Bernas observed that there would be no harm in repeating the provisions proposed to be deleted.

In view thereof, Mr. de los Reyes withdrew his proposed amendment.

AMENDMENT OF MR. DAVIDE

On page 5, line 27, between the words "convening" and "within", Mr. Davide proposed to insert the phrase IN ACCORDANCE WITH ITS RULES WITHOUT NEED OF CALL, and between "if" and "not", to insert the words IT IS; on line 28, to delete "twenty-one" and in lieu thereof, to substitute TEN; and on lines 29 to 31, to delete the phrase "or, if not in session, within twenty-one days after it is required to assemble,".

He explained that the deletion on lines 29 to 31 would be necessary as a consequence of convening within forty-eight hours without the need of a call.

He added that after the call, if it is not in session, the Congress should act within ten days because twenty-one days would be too long that a constitutional crisis might arise. He agreed with Mr. Regalado that the Congress should remain in session when it convenes without a call until it has determined the conflicting views of the Cabinet and the President as to the latter's disability.

Thereupon, on Mr. Bernas' observation that Congress would convene within forty-eight hours, Mr. Davide agreed to retain the phrase to be deleted on lines 29 to 31. However, on line- 30, he proposed to change "twenty-one" to TWELVE.

In reply to Mr. Rodrigo's query on whether Congress may still declare the incapacity of the President even if the 10 days had lapsed, Mr. Davide stated that it may still act since the President continues to exercise his powers and functions. He stressed, however, that the intention is to compel the legislature to act immediately because a prolonged period may cause a constitutional crisis.

Thereafter, Mr. Davide restated his proposed amendment as modified and accepted by the Committee, so that page 5, lines 26 to 31 would read as follows: THE CONGRESS SHALL DECIDE THE ISSUE, CONVENING, IN ACCORDANCE WITH ITS RULES WITHOUT NEED OF CALL, WITHIN FORTY-EIGHT HOURS FOR THAT PURPOSE, IF IT IS NOT IN SESSION. IF THE CONGRESS, WITHIN TEN DAYS AFTER RECEIPT OF THE LATTER WRITTEN DECLARATION, OR, IF NOT IN SESSION, WITHIN TWELVE DAYS AFTER IT IS REQUIRED TO ASSEMBLE, DETERMINES BY A TWO-THIRDS VOTE OF BOTH HOUSES. . .

On Mr. Padilla's suggestion that the provision should distinguish the situations when the Congress is in session and when it is not in session, Mr. Davide stated that it would be left to the Committee on Style.

There being no objection, the proposed amendment, as modified by the Committee, was approved by the Body.

Thereafter, on page 6, line 6, Mr. Davide proposed to change the word "shall" to MAY; and on lines 8 to 9, to delete the phrase "without the concurrence of at least a majority of all the Members of the Congress" and in lieu thereof, to substitute the phrase EXCEPT IN THE MANNER AND SUBJECT TO THE CONDITIONS PRESCRIBED IN SECTION 15 OF THIS ARTICLE.

However, instead of the phrase which Mr. Davide proposed to substitute, Mr. Nollado proposed to insert the phrase EXCEPT UNDER THE CONDITIONS OF AND SUBJECT TO THE PROVISIONS SET FORTH IN SECTION 15 HEREOF.

Mr. Nollado stated that the amendment is necessary in order that Section 15 would also apply to the declaration of martial law and the suspension of the privilege of the writ of habeas corpus.

But Mr. Bernas observed that even if nothing is said in Section 12 about the power to impose martial law, the President could impose martial law in accordance with Section 15; therefore, the first paragraph of Section 12 should be deleted because it would not be necessary, to which Messrs. Davide and Nollado agreed.

But Mr. Regalado opined that it is necessary to define in Section 12 the limitation of the power of the Acting President to declare martial law which is different from the power of the President in Section 16, in reply to which, Mr. Davide stated that it is the same power of the President that the Acting President would be exercising thus, the limitation would be the same.

Mr. Rama agreed with Mr. Davide that it is the same power of the President that an Acting President would be exercising and that the Constitution should not be cluttered with unnecessary provisions.

As proposed by Mr. Davide, jointly with Messrs. Nollado, Rama and Jamir, and as accepted by the Sponsor, and there being no objection, the deletion of the first paragraph of Section 12 on page 6 was approved by the Body.

PROPOSED AMENDMENT OF MR. MONSOD

On page 7, lines 1 and 2,,Mr. Monsod proposed to delete the phrase "and, with the concurrence of at least a majority of all the Members of the Congress".

