

R.C.C. NO. 20

VOL. I, June 30, 1986

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6b544c3b3180/>

Monday, June 30, 1986

OPENING OF SESSION

At 5:21 p.m., the President, the Honorable Cecilia Muñoz Palma, opened the session:

THE PRESIDENT: The session is called to order.

NATIONAL ANTHEM

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

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Honorable Alberto M. K. Jamir.

Everybody remained standing for the Prayer.

PRAYER

MR. JAMIR: Almighty God, we meet in Thy presence seeking divine guidance that we may fashion a Constitution which will prevent a repetition of the shameless rape of our country by another Marcos; assure our people's freedom from fear of oppression; and vouch-safe for them equal opportunity in their pursuit of a better tomorrow to lighten the burden of their unceasing daily toil.

For this awesome task, O Lord, we pray Thee to keep our minds clear, our hearts pure, and our hands clean and steady, that the product of our labor may endure for all time and bring to fruition our country's driving dream of a higher horizon. Only then may we be truly worthy of Thy benediction: "Well done, good and faithful servants, enter Thou into the Kingdom of Thy Lord." Amen.

ROLL CALL

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

THE SECRETARY-GENERAL, reading:

Abubakar Present Bacani Present

Alonto Present Bengzon Present

Aquino Present Bennagen Present

Azcuna Present Bernas Present

RosarioBraid Present Padilla Present

Brocka Present Quesada Present

Calderon Absent Rama Present

Castro de Present Regalado Present

Colayco Present Reyes de los Present

Concepcion Present Rigos Present

Davide Present Rodrigo Present

Foz Present Romulo Present

Garcia Present Rosales Absent

Gascon Present Sarmiento Present

Guingona

Present Suarez Present

Jamir Present Sumulong Present

Laurel Present Tadeo Present

Lerum Present Tan Present

Maambong Present Tingson Present

Monsod Present Treñas Present

Natividad Present Uka Present

Nieva Present Villacorta Present

Nolledo Present Villegas Present

Ople Present

The President is present.

The roll call shows 46 Members responded to the call.

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

The Floor Leader is recognized.

APPROVAL OF JOURNAL

MR. RAMA: Madam President, I move that we dispense with the reading of the Journal of the last session and that we approve the same.

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

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

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

The Secretary-General will read the Reference of Business.

REFERENCE OF BUSINESS

The Secretary-General read the following Proposed Resolutions on First Reading, Communications and

Committee Reports, the President making the corresponding references:

PROPOSED RESOLUTIONS ON FIRST READING

Proposed Resolution No. 315, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A NEW ARTICLE ENTITLED "NATIONAL DEFENSE AND SECURITY."

Introduced by Hon. de Castro.

To the Committee on General Provisions.

Proposed Resolution No. 316, entitled:

RESOLUTION PROPOSING TO ADOPT IN THE CONSTITUTION A PROVISION DECLARING LAND REFORM A CORNERSTONE IN THE ECONOMIC REFORM OF THE COUNTRY.

Introduced by Hon. Tingson.

To the Committee on Social Justice.

Proposed Resolution No. 317, entitled:

RESOLUTION PROPOSING TO INCLUDE IN THE TRANSITORY PROVISIONS THE IMPOSITION OF A TWENTY-YEAR LOGGING BAN ON ENDANGERED FOREST LANDS ALL OVER THE COUNTRY.

Introduced by Hon. Tingson.

To the Committee on the National Economy and Patrimony.

Proposed Resolution No. 318, entitled:

RESOLUTION PROPOSING TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION RENOUNCING WAR AS AN INSTRUMENT OF NATIONAL POLICY.

Introduced by Hon. Tingson.

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

Proposed Resolution No. 319, entitled:

RESOLUTION PROPOSING TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION EXCLUSIVELY EMPOWERING THE LEGISLATURE TO DECLARE THE EXISTENCE OF A STATE OF WAR.

Introduced by Hon. Tingson.

To the Committee on the Legislative.

Proposed Resolution No. 320, entitled:

RESOLUTION PROPOSING TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION ON THE PROTECTION AND WELFARE OF WORKERS.

Introduced by Hon. Tingson.

To the Committee on Social Justice.

Proposed Resolution No. 321, entitled:

RESOLUTION PROPOSING FOR THE ADOPTION OF A BICAMERAL SYSTEM OF LEGISLATURE IN
THE NEW CONSTITUTION.

Introduced by Hon. Tingson.

To the Committee on the Legislative.

COMMUNICATIONS

Letter from Mr. Bienvenido A. Castillo of Pulilan, Bulacan, suggesting provisions on the bill of rights and suffrage, among others.

(Communication No. 67 — Constitutional Commission of 1986)

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Letter from the Economic Emancipation Association of the Philippines, Inc., signed by Mr. Vicente D. Gabriel, submitting a proposal on managed currency.

(Communication No. 68 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Letter from Mr. Martin R. Reyes of Vasra Village, Quezon City, submitting recommendations pertaining to forest resources.

(Communication No. 69 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Letter from the Third World Movement Against the Exploitation of Women signed by Sister Mary Soledad Perpiñan, proposing "Women and men shall have equal rights," as a separate section in the Bill of Rights.

(Communication No. 70 — Constitutional Commission of 1986)

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Letter from Mr. Rafael B. Hidalgo, Regional Trial Court Judge, Legaspi City, enclosing a draft article on the judiciary proposing a five-member board of judicial administrators.

(Communication No. 71 — Constitutional Commission of 1986)

To the Committee on the Judiciary.

Resolution No. 3 of the Family Planning Organization of the Philippines, Quezon Provincial Chapter, proposing the inclusion in the Constitution of a national policy on family planning and population control.

(Communication No. 72 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Communication from Mr. Selwyn Clyde M. Alojipan of Capitol Green Village, Tandang Sora, Quezon City, proposing, among others, the election of the vice-president of the Philippines, the provincial vice-governor and the municipal vice-mayor for six-year terms, who shall automatically take over as president, governor and mayor, respectively, after the first three years in office.

(Communication No. 73 — Constitutional Commission of 1986)

To the Committee on the Executive.

Letter from Mrs. Pura Kalaw-Ledesma of Legaspi Village, Makati, Metro Manila, enclosing proposed constitutional provisions on science, arts and letters and on a Commission on Culture.

(Communication No. 74 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Letter from Mr. Albino V. Arriero of Provident Village, Marikina, Metro Manila, proposing provisions on citizenship, bill of rights, the legislature and term and tenure of elective and appointive officials, among others.

(Communication No. 75 — Constitutional Commission of 1986)

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Communication from Rev. Fr. Ever Cansancio, Mr. Luis S. Hervas and Ms. Noemi Deocampo, all of Tansa, Iloilo City, proposing provisions on the preamble, family unity, social integrity, poverty and reforms, among others.