Mr. Bernas pointed out the suggestion of Mr. Padilla that the suspension of the writ of habeas corpus should be treated separately from the imposition of martial law because the concurrence of the majority of the Members of the Congress might not be necessary in the former.

At this juncture, Mr. Padilla stated that the imposition of martial law should not require the prior concurrence of the majority of all the Members of Congress because after all, the Congress may reduce or extend the period of sixty days of martial law.

He disclosed that he would be proposing a different amendment to classify Section 15 into three situations, named: 1) to prevent or suppress lawless violence; 2) to suspend the writ of habeas corpus; and 3) to proclaim martial law.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 4:38 p.m.

RESUMPTION OF SESSION

At 6:17 p.m., the session was resumed.

MANIFESTATION OF MR. TINGSON

Upon resumption of session, Mr. Tingson manifested that upon request of Mr. Ople, he went to the Medical Office to seek an opinion on what serious illness is, and he was informed by Dr. Fe Soriano, that serious illness means any condition that could cause imminent death or could incapacitate the person to the extent, for example, that his mental faculties would deteriorate.

Mr. Davide, however, stated that the interpretation should not bind the Body and that the matter should be left to the Supreme Court to interpret. Mr. Ople argued that the purpose is merely to give a persuasive weight to the definition, to which the Chair agreed.

AMENDMENTS OF MR. PADILLA

Mr. Padilla proposed the following amendments:

"1.

On Section 15, page 6, line 29, to substitute "invasion or rebellion" with OR PUBLIC DISORDER;

2)

On the same page, line 30, to insert the sentence IN CASE OF SUBVERSION, SEDITION OR IMMINENT DANGER OF REBELLION OR INVASION WHEN THE PUBLIC SAFETY DEMANDS IT, HE MAY SUSPEND THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN ANY PART OF THE PHILIPPINES. IN CASE OF ACTUAL INVASION OR REBELLION WHEN THE PUBLIC SAFETY REQUIRES IT, HE MAY BY PROCLAMATION PLACE THE PHILIPPINES OR ANY PART THEREOF UNDER MARTIAL LAW. THE PERIOD OF SUCH SUSPENSION OR PROCLAMATION SHALL NOT EXCEED SIXTY (60) DAYS.

(3)

On the same page, lines 21 to 23, to substitute the whole paragraph with DURING THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS, ANY PERSON WHO HAS BEEN ARRESTED OR DETAINED SHALL BE JUDICIALLY CHARGED WITHIN FIVE WORKING DAYS OTHERWISE HE SHALL BE RELEASED.

Explaining his proposed amendments, Mt. Padilla stated that during the last regime, several innocent people were arrested by virtue of ASSO, PCO and PDA denying them of their day in court. He stated that what he seeks to avoid is the arrest of persons during the suspension of the privilege of the writ of habeas corpus without the benefit of trial in court.

On the suspension of the privilege of the writ of habeas Corpus, he stated that actual invasion or rebellion would make the suspension a useless formality. Recalling the time of President Quirino when he suspended the privilege of the writ of habeas corpus without declaring martial law, he pointed out that martial law contemplates a graver situation than a mere suspension of the privilege of the writ of habeas corpus.

Adverting to Mr. Monsod's opinions on the prevention of abuses by the government, Mr. Padilla stated that the elimination of "imminent danger" from the provision would be one of the restrictions since the President as the Commander-in-Chief of the Armed Forces cannot suspend the writ of habeas corpus unless there is actual invasion or rebellion.

He maintained that the Body should not be deprived of the opportunity to reconsider or improve provisions which it may have disposed of especially on debatable or sensitive issues.

INQUIRY OF MR. NATIVIDAD

Mr. Natividad manifested his agreement with Mr. Padilla's thesis that there is no need for the concurrence of Congress for the President to declare martial law or to suspend the privilege of the writ of habeas corpus for the following reasons: 1) in case of actual invasion or rebellion it may be impractical for Congress to hold sessions; 2) the Congress may revoke the declaration or lift the suspension; and 3) the declaration of martial law is a justiciable question subject to judicial review.

Mr. Padilla concurred with Mr. Natividad's observation that in the proposal, there are lesser requirements needed for the suspension of the privilege of the writ of habeas corpus than for the declaration of martial law.

On Mr. Natividad's query on whether military intelligence reports on imminent danger of invasion or rebellion could be used as evidence, Mr. Padilla replied that they could be used as credible evidence if based on actual reports and investigation of facts.

On whether classified documents are acceptable as evidence, Mr. Padilla stated that the President, as Commander-in-Chief, would have to appraise these reports to determine whether they could be used as bases for the suspension of the privilege of the writ. He added that since the suspension of the writ and declaration of martial law are now justiciable issues, the Supreme Court could even investigate the factual background supporting such suspension or declaration.

In reply to Mr. Natividad's query whether authors or witnesses of classified documents may not be revealed, Mr. Padilla answered in the affirmative.

Reacting to Mr. Natividad's comment that it would be better for the President to get the concurrence and consent of the Members of the House rather than of the Senate, considering that they are closer to the people, Mr. Padilla stated that he was not very emphatic on the change of Congress to Senate as it could remain with Congress.

Upon inquiry, Mr. Padilla affirmed that his proposal would be that those who would be arrested when suspension of the writ of habeas corpus is declared can only be detained for a period of not more than five working days without being charged. He also affirmed that should government fail to charge them, they would have to be released. Mr. Natividad stated this would be a satisfactory compromise as it would prevent the recurrence of past incidents when people were detained for hundreds of days. Mr. Padilla clarified that a person cannot be detained beyond 5 working days unless the proper criminal information is filed in which case, it becomes a judicial prerogative to determine whether the accused will be entitled to bail or not. Mr. Natividad noted that the criminal information must be filed in court and it would not be enough that such persons are charged in the Fiscal's Office. Mr. Padilla observed that the words in the Committee Report referring to persons judicially charged have not been changed. Mr. Natividad clarified, for the record, that the persons must be judicially charged in court and not in the Fiscal's Office. He explained that in law enforcement such persons may take advantage of the loophole that they have not been properly charged. Mr. Padilla agreed with Mr. Natividad and stated that it was the reason that the words "judicially charged" were maintained.

INTERPELLATION OF MR. SUAREZ

As to whether in Section 15 he suggests the deletion of the phrase "with the concurrence of at least a majority of all the Members of the Congress", Mr. Padilla replied this would be correct especially for the initial suspension of the writ of habeas corpus or the declaration of martial law.

As to whether he suggests that this would be an exclusive prerogative of the President, Mr. Padilla stated that it would be so at least initially for a period of 60 days. He added that even the period of 60 days may be shortened

by Congress or by the Senate as provided for in the next sentence which states that the Congress or the Senate may revoke the proclamation.

Mr. Monsod interposed at this juncture to state that when the Body started on the Padilla amendment, he wanted to present his amendment but gave way because of the anterior proposals of Mr. Padilla. Nevertheless, he stated that he had his own series of amendments specifically on lines 1, 4, 5, and 7 on page 7 which would have a different effect from the current discussions. He asked the Chair if the Body could consider his amendments inasmuch as the answers would be different, depending on whether or not his amendments would be accepted by the Committee.

Upon inquiry of the Chair, Mr. Monsod informed that he had conferred with Mr. Sumulong on the substitution of "Senate" for "Congress" and with Mr. Bernas on the phrase "revoke such proclamation or suspension" and that he had tried to consolidate his own amendments with Mr. Padilla. He stated that some of the amendments in the consolidated formulation were accepted by the Committee while others were not and added that he gave way to Mr. Padilla to enable him to discuss those parts which were not accepted by the Committee.

Mr. de Castro noted that during the period of sponsorship and interpellations, he was the first one who objected to the need for the concurrence of Congress on the initial proclamation of martial law or suspension of the privilege of the writ of habeas corpus and that he gave way to Mr. Padilla inasmuch as the provision on the initial concurrence was already eliminated. Mr. Monsod stated that there had been no elimination as yet.

Mr. de Castro stated that Mr. Padilla's proposal to delete the phrase "and, with the concurrence of at least a majority of the Members of the Congress" was also his amendment. He noted, however, that on the second sentence of the same section he had his own amendment at which point Mr. Monsod amended "Congress" to SENATE.

The Chair stated that Members who have intended to propose amendments thereto shall afterwards be considered as joint sponsors.

Mr. Bengzon, at this juncture, informed the Chair that after conferring with Mr. Padilla, the latter had agreed to confine himself to the first paragraph of Section 15 which the former would like to amend. Thereafter, Mr. Monsod would present his own amendments on page 7. Mr. de Castro stated that he does not agree with Mr. Monsod in the substitution of "Congress" with SENATE.

Mr. Regalado suggested that to enable the Committee to follow the discussion, the amendment should be taken step by step—first, the grounds for the declaration of martial law or the suspension of the privilege of the writ of habeas corpus. The Chair advised that line 29 which reads "he may call out such armed forces to prevent or suppress violence" and which was being amended by Mr. Padilla shall be first considered.