(Communication No. 76 — Constitutional Commission of 1986)

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

Letter from Filipino Crusaders World Army, Inc., signed by Cirilo T. Demetria proposing incorporation in the Constitution of its Man's Moral Concept.

(Communication No. 77 — Constitutional Commission of 1986)

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

Communication from Minister of Local Governments referring Resolution No. 1473 of the Sangguniang Panlungsod of Cotabato requesting the inclusion of a provision for the reappointment of representative districts and the constitution of Cotabato City into a separate district.

(Communication No. 78 — Constitutional Commission of 1986)

To the Committee on the Legislative.

Letter from Mr. Francisco O. Javines of 348 Gov. Forbes, Sampaloc, Manila, enclosing an article proposing provisions on initiative, referendum and recall.

(Communication No. 79 — Constitutional Commission of 1986)

To the Committee on the Legislative.

Letter from Mr. Ruben A. Ferrer of 2251-C Adonis St., Pandacan, Manila, proposing a manner of ratification of the Constitution.

(Communication No. 80 — Constitutional Commission of 1986)

To the Committee on Amendments and Transitory Provisions.

Letter from Lingkod-Tao-Kalikasan signed by Sr. Ma. Aida Velasquez, OSB, requesting the inclusion of provisions that would promote ecological and environmental consciousness and participation.

(Communication No. 81 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Resolution No. 1 of the Pambansang Konsultasyon ng Maralitang Tagalunsod, with attachments, urging attention to issues affecting the urban poor.

(Communication No. 82 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Letter of the Honorable Commissioner Ambrosio Padilla, expressing heartfelt appreciation for the unanimous adoption by the Constitutional Commission of Resolution No. 5, entitled:

RESOLUTION EXPRESSING THE PROFOUND CONDOLENCE OF THE CONSTITUTIONAL COMMISSION ON THE DEATH OF HONORABLE SABINO PADILLA, FORMER JUSTICE OF THE SUPREME COURT OF THE PHILIPPINES.

(Communication No. 83 — Constitutional Commission of 1986)

To the Archives.

Letter from Mr. Melquiades de la Cruz, Presidential Staff Director, Malacañang Records Office, transmitting a copy of Executive Order No. 23, dated June 26, 1986, entitled:

GRANTING THE PUBLIC FRANKING PRIVILEGE ON ALL COMMUNICATIONS BEING SENT BY THEM TO THE CONSTITUTIONAL COMMISSION.

(Communication No. 84 — Constitutional Commission of 1986)

To the Archives.

COMMITTEE REPORTS

Committee Report No. 5 on Proposed Resolution No. 264, prepared by the Committee on the Executive, entitled:

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

recommending its approval in substitution of Proposed Resolution Nos. 9, 107, 151, 152 and 158.

Sponsored by Hon. Sumulong, Regalado, Davide, Jr. and Foz.

To the Steering Committee.

Committee Report No. 6 on Proposed Resolution No. 273, prepared by the Committee on the Executive, entitled:

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

recommending its approval in substitution of Proposed Resolution No. 55.

Sponsored by Hon. Sumulong and Davide, Jr.

To the Steering Committee.

Committee Report No. 7 on Proposed Resolution No. 322, prepared by the Committee on Amendments and

Transitory Provisions, entitled:

RESOLUTION TO INCLUDE IN THE NEW CONSTITUTION AN ARTICLE PROVIDING THE
PROCEDURE FOR ITS AMENDMENTS,

recommending its approval in substitution of Proposed Resolution No. 148, subject to the reservation that Section 1 (c) of this substitute resolution shall only be incorporated if and when Proposed Resolution No. 161 is approved by the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Sponsored by Hon. Suarez and Jamir.

To the Steering Committee.

Committee Report No. 8 on Proposed Resolution No. 324, prepared by the Committee on the Executive, entitled:

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

recommending its approval in substitution of Proposed Resolution No. 56.

Sponsored by Hon. Sumulong and Davide, Jr.

To the Steering Committee.

Committee Report No. 9 on Proposed Resolution No. 128, as reported out by the Committee on the Executive, entitled:

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

recommending its approval with amendments solidation with Proposed Resolution No. 183.

SUSPENSION OF SESSION

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

It was 5:36 p.m.

RESUMPTION OF SESSION

At 5:42 p.m., the session was resumed with the Honorable Jose E. Suarez presiding.

THE PRESIDING OFFICER (Mr. Suarez): The session is resumed.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Bernas be recognized.

THE PRESIDING OFFICER (Mr. Suarez): Commissioner Bernas is recognized.

FR. BERNAS: Mr. Presiding Officer, thank you for this opportunity.

You have on your desk a note from the Secretary-General inviting you to a presentation of a survey — a nationwide public opinion survey — to be made in Caucus Rooms "D" and "E" at one o'clock tomorrow. I thought I should give a brief explanation for those of you who have asked me what this is all about.

This is a nationwide survey of 2,000 respondents, sponsored by the Ateneo de Manila Public Affairs Center and

the Social Weather Stations, Inc. It is a project we try to do four times a year. The idea is to try to get the pulse of the people on various questions. Let me just give you some samples of the questions which were asked-there were 70 questions with each question sub-divided into various other subquestions. For instance, some of the questions asked on the quality of life were: Is your life now better than twelve months ago? Do you expect your life to be better twelve months later? Other questions were on employment, government and administration, such as: Is the government as you know it, "mapapaniwalaan, medyo mapapaniwalaan, hindi mapapaniwalaan," and so forth. And then on the Cabinet, there is a list of the Cabinet members and some of the questions asked were: Have you heard of these names? (We run through the list of all the Cabinet members.) Are you pleased with their appointment? Are you displeased with their appointment? The questions on the Church and on the Communist Party would be something like this: Personnel of any church should not get involved with the struggle for the oppressed. Do you agree or disagree? The Communist Party should be legalized. Do you agree or disagree? With the new government now, NPA-Communist activities will escalate. Do you agree or disagree? The rest are on post election problems, government, on President Corazon Aquino, former President Marcos and others.

So, these are matters which, while not directly touching on the work of the Constitutional Commission, will give us a feel of what the people are thinking on matters of public concern. The presentation will be made by Dr. Mangahas, with graphs and everything, and with opportunity for inquiries.

As I said, this is a presentation of a survey made of 2,000 randomized from all over the Philippines, and the answers are segmented according to different levels: age, education, economic level, and so forth.

MR. RAMA: Mr. Presiding Officer, I ask that the Chairman of the Steering Committee be recognized on some proposed division of schedule.

THE PRESIDING OFFICER (Mr. Suarez): Commissioner Bengzon is recognized.

MR. BENGZON: Thank you, Mr. Presiding Officer.