Thereafter, Mr. Padilla proposed on line 29 to insert the phrase OR PUBLIC DISORDER in lieu of "invasion or rebellion". Mr. Sumulong stated that the Committee could not accept the amendment because under the first sentence of Section 15, the President may call out and make use of the armed forces to prevent or suppress not only lawless violence but even invasion or rebellion without declaring martial law. He observed that by deleting "invasion or rebellion" and substituting PUBLIC DISORDER, the President would have to declare martial law before he can make use of the Armed forces to prevent or suppress invasion or rebellion.

Mr. Padilla, in reply thereto, stated that the first sentence contemplates a lighter situation where there is some lawless violence in a small portion of the country or public disorder in another at which times, the armed forces can be called to prevent or suppress these incidents. He noted that the Commander-in-Chief can do so in a minor degree but he can also exercise such powers should the situation worsen. The words "invasion or rebellion" to be

eliminated on line 14 are covered by the following sentence which provides for "invasion or rebellion. He maintained that the proposed amendment does not mean that under such circumstances, the President cannot call on the armed forces to prevent or suppress the same.

Mr. Regalado stated that the Committee's problem is that the 1935 and 1973 Constitutions mention invasion and rebellion as among those instances when the President can call out the armed forces without declaring martial law or suspending the privilege of the writ of habeas corpus. He observed that by deleting these words, the necessary implication would be that the Body must have had a good reason for eliminating that which has been enshrined in the two Constitutions, the construction it would carry being that the Commission deliberately eliminated this phrase to bar the President from calling out the armed forces in actual invasion or rebellion unless he proclaims martial law and suspends the privilege of the writ of habeas corpus. He added that public dig order is covered by lawless violence.

In reply thereto, Mr. Padilla stated that the situation stated by Mr. Regalado was not the intention of the amendment although he admitted that public disorder would be covered by lawless violence.

Mr. Padilla noted, moreover, that invasion or rebellion has been understood as actual invasion or actual rebellion. He stated that the President can call out the armed forces to suppress lawless violence and public disorder and that should the situation worsen, it will not mean that the President shall have less power.

Mr. Regalado maintained that it could be argued the other way around as it would eliminate the power of the President to call out the armed forces as much as in invasion or rebellion.

Thereafter, Mr. Padilla did not insist on his amendment.

On line 30, Mr. Padilla proposed to include the clause IN CASE OF SUBVERSION, SEDITION OR IMMINENT DANGER OF REBELLION OR INVASION WHEN THE PUBLIC SAFETY DEMANDS IT, HE MAY SUSPEND THE WRIT OF HABEAS CORPUS IN ANY PART OF THE PHILIPPINES. The Chair noted that the amendment would include several grounds.

Mr. Sarmiento observed that the proponent added the word "subversion" as one of the grounds for the suspension of the privilege of the writ of habeas corpus. Mr. Sarmiento queried whether as defined, it would refer to R.A. 1700, as amended by P.D. 885, which is the Anti-Subversion Law, as amended. Mr. Padilla answered in the affirmative and stressed that subversion, as correctly understood, is with the aid or assistance, either overt or covert, of an alien power.

POINT OF ORDER OF MR. BERNAS

Mr. Bernas stated that the matter proposed adds new grounds for the suspension of the privilege of the writ of habeas corpus. He informed that in the Article on the Bill of Rights already approved on Third Reading, the Body limited the grounds for the suspension of the privilege of the writ of habeas corpus to actual rebellion and actual invasion. He said that before this matter could be discussed again, the Body would have to reconsider the Third Reading approval of the Article on the Bill of Rights which, in turn, would require the suspension of the Rules inasmuch as the period for reconsideration has passed.

Upon inquiry of the Chair whether it is the reason why the Committee did not accept the proposed amendment of Mr. Padilla, Mr. Regalado stated it was so. He added that there are additional grounds like sedition and subversion or imminent danger. The elimination of the phrase "imminent danger", he explained, in both Articles on the Bill of Rights and the Executive had been explained thoroughly on the floor. He expressed the fear that the alleged intelligence reports which cannot be looked into and the veracity of which would be dependent on the

classification by the military, might lead to a situation where such reports could easily be manufactured and attributed to anybody. He stated that even the Judiciary cannot dispute the authenticity and truth of such reports which may be classified "A" or "B". Sedition, he observed, only involves a public uprising and not an armed public uprising and the purpose of sedition would be to prevent the public authorities including the Judiciary from carrying out their functions. He stated that it is for the purpose of despoiling a particular social class, or an attack upon the lives of persons, or private property of public officers just because they are public officers, and it is on a much lesser magnitude because it does not involve an armed public uprising. He added that once there is an armed public uprising, it would be rebellion.