We are now in the period of sponsorship and interpellation on the committee report on National Territory. I would like to propose to the body that after we finish the sponsorship and interpellation, the Commission resume consideration of Committee Report No. 4 of the Committee on Citizenship and move on to the period of amendments. I would like to present this motion so that a decision could be made on this matter, and in order to give a chance to those who may have amendments to Committee Report No. 4 on citizenship, that this discussion be held three days from now or exactly on July 3.

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

MR. BENGZON: Thank you.

Also, as agreed upon, starting July 7, we will spend more time in plenary sessions because we will be considering committee reports until August 25. For this reason, I would like to propose that beginning July 7, our sessions start at 2:30 p.m. until we adjourn. The reason behind this is that those committees that still wish to meet and wind up after the public hearings would be able to devote the whole morning to their committee meetings until lunch time. Therefore, the plenary session will begin at 2:30 in the afternoon of July 7, until whatever time the Commissioners would wish to continue the discussions.

I so move, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Suarez): There is a motion and a proposal submitted by the Chairman of the Steering Committee that beginning July 7, 1986, the sessions start at 2:30 p.m. until such time as may be decided

by the body.

Does the Chair hear any objection to the second motion submitted by the Chairman of the Steering Committee? (Silence) The Chair hears none; the second motion is approved.

MR. BENGZON: Thank you very much.

THE PRESIDING OFFICER (Mr. Suarez): The Floor Leader is recognized.

CONSIDERATION OF PROPOSED

RESOLUTION NO. 263

(Article on National Territory)

Continuation

MR. RAMA: Mr. Presiding Officer, I move that we continue the consideration of Proposed Resolution No. 263. We are still in the period of sponsorship. I would like to remind the body that under the Rules, three speakers in favor of the resolution may be recognized and only two speakers in turno en contra would be recognized, each to be given 15 minutes. Of course, during the interpellations, those who may not be able to speak for or against can always bring up their views.

Mr. Presiding Officer, I request that Commissioner Nollado be recognized as sponsor.

THE PRESIDING OFFICER (Mr. Suarez): The Honorable Nollado is recognized.

MR. RAMA: Those who may wish to interpellate, please register with the Floor Leader for a more speedy proceeding.

I ask that Commissioner Sarmiento be recognized.

THE PRESIDING OFFICER (Mr. Suarez): The Honorable Sarmiento is recognized.

MR. SARMIENTO: Will Commissioner Nollado yield to a few questions.

MR. NOLLEDO: Mr. Presiding Officer, I had an agreement with the Floor Leader that I am going to clarify certain issues raised by Commissioners Regalado and de los Reyes, because in the last meeting I was not here, not because I was ill as rumored, but because Commissioner Gascon and I were on our way to Butuan City to conduct consultations.

During the last session, Commissioner Regalado asked what the internal waters of the Philippines were. I would like to answer that question by reading the following definition of our national territory in Article I of the 1973 Constitution, the words of which were adopted by our Committee on Preamble, National Territory, and Declaration of Principles:

The waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines.

In this connection, I would like to put on record the observations of Ambassador Juan Arreglado in relation to the internal waters of the Philippines. He said that the physical formation of the island territory of the Philippine Archipelago constitutes a compact and closely knit group of islands spread out in the form of a triangle. He continued by saying that inside this triangle are several areas, the largest of which is the Sulu Sea; passages and straits lying between and connecting together the 7,100 islands; and islets and shores of different sizes and formations. Underneath the waters around the perimeter of the Philippine Islands group lies the submarine platform connecting together the constituent islands of Luzon, the Visayan group, Mindanao, the Sulu Archipelago, the Turtle Islands, the Cagayan-Sulu groups, the Balabac group, Palawan and Mindoro, thus

showing the original unity of all these island formations.

Commissioner Regalado, in relation to the questions posed by Commissioner de los Reyes, questioned the inclusion of the last sentence in our proposed definition of the national territory by saying that the 200-mile economic zone now provided for in the Convention on the Law of the Sea of 1982 should not appear anymore in the definition on the ground that that is already governed by international law, specifically the Geneva Convention of 1958, as well as existing decrees issued by the former and deposed President. Mr. Presiding Officer, I think this is very important for purposes of posterity. I beg the kind indulgence of the Members of this Constitutional Commission and Ambassador Juan Arreglado who testified before our (Committee that he did not like any reference to the Law of the Sea in our definition on the ground that there are many provisions therein that may adversely affect the definition or description of our national territory as found in various existing treaties, among which is the Treaty of Paris of 1898. In this connection, Mr. Presiding Officer, I would like to quote again the ambassador who was instrumental in bringing about this definition in the Quintero Committee of the 1971 Constitutional Convention when he said, and I think this is very important:

As regards the nature and purpose of the straight baselines which have been drawn around the coastlines of the Philippine Island territory, and embodied in Republic Act No. 3046, as amended by Republic Act No. 5446, it should be noted that they were designed primarily to establish and indicate the outer limits of "all waters around, between, and connecting" the constituent islands, islets and other land formations of the Philippine Archipelago, which, under Article I of the 1973 Constitution, have the juridical status of "inland waters." But they were not intended to provide baselines for measuring the so-called "territorial seas" outwards, as this term is defined in the Law of the Sea Convention, for the simple reason that all the sea areas lying inside the "international treaty limits" are national waters forming an integral part of the national territory of the Philippines.

I know the Gentleman cannot see from that area. At least, he can try to see the map of the Philippines in accordance with the boundaries set forth in the Treaty of Paris.

According to Ambassador Arreglado, from the base lines, we have 320 miles on the east coast of Luzon and 150 miles on the west coast of Luzon. Ordinarily, and I think even technically, under the Law of the Sea, we have only the 12-mile limit which is known as the territorial sea. Also, according to him that territorial sea should not be equated with the territorial waters. We have the territorial waters set forth in the Treaty of Paris going much beyond the 12-mile limit. And, therefore, that should be respected because, according to him, the Treaty of Paris is an old treaty adhered to by other nations under the principle of *quieta non movere* and, therefore, should be binding upon all nations of the world.