Mr. Padilla affirmed that sedition is of a lesser magnitude than rebellion and therefore would be the ground proposed for the suspension of the writ. On the other hand, actual rebellion or invasion would be the grounds for the declaration of martial law. He noted also that sedition would involve a public uprising for political and social end and that Article 139 of the Revised Penal Code contains a number of offenses which fall under sedition. He explained that in Article 134 of the same Code the purpose of rebellion is to overthrow the government or deprive the government of a portion of territory, or disrupt the prerogatives of the President or the Legislature.

Mr. Bernas, thereafter, asked for a ruling of the Chair on the point of order he had raised.

RULING OF THE CHAIR

Thereafter, the Chair ruled that what had been approved on Third Reading could no longer be reconsidered.

Mr. Padilla stated that in considering the powers of the President as Commander-in-Chief, the Body has to harmonize the different provisions of the Constitution and although the majority had voted to eliminate "imminent danger", this should not be conclusive, final and unappealable. He stated that should the majority find some merit in the proposed amendments, nothing should prevent it from harmonizing the provisions previously approved on the Bill of Rights. He stressed that in discussing the Executive, he should not be required to just move for reconsideration of the Bill of Rights. The rules of procedure should not prevent this Commission, if circumstances warrant and justify, from making improvements on approved amendments without considering technicalities.

INQUIRY OF MR. OPLE

At this juncture, Mr. Ople inquired whether Mr. Padilla was appealing the ruling of the Chair, to which Mr. Padilla replied that he was not.

Mr. Bernas pointed out that there was no attempt to stop debate on the matter but should the Body desire further debate, it should be done according to the Rules. He noted that to reopen the question, there should be a motion for reconsideration which would require suspension of the Rules and that after passing these two hurdles, the Body can then discuss additional grounds for suspension.

SUSPENSION OF SESSION

The Chair suspended the session.

It was 6:05 p.m.

RESUMPTION OF SESSION

At 6:12 p.m., the session was resumed.

Upon resumption of session, the Chair reiterated its ruling to the effect that the proposed amendment of Mr.

Padilla was out of order because it would involve a reconsideration of what had already been approved in the Bill of Rights.

REMARKS OF MR. PADILLA

Mr. Padilla stated that, although he respects the ruling of the Chair, he does not agree therewith; for if any and all approvals on Third Reading cannot be subjected to any reconsideration, it would result in this Commission drafting a bad Constitution.

PROPOSED AMENDMENT OF MR. MONSOD

On Section 15, page 7, lines 1 and 2, Mr. Monsod proposed to delete the phrase "and, with the concurrence of at least a majority of all the Members of the Congress".

Mr. Monsod stated that his proposed amendment was coauthored by Messrs. de Castro, Bengzon, Natividad, de los Reyes, Colayco, Foz, Rigos and Nolleddo.

INQUIRY OF MR. SUAREZ

On Mr. Suarez' query on the reasons for his proposal, Mr. Monsod stated that 1) in cases of invasion or rebellion, the President has to act quickly; 2) the declaration is only good for sixty days, at the end of which it automatically terminates; and 3) the right of the Judiciary to inquire into the sufficiency of the factual basis of the proclamation always exists even during the first sixty days.

Adverting to Proclamation No. 1081 and General Order No. 3 promulgated by President Marcos which contain the reasons for the suspension of the privilege of the writ of habeas corpus and the declaration of martial law in the country which were not justifiable enough, Mr. Suarez inquired whether the proponent would still insist on the deletion of the phrase, in reply to which, Mr. Monsod stated that he would insist on his proposal because the draft Constitution has sufficient safeguards, among others, the power of the Supreme Court to review the proclamation of the President.

On whether his proposal would prevent a future President from doing what Mr. Marcos had done, Mr. Monsod contended that there is nothing absolute in this world and that there may be another Marcos. He pointed out, however, that the safeguards in the Constitution are reasonable and adequate. In case of invasion or rebellion, he stated that it would be unreasonable to ask for the concurrence of Congress because the declaration automatically terminates on the sixtieth day.

On the distinction between invasion and rebellion, Mr. Monsod stated that the provision previously contained the words "insurrection" and "imminent danger thereof", such that with the removal of said phrases, the right of the President has been limited to invasion or rebellion, interpreted as actual invasion or actual rebellion.

On the suggestion of providing a legislative check on the awesome power of the Chief Executive acting as Commander-in-Chief, Mr. Monsod stated that he would be less comfortable if the President could not act under these conditions, because 1) it would be unlikely that the concurrence of Congress would be available; and 2) the President has to act quickly in order to deal with the circumstances.