I would like to quote the noteworthy observations of Ambassador Arreglado for purposes of posterity because there may be international cases that may be brought to the International Court of Justice later. In conclusion, he said:

In view of all the considerations-legal, historical, geographical and geological-expounded above, it appears clearly that the international validity of the Philippine instrument of Ratification of the Law of the Sea Convention with the understandings embodied in the Philippine Declaration attached thereto, is fully justified by the following established facts, to wit:

First, that the Law of the Sea Convention is designed solely to establish, with due regard for the sovereignty of all States, a new treaty regime or legal order for the seas and oceans which are beyond the territorial limits of national jurisdiction of States and which are thus considered as *res communes*:

Second, that it is not within the contemplation of the Law of the Sea Convention to prescribe rules for the

regulation or limitation of the sovereign authority vested in, and exercised by, a State over the sea areas forming an integral part of its national territory for to do so would run counter to the fundamental rules of international law underlying the principles of consent, independence, sovereignty and equality of States, which are in the nature of Jus Cogens and beyond the competence of States to modify or abrogate by treaty;

Third, that the Philippine Archipelago — our ancestral homeland is not just a group of islands, but an "island-studded sea," whose territorial boundaries were delineated by parallels of latitude and meridians of longitude along specified degrees set forth in Article III of the Peace Treaty of Paris of 10 December 1898, between Spain and the United States of America, and the Treaty of Washington between the United States of America and Great Britain of January 2, 1930, and Article I of the 1935 and 1973 Constitutions of the Philippines;

Fourth, that under international customary law and the juridical principles enunciated in various decisions of arbitral tribunals and international courts of justice, such international treaties involving changes and transfers of State territories and defining their frontiers are of general interest and concern, not only to the parties directly involved, but also to all Third States, and in case of silence on their part, such silence will be construed as a form of tacit consent or recognition of the existing situation; and that following the established international law principle of *quieta non movere*, said treaties have now become an integral part of the Law of Nations and thus binding upon all Members of the international Community of States, insofar as the delimitation of the national frontiers of the Philippine Archipelago is concerned; and

Fifth, that the series of Understandings embodied in the Philippine Declaration are simply statements of the interpretation placed by the Philippine Government upon certain provisions of the Law of the Sea Convention which are deemed to be *per se* not applicable to the internal and territorial waters enclosed within the "international treaty limits" defining the territorial boundaries of the Philippine Archipelago, and cannot, therefore, in any manner "impair and prejudice" the sovereign rights exercised by the Republic of the Philippines over all the sea areas forming an integral part of its national territory as defined and delimited in the Philippine Constitution.

Lastly, Mr. Presiding Officer, I would like to mention in passing that Article 310 of the United Nations Convention on the Law of the Sea permits the setting forth of understandings or reservations before the Treaty is signed by any representative of a party-nation to that Convention.

So, that is the reason Mr. Tolentino made certain understandings or reservations, which I referred to in the last two sessions. These reservations were taken into account when the Law of the Sea was ratified by our Batasang Pambansa.

I am now ready to entertain further questions.

THE PRESIDING OFFICER (Mr. Suarez): The Honorable Sarmiento is recognized.

MR. SARMIENTO: I think honorable Commissioner Nolleto will agree with me that one of the purposes of including a provision on National Territory in the new Constitution is to give our people an opportunity to know their territorial home, is that correct?

MR. NOLLEDO: Yes, I agree.

MR. SARMIENTO: Of course, there are other reasons, such as, to make it difficult for some provinces to secede from our country and to facilitate pinpointing national boundaries in questions arising before international bodies, are there not, honorable Commissioner?

MR. NOLLEDO: Yes, and, therefore, we assert that the Treaty of Paris and other related treaties are valid and,

therefore, binding upon third-party states.

MR. SARMIENTO: But the sponsor will agree with me that the silence of a constitution regarding the national territory does not deprive such sovereignty of any portion of territory it is entitled to under international law, will he not?

MR. NOLLEDO: In that case, yes, because we can still invoke the Treaty of Paris separately, even if we do not have any provision in the Constitution on national territory setting forth, for example, the boundaries recognized by the Treaty of Paris because it is binding not only upon our country but upon other states of the world.

MR. SARMIENTO: For the information of the Gentleman, we made a survey on the constitutions of 81 countries, and we discovered that 52 of them have no provision on National Territory, which seems to be the national trend. These countries include the United States, Japan, Italy, France, Soviet Union, Albania, Angola, Bulgaria, etc. Considering this international trend of not including a provision on National Territory in the Constitution, does not the sponsor think it advisable if we do not include a provision on National Territory?

MR. NOLLEDO: I do not agree with the Gentleman, because that was the very reason presented by the late Voltaire Garcia when he moved before the Constitutional Convention of 1971 to delete the provision on National Territory. I was one of those who vigorously objected to that motion, and I was upheld by the Convention. For the information of the Gentleman, if we do not define our national territory, it may cause some embarrassment in future conferences. In the Bangkok and London Conferences when President Macapagal was pursuing our claim over Sabah, a Great Britain delegate asked: "Under what provision of your Constitution are you claiming Sabah?" President Macapagal and the members of his Cabinet could not pinpoint and they were embarrassed. That is why in the 1971 Constitutional Convention, we decided to put the words "by historic or legal title" in order to open the avenues to the pursuit of our claim over Sabah in Freedomland.

I believe that the Philippines is a peculiar archipelago; we should define the National Territory in the Constitution to show to the entire world our territory. And when in future conferences there would be questions on the extent of our national territory, we could cite our Constitution, the fundamental law of the land.

MR. SARMIENTO: Aside from that international trend, may I invite the sponsor's attention to a question raised by the honorable Commissioner Bernas in his book *Philippine Constitutional Law*, 1984 edition:

What then does the new provision gain for the Philippines? A mere security blanket, a rhetorical assertion of historic identity, decolonization on paper, and an embarrassing muddling of Philippine position towards the Treaty of Paris.

Will the sponsor comment on that question?

MR. NOLLEDO: Father Bernas is entitled to his own opinion. Besides, his statements are too general and do not consider possibilities of specific cases that may arise in the future. I still restate my previous statements supporting my stand, opposing the motion of the late Voltaire Garcia to delete the provision on National Territory in the 1973 Constitution.

MR. SARMIENTO: May I proceed, Mr. Presiding Officer? In the sponsor's speech he said that by historic right or legal title our territory possibly includes Marianas Islands — he emphasized the word "possibly." Instead of using "possibly," can we say "definitely includes Marianas Islands"? I ask this question because in one of Mabini's books, in his memoirs, he said that Marianas Islands is a province of the Philippines. Aguinaldo also said that Marianas Islands constitutes a province of the Philippines. A bishop during the Spanish time was assigned in that place; and one French book stated that Marianas Islands is a part of the Philippines. As a matter of fact, the first

school established in that island was named San Juan de Letran. So, I reiterate that instead of "possibly includes Marianas Islands" we use "definitely includes Marianas Islands" by historic right or legal title.

MR. NOLLEDO: If the Gentleman wants me to delete "possibly," I will agree with him. But does he not think our claim has already become stale? I do not know of any President of the Philippines pursuing any claim over Marianas Islands. However, I know that President Macapagal pursued his claim over Sabah but not over Marianas Islands. So, I think it has already become passé; we have no more right over Marianas Islands. But I agree with the Gentleman that historically, not legally, Marianas Islands is a part of the Philippines.

MR. SARMIENTO: May I also know if Spratley or Freedomland is included in the phrase "by historic right or legal title"? I ask this question because Atty. Coloma occupied the place and, in fact, formulated a constitution governing that Spratley Island.

MR. NOLLEDO: Who formulated a constitution?