Mr. Monsod then agreed that the Constitution has to balance the interests of the country with the rights of its citizens without sacrificing the security of the state. He stressed that it was for this reason that he endorsed the proposal of Mr. Padilla providing that those who had been arrested should be judicially charged within five days, otherwise, they shall be released. He then gave the assurance that there are enough safeguards in the Constitution.

MR. OPLE'S PROPOSED AMENDMENT TO THE AMENDMENT

Mr. Ople proposed an amendment to the amendment by changing the word "concurrence" to CONSULTATION on page 7, line 1.

Explaining his amendment, Mr. Ople stated that the proclamation of martial law by a President is a decision of highest importance and carries the most critical implications in the life of every Filipino, such that the representatives of the people should at least be consulted.

He pointed out that the views of Congress in a system of consultation would not bind the President, but as a rational leader, willing to take advice from the elected representatives of the people, consultations need not be a usele66 and futile exercise. He then read into the record pertinent portions of a book by Lawrence Thribe which states, among others, that "collective judgment is to be effected by heightened consultations between the President and Congress".

In this connection, Mr. Ople reiterated that his proposed amendment contemplates consultations with Members of Congress. He stated, however, that if such a proposal is not acceptable to the Committee, he would propose an alternative amendment which would require the President of the Philippines within 48 hours after the proclamation of martial law to render a report in writing to Congress.

Mr. Monsod did not accept the amendment to his amendment.

Mr. Ople stated that he would not insist on his amendment but would fall back on his alternative amendment.

REMARKS OF MR. DE CASTRO

Mr. de Castro stated that invasion and rebellion are two situations which could give the President the authority to suspend the privilege of the writ of habeas corpus or to proclaim martial law.

On the matter of invasion, Mr. de Castro explained that this refers to an external force ready to invade the Philippines and, therefore, giving no chance for the President to proclaim martial law or suspend the privilege of the writ of habeas corpus because there will be immediate fighting and the rules of land warfare will take over. In this connection, he maintained that neither a suspension of the writ of habeas corpus nor a declaration of martial law would fit in the case of an external force invading the country. In this regard, he opined that the proposition of Mr. Padilla was in order with regard to subversion, sedition or imminent danger thereof, because the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus would become useless if there is an actual invasion of the country by an external force.

Reacting to the argument Of Mr. Ople that the President of the United States is in consultation with the Members of Congress before the employment of U.S. forces, Mr. de Castro stated that the United States has all the time to consult Congress because there is no invasion in the United States in the first place. In this connection, he stressed that the defect in the Mutual Defense Treaty of the Philippines and the United States lies in the fact that the United States would only employ their forces in accordance with constitutional processes which, he opined, would render the Defense Treaty useless, as it may happen that before any assistance could be extended, the Philippines might have been conquered. He argued that in case of actual invasion or rebellion in the Philippines, the President would not have time to consult the Members of Congress and neither would he have the time to declare martial law or suspend the privilege of the writ of habeas corpus,

INTERPELLATION OF MR. NOLLEDO

On Mr. Nollado's contention that the President is not powerless and need not declare martial law or suspend the privilege of the writ of habeas corpus should there be an actual invasion or rebellion because Section 15 authorizes him to immediately call out the armed forces to prevent or suppress lawless violence, invasion or rebellion, Mr. de Castro pointed out that the second sentence thereof is useless because the President would have no time to declare martial law or suspend the privilege of the writ of habeas corpus. It was for this reason, he stated, that he had been insisting on the retention of the phrase "imminent danger thereof so that the President could anticipate such a situation.

REMARKS OF MR. REGALADO

Reacting to Mr. de Castro's statement attributed to the Committee that it is not considered actual invasion when foreign vessels, in an attempt to invade the country, have not yet landed on the shores, Mr. Regalado stated that it was he who pointed out that under the rules of international law any overt belligerent act for the purpose of invasion is considered actual invasion.

PROPOSED AMENDMENT OF MR. OPLE

After withdrawing his previous amendment, Mr. Ople, jointly with Messrs. Davide and Nollado, proposed to add a sentence after Mr. Monsod's proposed amendment to read: THE PRESIDENT SHALL WITHIN FORTY-EIGHT HOURS FOLLOWING SUCH PROCLAMATION APPEAR BEFORE THE CONGRESS TO REPORT ON HIS PROCLAMATION IF THE SAME IS IN SESSION AND, IF IT IS NOT IN SESSION, HE SHALL WITHIN THE SAME PERIOD CALL THE CONGRESS TO A JOINT SESSION FOR THE PURPOSE.

Mr. Ople explained that his proposal is merely a reporting requirement in order to give the Congress an opportunity to consider its role in helping the President confront a rebellion or an invasion.

OBJECTION OF MR. GARCIA TO MR. MONSOD'S PROPOSED AMENDMENT

Mr. Garcia, objecting to Mr. Monsod's proposed amendment, stressed that the imposition of martial law is not a singular event that happened in the Philip- pines because it also happened in several Latin American countries. He pointed out that martial law leads to violations of basic guarantees and the militarization of politics and it is for these reasons that the concurrence of Congress is necessary as a way of obtaining the support of the people through their representatives. He likewise adverted to the International Covenant of Civil and Political Rights which allows a state to declare martial law and make a written report to the United Nations stating the specific reasons therefor and its duration.

Finally, Mr. Garcia adverted to the insistent demand of the people during the public hearings to require the concurrence of the Legislature to the declaration of martial law.

OBJECTION OF MR. SARMIENTO TO MR. MONSOD'S PROPOSED AMENDMENT

Objecting to the proposed amendment, Mr. Sarmiento pointed out that the non-inclusion of concurrence by the Legislature in the 1973 Constitution had brought untold sufferings and miseries to the people during the past administration. He stressed the need of requiring the concurrence of the Legislature to prevent the rise of another dictator. He warned that arrests and incarcerations may happen in the initial stages of martial law. He also affirmed Mr. Garcia's statement that during the public hearings the people were very supportive of the provision

requiring the concurrence of the Members of Congress before the imposition of martial law.

REMARKS OF MR. BACANI IN SUPPORT OF THE AMENDMENT

Speaking in support of the amendment, Mr. Bacani adverted to Mr. Bernas' statement that martial law refers to the classical concept which contemplates an actual theater of war and stated that it would be unreasonable to bind the President by requiring the concurrence of the Members of Congress. He urged the Body to face the reality that in an actual theater of war, it may not be possible for the President to seek the concurrence of Congress.

REMARKS OF MR. MONSOD

Mr. Monsod stated that he could not accept the examples given of the situations in Latin American countries until he sees their Constitutions, particularly whether they contain the same safeguards approved in the new Constitution. He disputed the arguments on violations of human rights and militarization by stressing that if we must deal with actual invasion or rebellion, we may not have freedom to speak of.

Thereupon, the Committee asked that the proposed amendment be submitted to the Body.

INQUIRY OF MR. DE LOS REYES

In reply to Mr. de los Reyes' inquiry, Mr. Monsod affirmed that in proposing the amendment, he took into account the ruling in the case of *Barcelon vs. Baker*, 5 Phil. 87, when it said that "this power in the President is dangerous to liberty and may be abused. All powers may be abused if placed in unworthy hands but it would be difficult to point any other hands in which this power would be more safe and at the same time equally effectual".

VOTING ON MR. MONSOD'S PROPOSED AMENDMENT

Submitted to a vote, and with 27 Members voting in favor and 11 Members against, the Chair declared Mr. Monsod's amendment approved.

NOMINAL VOTING

Upon request of Mr. Suarez and there being the required number, the Chair declared nominal voting in order.

Thereupon, the Secretary-General called the Roll for nominal voting and, thereafter, a second Roll Call was made.

The following Members explained their votes:

By Mr. Bacani

In voting Yes, Mr. Bacani stressed that a good President could safeguard human rights and it would not be practicable to emasculate his powers by requiring the concurrence of Congress.

By Mr. Bennagen

Mr. Bennagen voted No, stating that the first sentence of Section 15 would be sufficient to enable the President to act adequately on the situation contemplated therein. He underscored the importance of requiring the concurrence of the representatives of the people before the declaration of martial law and pointed out that the Office of the President has the highest symbolic content which could produce other types of power unpredicted in the Constitution.

By Mr. de Castro

Mr. de Castro voted Yes, stating that he would not want a useless President in case of actual invasion or rebellion.

By Mr. Garcia

In voting against the amendment, Mr. Garcia stressed that martial law is divisive and it is important to get the support of the people by requiring the concurrence of their representatives in Congress. He warned against the militarization of politics during martial law which would be difficult to check later on. He pointed out that approval of the amendment would negate the result of the public hearings when the people, after their sad experience during the last martial law, demanded the concurrence of Congress as one of the safeguards against abuse in declaring martial law.

By Mr. Gascon

Mr. Gascon voted No on the ground that the people must be assured that the evils of martial law would not be experienced again, but if and when martial law is to be imposed, it must have the support of the people.

By Mr. Jamir

Mr. Jamir also voted No because the suspension of the privilege of the writ of habeas corpus and the imposition of martial law would not be defenses against actual rebellion or invasion but would prevent people from giving aid to the enemies.