MR. SARMIENTO Atty. Cloma.

MR. NOLLEDO: Yes.

MR. SARMIENTO: After occupying that territory, he initiated the formulation of a constitution.

MR. NOLLEDO: Yes. Kalayaan Island or Freedomland is under the effective control of the Republic of the Philippines.

MR. SARMIENTO: So, the sponsor agrees with me, therefore?

MR. NOLLEDO: I agree with the Gentleman.

MR. SARMIENTO: One last question, Mr. Presiding Officer.

During the Commissioner's sponsorship speech, he said that he was one of those active members of the Committee on National Territory of the 1971 Constitutional Convention.

MR. NOLLEDO: I was not a member of the Committee. I said that despite the fact that I was not a member, I actively participated in the deliberations of the Committee, because I come from the beautiful Island of Palawan.

MR. SARMIENTO: During one of its deliberations — I am referring to the 1971 Constitutional Convention — the Chair informed the Committee that the Kiram heirs, one of the heirs claiming title over Sabah, had extended a special power of attorney in favor of several persons and one of these was Mr. Ferdinand Marcos. Will the sponsor kindly enlighten us on this point?

MR. NOLLEDO: Based on the actuations of the heirs of the Sultan of Sulu, it seems that the power of attorney must have been revoked because they are now insisting on their claims individually without asking for presidential assistance.

MR. SARMIENTO: Thank you, honorable Commissioner.

MR. NOLLEDO: Thank you.

MR. ABUBAKAR: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Suarez): The Honorable Abubakar is recognized.

MR. ABUBAKAR: May I be allowed to say something because this is important in matters of the territory of the Philippines as covered in the Constitution?

In the 1935 and the 1973 Constitutions, the territory of the Philippines is defined. The question of other territory which is not included in the Constitution may be embraced within the phrase "by historic right." So, for purposes of definition, I think it is better to leave this in a general classification because Sabah or any other territory over which the Philippines may have a claim or has a right to claim is a delicate matter which should not be included in the Constitution for if we do so, it would be difficult to amend it and to negotiate whatever may be advisable in promoting understanding between the contending parties. So, let us limit the constitutional definition of territory to what has already been included in our Constitution. Let any other claim of territory, whether over Sabah or Kalayaan Islands or other islands, be decided by negotiation in order to promote the cohesive regional understanding between the parties or countries involved. As I said, to incorporate this in the Constitution is inadvisable because the Constitution is a document which is not only hard to amend -but hard to withdraw. Regarding this right, which all of us would like to protect, let us leave it to the judgment of our government and our people to pursue whatever is the correct course, but let us not include it in the Constitution which will not only be misunderstood but will promote certain conflicting claims.

MR. OPLE: Mr. Presiding Officer.

MR. ABUBAKAR: May I have the floor, Mr. Presiding Officer?

MR. OPLE: Yes, I will wait.

MR. ABUBAKAR: Thank you.

So, let us then wait and abide by the previous provision "by historic right or legal title" without any definition as to what territories are included in this historic right.

When we use the words "by historic right or legal title," we do not necessarily refer to Sabah alone. There may come a time when we might be embarrassed in a foreign conference involving claims over certain territories. I would like the Gentleman to know that the phrase "all territory over which the present Government of the Philippine Islands exercises jurisdiction," as found in the 1935 Constitution, was included in the definition of the National Territory purposely to include Batanes Islands because Batanes was not set forth in the Treaty of Paris of 1898 and the Treaty of Washington (between the United States and Great Britain) of 1930. Because of the Sabah claim and the claim over Freedomland and the Marianas Islands, the Committee on National Territory of the 1971 Constitutional Convention headed by Delegate Eduardo Quintero — although I was not a member thereof I attended all its meetings — used the words "historic right or legal title." So, to eliminate these words would be retrogression of the highest order.

MR. ABUBAKAR We have no objection to the inclusion of that phraseology "by historic right or legal title" because this is broad enough to cover whatever claim we may have as a matter of right through history. I refer to the nonspecification of whatever claim over any territory.

MR. NOLLEDO: Yes, that is correct. Our recommended provision does not specify any area of territory over which we lay our claim.

THE PRESIDING OFFICER (Mr. Suarez): What is the pleasure of the Gentleman from Bulacan?

MR. OPLE: With the permission of the Gentlemen on the floor, I just want to make a very important distinction between the Kalayaan Islands and Sabah.

MR. NOLLEDO: I have no objection, Mr. Presiding Officer.

MR. OPLE: Yes, I just want to point out that this is such a sensitive matter which can be the germ for future conflict with another country. In the case of the Kalayaan Islands adverted to by Commissioner Abubakar, there is

no claim to speak of. We are in physical possession of the Kalayaan Islands. We have local governments existing there under the Provincial Government of Palawan and Region IV comprising the Southern Tagalog region. This is completely different from other territories that may be contemplated under historic right or legal title including Sabah and the Marianas Islands. I think it is very important to correct the record with respect to that, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Suarez): The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Maambong be recognized to interpellate.

THE PRESIDING OFFICER (Mr. Suarez): Honorable Maambong is recognized.

MR. MAAMBONG: Mr. Presiding Officer, will the distinguished sponsor yield to a few questions?

MR. NOLLEDO: Yes, gladly.

MR. MAAMBONG: The sponsor will probably agree with me that this problem or this issue on national territory is very closely tied up with the issue on sovereignty.

MR. NOLLEDO: Yes, I agree.

MR. MAAMBONG: Mr. Presiding Officer, I do not claim to know much about public international law but what little I know from my former professor, then Chief Justice Concepcion, is that when we talk of a territory of a country, we have to be specific about it. Will the sponsor agree with that, Mr. Presiding Officer?

MR. NOLLEDO: I should qualify, because if we specify all the islands that would form the territory of our country, it might happen that we might leave out other islands that should also belong to our territory.

MR. MAAMBONG: Yes, Mr. Presiding Officer, I will, therefore, clarify the matter by propounding some more questions on the issue. When I talk about the relationship between territory and sovereignty, I am actually talking about the situation that when a state claims sovereignty, it claims sovereignty actually on two things: one, the territory, and the other, the persons and things within the territory. And when we talk about sovereignty, we are also talking about effective exercise of sovereignty in the sense that if the state, for instance, the Philippines, claims ownership over Taiwan by just saying that Taiwan is hers, that is a hollow claim because we really do not have effective control over Taiwan and we do not have jurisdiction over the persons living in it. Is that clear enough, Mr. Presiding Officer?

MR. NOLLEDO: Yes, it is very clear. I believe the Gentleman is talking of the doctrine of effective control as recognized by public international law.

MR. MAAMBONG: Yes, precisely, Mr. Presiding Officer.

When we say we have sovereignty over persons that means that whether these people are citizens or not does not really matter. They still owe allegiance to the state who owns the territory.

MR. NOLLEDO: That is right.

MR. MAAMBONG: And in that connection, if I may refer later to the committee report of Commissioner Bernas, when we have effective control of the citizens we can even determine whether they are natural-born or not. In this way, we can even grant them citizenship.

MR. NOLLEDO: That is right.

MR. MAAMBONG: I will now proceed to the meat of my question.

MR. NOLLEDO: On the basis of the premises laid down, Mr. Presiding Officer.

MR. MAAMBONG: Yes, we are now talking of the national territory comprising the Philippine Archipelago.

Would the sponsor say that the term "Philippine Archipelago" is too broad and too general that it defies the element of specificity when it comes to the exercise of sovereignty of a certain state over a certain part of the world?

Would it not be more proper if we can relate this, for example, to the previous definition of territory in the 1935 Constitution which talks of the Treaty of Paris or something and the metes and bounds are clearly identified?

MR. NOLLEDO: I do not think so. I think the Commissioner is influenced by the statements of Commissioner Bernas in his book where he said, "What or where is the Philippine Archipelago?" Then that particular article, however, gives no point of reference that can delineate the exact location of these islands and waters. I give emphasis to the word "exact." On its fact therefore, the article does not serve as a definition of national territory.

I would agree with him if he stops there, but with reference to the pertinent provisions of the Treaty of Paris, explanations of which I have already read, then the observation would instead seem to weaken.

MR. MAAMBONG: The sponsor is referring to the book of Commissioner Bernas. I have wanted very much to have a copy of that book, but it is too expensive now. And this, of course, is an indication that I need a free copy.

Anyway, let us go to another point. Actually, the reason a certain principle of international law indicates that we have to be specific about our territory is that it can cause confusion in the sense that if we are not specific, some other country may also claim jurisdiction over that territory. Thus, it could really cause war when two countries both claim a certain parcel or portion of an island in the world. Does the sponsor agree with me on that principle?

MR. NOLLEDO: The principle of specificity, whatever it means, is already weakened because of the existence of different organs of the United Nations, particularly the International Court of Justice. Before the United Nations was established, I would have agreed with the Commissioner that the principle of being specific was important in the light of the doctrine of effective control by the state, which means the state could only define its territory if it had effective control over the territory. But even granting, without admitting, that the boundaries set forth in the Treaty of Paris which I consider binding upon other states of the world should be taken into account, I think that should those boundaries be violated by third parties, then we can always ask for the intercession of the United Nations — first through the Security Council, then, perhaps, we can appeal to the General Assembly. Finally, if both parties agree, they can submit the question to the International Court of Justice.

MR. MAAMBONG: I thank the Gentleman for the explanation. But in order not to prolong my questions, I think we should delimit our discussion on the word "sovereignty" and the phrase "claim of sovereignty." Are these two different things?

MR. NOLLEDO: We can exercise sovereignty over the boundaries set forth in the Treaty of Paris. If that sovereignty could not be effectively exercised, sovereignty over these boundaries would not be lost.

Moreover, if other nations violate one's territorial jurisdiction, then the aggrieved nation has the remedies guaranteed and set forth in the United Nations Charter.

MR. MAAMBONG: I will go to another point.

Much has been said about Sabah. Actually, I do not even know where Sabah is. Perhaps, the sponsor could help me. Is Sabah under our effective control in terms of exercising actual sovereignty?

MR. NOLLEDO: That is why we did not include the word "Sabah" in the definition. I personally believe that the

observations of the Honorable Ople are very note worthy. In the referendum conducted by the United Nations among the people of Sabah, the people of Sabah opted to join the Federation of Malaysia. I feel that for practical purposes or by being pragmatic, we had to settle for the words "historic right or legal title" since we cannot exercise sovereignty over Sabah. It seems to me that the Honorable Ople has no objection to those words appearing in the definition of the national territory.

MR. MAAMBONG: Just to leave this issue, we should, therefore agree that we have no effective territorial control over Sabah, neither do we have effective control of sovereign over its inhabitants.

MR. NOLLEDO: I agree.

MR. MAAMBONG: The sponsor agrees; he can still open the avenue for claims but not actually effective sovereignty, only a mere claim.

MR. NOLLEDO: In that connection, I would like to quote again the very studious Ambassador Juan Arreglado. He said that the people of Sabah are dissatisfied with their administration. Here, I do not mean that we foment the dissatisfaction or struggle within the state of Sabah. But the Ambassador said:

Who knows, someday they might sever their connection with Malaysia and join the Philippines, after all, especially if they like the President of the Philippines.

MR. MAAMBONG: I think we have clarified the point that Sabah is not under our effective territorial control and the inhabitants thereof are not under our control.

I will just go to another point. Does this phrase "historic right or legal title" violate the principle which I mentioned earlier that the territory of a state should be specific under the doctrine of specificity of territory?

MR. NOLLEDO: Pardon me, I object to that word "violate." First of all, I do not find any legal basis for that theory.

MR. MAAMBONG: I am open to correction.

MR. NOLLEDO: That theory is a mere opinion of professors of Constitutional Law like the Honorable Roberto R. Concepcion and myself. We invoke theories that find no legal support even in international law. So that theory, to the Commissioner's mind, is valid, but to my mind it is not. Hence, the Members of this Constitutional Commission should not be bound by that theory because we are working on a framework that is consistent with the territorial integrity of the Republic. We belong to an archipelago that is unique in many ways, as compared to Indonesia which is also an archipelago.

MR. MAAMBONG: Considering the insertion of the phrase "historic right or legal title," the sponsor is actually saying that when we put into the Constitution our national territory we do not really have to be specific about it. I think that is the general trend of the sponsor's answer.

MR. NOLLEDO: No, I do not mean that. That is already cross-examination. We can be specific in one part and at the same time general in others.

MR. MAAMBONG: Therefore, how does the sponsor specify "historic right or legal title"?

MR. NOLLEDO: I would like to give an example. Our claim over the Philippine Archipelago as defined in the Treaty of Paris can fall under both historic right and legal title. Our claim over certain islands that were left out in the Treaty of Paris as set forth in the treaty concluded in Washington between the United States and Spain on November 7, 1900 can also fall under the category of legal title.

MR. MAAMBONG: So that I will not take much of the sponsor's time, this "historic right or legal title" is actually susceptible to interpretation. It can be interpreted to extend to whatever islands, depending upon the person interpreting it using available documents.

MR. NOLLEDO: I would try to qualify the words "depending upon the person interpreting." It should depend upon the competent authority who will interpret the question based on documents that are available, like the Treaty of Paris.

MR. MAAMBONG: This is my last point.

In this connection, I will have to overlap a little bit with the question of Commissioner Sarmiento. I have here a quotation which says that it is not practical to define the national boundaries of a state because a constitution, being a municipal law, would anyway have no binding effect on other states for which statement a country's territorial limits can only be intended.