By Mr. Maambong

Explaining his affirmative vote, Mr. Maambong stated that the many safeguards would not prevent a bad President from imposing martial law for an unpopular cause, so that the real safeguard should be installed in the electoral process rather than in the exercise of such power.

By Mr. Natividad

Mr. Natividad voted Yes on the ground that unlike the ' 973 Constitution, the Body had approved the provision that would not allow the President to declare martial law except in case of actual rebellion or invasion, and which is subject to review by the Supreme Court or revocation by the Legislature.

By Mr. Nollado

Voting in favor of the proposal, Mr. Nollado stressed that the Congress has anyway the power to revoke or reduce the sixty day duration of the suspension of the privilege of the writ of habeas corpus or martial law, and that during martial law, the rights of the people would also be respected because the Constitution would continue to operate, particularly the Bill of Rights.

By Mr. Ople

Mr. Ople voted Yes on the ground that martial law would- not abolish the Legislature and the Constitution, so that the President would not be exempted from judicial review. He added that there would be enough safeguards against abuse of the power to declare martial law.

By Mr. Padilla

Voting in favor, Mr. Padilla opined that since the suspension of the privilege of the writ of habeas corpus and the declaration of martial law could only be done in case of actual invasion or rebellion, the provisions on such suspension or declaration should likewise be deleted because it would be absurd to declare martial law when the country is under invasion or rebellion.

By Mrs. Quesada

Mrs. Quesada voted No for the reason that the imposition of martial law should have the concurrence of the people through their representatives.

By Mr. de los Reyes

Mr. de los Reyes voted Yes on the ground that there are enough safeguards against the abuse of such power, like the nowday limit or duration of martial law, the power of the Congress to revoke the declaration or reduce the duration, the power of the Supreme Court to review the decision to impose martial law, among others. He stressed that it is necessary that the decision of the President be prompt without the requirement of concurrence by the Legislature.

By Mr. Rigos

Mr. Rigos voted Yes on the understanding that the Congress may still revoke the decision of-the President to suspend the privilege of the writ of habeas corpus or to declare martial law.

By Mr. Sarmiento

Voting against the proposal, Mr. Sarmiento underscored that the rise of another dictator should not be allowed by deleting such safeguard.

By Mr. Suarez

Mr. Suarez also voted No because he was afraid that such awesome constitutional power would be potentially exploited.

By Mr. Sumulong

Mr. Sumulong voted Yes, stating that Section 15 already provides for a safeguard whereby the Congress may revoke proclamation or suspension, or may even extend it if public safety requires.

By Mr. Tadeo

Mr. Tadeo stated that he was against the proposal because it would be against the will of the people, and that the concurrence of the Legislature would be a strong safeguard against abuse.

By Mr. Tingson

Voting in favor, Mr. Tingson stressed that the power of the President-should not be emasculated, and that trust be accorded the President, who would surely be exercising his powers for the welfare of the people and not to seek reelection or perpetuate himself in power because he is already prohibited from reelection.

By Mr. Villacorta

Mr. Villacorta voted No for the reasons that: 1) no single official, not even the President should deprive millions of his countrymen of their basic freedoms; and 2) full trust should be placed in the judgment of the people's representatives and their ability to discern clear danger to public safety and national security and to make appropriate decisions expeditiously.

By Mrs. Muñoz Palma

Mrs. Muñoz Palma voted No on the ground that it was the promise of the Opposition during the Marcos regime that if they come to power, the power of the President to suspend the privilege of the writ of habeas corpus and to

declare martial law would be limited.

RESULT OF THE VOTING

The result of the voting was as follows:

In favor

Azcuna Nieva

Bacani Nollado

Bengzon Ople

Rosario Braid Padilla

De Castro Regalado

Colayco De Los Reyes

Concepcion Rigos

Davide Rodrigo

Foz Romulo

Laurel Rosales

Lerum Sumulong

Maambong Tingson

Monsod Uka

Natividad Villegas

Against

Bennagen Quesada

Brocka Rama

Garcia Sarmiento

Gascon Suarez

Jamir Tadeo

Muñoz Palma Villacorta

Abstention

None

With 28 Members voting in favor, 12 against, no abstention, the proposed amendment of Mr. Monsod was approved by the Body.

ADJOURNMENT OF SESSION

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

I hereby certify to the correctness of the foregoing.

(SGD.) FLERIDA RUTH P. ROMERO

Secretary-General

ATTESTED:

(SGD.) CECILIA MUÑOZ PALMA

President

Approved on July 31, 1986

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