On this statement, I would like to recall that in the United States, they have omitted in their Constitution the definition of their national territory. I do not know whether or not this was intentionally done. My point is: Would the sponsor agree with that statement that a constitution, being a municipal law, has no binding effect on other states?

MR. NOLLEDO: I vigorously disagree. While it is true that the constitution is a municipal law, the constitution refers not only to the particular provisions of that constitution but also to previous treaties.

I would like the Commissioner to know that the Treaty of Paris is a treaty sanctioned by public international law. With the kind indulgence of the Members of this Constitutional Commission, may I recall what I stated in my opposition remarks on the motion to delete the definition of the national territory in the 1971 Constitutional Convention. I said that the Treaty of Paris of 1898, entered into between two maritime powers of the world, the United States and Spain, fixed the international limits of our waters. Our claim over these waters is predicated upon Spain's title held unchallenged across a colonial span of more than three centuries, except in sporadic but few instances during that period by the other nations of the world. It was this title that Spain ceded to the United States in the Treaty of Paris — a title recognized by the United States' Congress through pertinent provisions of the Hare-Hawes Cutting Act and the Jones Law. It was this title which we set forth in our 1935 Constitution, ratified by 1,200,000 Filipinos, and it was also this title that the United States, admittedly a great world power, relinquished in favor of the Republic of the Philippines on July 4, 1946. I fervently hope that this Commission will likewise set forth this same title in our new Constitution in the face of unjustified threat to the sovereignty of our internal and territorial waters posed in these modern times by economically self-centered nations of the world, including the United States.

MR. MAAMBONG: I thank the Commissioner for that quotation.

But is he actually saying that the Treaty of Paris is now being incorporated in the present Constitution that we are forming?

MR. NOLLEDO: Yes. If we delve into the records of the 1971 Constitutional Convention, the words "historic right and legal title" necessarily referred to the Treaty of Paris and other related treaties that I mentioned here.

MR. MAAMBONG: I am talking of the present Constitution we are drafting.

MR. NOLLEDO: When we adopted the 1973 Constitution, we necessarily referred to the Treaty of Paris and other treaties that recognized our boundaries.

MR. MAAMBONG: I am referring to the present Constitution we are drafting.

MR. NOLLEDO: We have not adopted in toto the last sentence — the definition embodied in the 1973 Constitution. I would like this Commission to know that it is the intention of the Committee — and I hope it will also be the intention of this Commission — that the Treaty of Paris and the other treaties related thereto should not be lost in the definition of national territory.

MR. MAAMBONG: This is my last question: I have read several books about the 1935 Constitution and from my readings, found out that the reason we indicated a provision on the National Territory was to prevent dismemberment of our country by the United States. All of us will probably recall that our 1935 Constitution was a very unique document in the sense that it had to be approved by the President of the United States. And considering that the national territory was clearly indicated therein, it actually became a contract between the United States and our country. According to the book of Sinco, the only purpose for inserting that provision on the national territory was not really to define our national territory but to bind the United States, upon the signature of its President, in terms of contract and to prevent dismemberment of our country.

If that is a correct statement, would it not support the theory that, if it were not for that consideration, this provision on the national territory in the 1935 Constitution would never have been there? And so in our present formulation we are not bound to put a similar provision on National Territory because the consideration which prevailed in 1935 is no longer existing today. That is my last question..

MR. NOLLEDO: Perhaps, Commissioner Maambong Would like to add some more to those statements.

MR. MAAMBONG: Yes.

MR. NOLLEDO: There was fear that Mindanao might secede from the Philippines and so it was desired that Mindanao be included in the definition of the national territory. I would say that the consideration for the inclusion of the definition of national territory in the 1935 Constitution has attained a heightened significance during our present time because of the many secessionist movements now existing in Mindanao. Hence, there is a need to define our national territory to assert the territorial integrity of the Republic of the Philippines and to show to all the nations of the world that we want to be maintained as one territory as contemplated in the 1935 and 1973 Constitutions, and, if possible, to add some more to that territory and also to discourage any attempt to secede Mindanao from our national territory. The consideration exists now and it will exist even in the near future.

MR. MAAMBONG: Thank you, Commissioner Nolleddo. Thank you, Mr. Presiding Officer.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Suarez): What is the pleasure of the Floor Leader?

MR. RAMA: I ask that Commissioner Concepcion be recognized.

THE PRESIDING OFFICER (Mr. Suarez): Commissioner Concepcion is recognized.

MR. CONCEPCION: Thank you, Mr. Presiding Officer.

I do not propose to discuss the merits of the declaration. However, the observations made by Commissioner Sarmiento and the latest observations made by Commissioner Maambong touch on the question of motivation. Why?

I believe that one of the main considerations for the insertion of a National Territory provision in the 1973 Constitution was to incorporate the archipelagic doctrine. Mr. Presiding Officer, for over 10 years, our delegates to the Convention on the Law of the Sea fought a battle for the incorporation of this archipelagic doctrine. There were other matters that delayed the approval of the Law of the Sea, one of which had to do with how to organize a

body that will supervise the implementation of the said law.

Eventually, the majority of the number of votes necessary to approve the Convention were cast. But the biggest powers — the United States, Russia and England — had a number of reservations. Sometimes they would agree on the principle but would try to insert certain qualifications which were not acceptable to others. In fact, I think England and France — the big sea powers — did not vote in favor of the Convention on the Law of the Sea. They enacted their own laws but, in effect, accepted most of the principles on the Law of the Sea with qualifications aimed at protecting their particular problems insofar as the provisions of the Law of the Sea were concerned.

Because of this fact, I assumed that the one who drafted the 1973 Constitution incorporated the provision that is found in the last part, that is:

The waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines.

Prior to this declaration, "internal waters" were considered as only those entirely within the territory like Laguna de Bay. Thus, we had no sovereignty out-side of the territorial waters. We do have certain rights with respect to the territorial waters, but that was about the end of it.

Insofar as the archipelagic doctrine is concerned, my understanding was that those who favored it presented relief maps showing the seabeds around these islands. They showed that all these tiny islands surrounding the Philippines were part only of one range of mountains. That was the basis for their claim that being only part of one mountain range, such islands constitute an archipelago. The problem then was principally to determine what an archipelago is.

But then, in view of the qualified vote of the big powers, it is necessary to stress that in line with the majority vote of the members of the family of nations, we should insert the definition or the substance of the archipelagic doctrine as a notice to the whole world, so we will be able to say:

Well, I have this vote of the majority. While you may be the most powerful, just the same, we have incorporated the definition into the Constitution.

That is all I can say about this matter.

Thank you, Mr. Presiding Officer.

MR. NOLLEDO: Thank you very much, Commissioner Concepcion.

THE PRESIDING OFFICER (Mr. Suarez): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Davide be recognized.

THE PRESIDING OFFICER (Mr. Suarez): The Honorable Davide is recognized.

MR. DAVIDE: Thank you, Mr. Presiding Officer.

Would the sponsor yield to some questions?

MR. NOLLEDO: With pleasure.

MR. DAVIDE: At the start of the sponsorship, read into the records of the Constitutional Commission was the position paper of Ambassador Arreglado, more specifically on the reference on the Convention on the Law of the Sea. My question is very specific: Would the Committee now accept the theory of Ambassador Arreglado insofar as the area under the Convention on the Law of the Sea is concerned?

MR. NOLLEDO: That question seems to be very vague in the latter part since Ambassador Arreglado does not like any reference to the Law of the Sea in the definition of our national territory.

MR. DAVIDE: Precisely, does the Committee believe in that?

MR. NOLLEDO: If Commissioner Davide reframes the question by asking: Does the Committee believe in the opinion of Ambassador Arreglado, then I will answer that. Is that what the Commissioner means?

MR. DAVIDE: That would be practically the same.

MR. NOLLEDO: Yes, I will answer it this way: I am not binding the Committee because it seems to me the Committee was not fully influenced by the opinion of Ambassador Arreglado because of the inclusion of the last sentence of the definition which was taken from the Davide resolution. However, without binding the Committee, I would personally agree with the observations of Ambassador Arreglado.

MR. DAVIDE: So, in other words, the opinion of Ambassador Arreglado would not in any way diminish the original import of the resolution as approved by the Committee?

MR. NOLLEDO: It can diminish to a certain extent.

MR. DAVIDE: To what extent would it diminish the meaning of the report of the Committee?

MR. NOLLEDO: Ambassador Arreglado used the term "national waters." He must be referring to the 320 miles east coast of Luzon and 150 miles west coast of Luzon as set forth in the Treaty of Paris since he made a distinction between territorial sea and territorial waters.

The provisions of the Law of the Sea seem to be vague because of the reference to territorial sea. When we refer to territorial sea, it is mandatory on the part of the state or the archipelago concerned to respect the right of innocent passage or the right of setting up sea lanes.

With respect to territorial waters which are considered national waters, in the opinion of Ambassador Arreglado, it seems to be not exactly binding because these are waters over which the Philippines had acquired title under the Treaty of Paris.

MR. DAVIDE: The territorial sea is actually the sea beyond 12 nautical miles from the archipelagic base line.

MR. NOLLEDO: Yes.

MR. DAVIDE: The exclusive economic zone as prescribed and defined under the Convention on the Law of the Sea is 200 nautical miles computed from the archipelagic base line. Would the Commissioner not agree?

MR. NOLLEDO: Yes, I agree.

MR. DAVIDE: So, necessarily, the area within the territorial jurisdiction of the Philippines under and by virtue of the Convention on the Law of the Sea would be tremendously increased?

MR. NOLLEDO: In some parts of the definition.

MR. DAVIDE: Not in some parts, but in all parts

MR. NOLLEDO: But not with respect to the boundaries set forth in the Treaty of Paris. If one talks of 320 miles or 150 miles, and we specifically refer to the east coast of Luzon, then the Gentleman's contention might be subject to question.

MR. DAVIDE: The 320 miles was not actually based on the archipelagic doctrine. But if we base it on the

doctrine, that would be expanded far more because the archipelagic doctrine is from the archipelagic base line and we have to consider the outermost islands of the archipelago.

MR. NOLLEDO: I would agree with Commissioner Davide, if he is referring to the understanding of Senator Tolentino before the treaty was ratified.

MR. DAVIDE: No, not that. But that is really the concept of the 1971 Constitutional Convention adopted in the 1973 Constitution where we adopted the archipelagic doctrine. And so, if we adopt the archipelagic doctrine, the 320 miles stated in the Treaty of Paris would even be far exceeded.

MR. NOLLEDO: Where will it be measured?

MR. DAVIDE: From the archipelagic base line.

MR. NOLLEDO: What is the specific area of the archipelagic base line?

MR. DAVIDE: I would not really be in a position to determine on the basis of the archipelagic doctrine, because one has to consider the outermost points.

MR. NOLLEDO: We have set forth the base lines. We used the straight method as recognized by Republic Acts 3046 and 5446.

According to Senator Tolentino, we measure necessarily the 200-mile limit from the base lines we have set forth in these two Republic Acts. That is the observation. If we follow that opinion, then we will be amending the 320 miles set forth in the Treaty of Paris. That is the observation of Ambassador Arreglado.

MR. DAVIDE: The Gentleman has presented that map. Is that the same map that was shown by the representative of the Bureau of Geodetic Survey?

MR. NOLLEDO: Yes.

MR. DAVIDE: Did the Gentleman not remember that this representative of the bureau admitted that they had not prepared the map of the Republic of the Philippines on the basis of the 1973 Constitution?

MR. NOLLEDO: Yes, on the basis of the 1973 Constitution without mentioning the Treaty of Paris.

MR. DAVIDE: In other words, that bureau has not yet prepared a map of the Philippines in accordance with the definition of national territory as laid down in the 1973 Constitution?

MR. NOLLEDO: I would say that should be qualified in the sense that perhaps they have not complied with Republic Act 3046, as amended by Republic Act 5446.

MR. DAVIDE: Precisely.

MR. NOLLEDO: But these Acts are municipal legislations. They exist and are considered binding until superseded.

MR. DAVIDE: Only for purposes of the domestic law. But we are now seeking to define what is really the length and breadth of the national territory.

MR. NOLLEDO: As far as domestic law is concerned, I will agree with the Gentleman, but as far as international law is concerned, we have to refer necessarily to the Treaty of Paris.

MR. DAVIDE: The Treaty of Paris?

MR. NOLLEDO: Yes, except for the 320-mile limit counted from the base line as defined in our municipal

legislations.

MR. DAVIDE: Regarding the Treaty of Paris, would we, therefore, refer to the definition of Philippine territory as defined under the 1935 Constitution? Is that the position of the Committee, that we will rewrite the 1935 Constitution?

MR. NOLLEDO: I will not speak for the Committee. But the Treaty of Paris has never been superseded even by the 1973 Constitution. It seems to me that the Gentleman is implying that the 1935 Constitution, mentioning the Treaty of Paris, has been modified by the 1973 Constitution. I would not even say then that the Treaty of Paris setting the boundaries of the Republic of the Philippines had been modified by the Convention on the Law of the Sea. On the contrary, it would be very unfortunate if we state the Law of the Sea here by reference to the definition of the national territory.

MR. DAVIDE: We have here the proceedings of the interim Batasang Pambansa when the UN Convention on the Law of the Sea was presented for ratification. I will quote for the record the statement of the sponsor, then Assemblyman Arturo Tolentino, just to show that we will increase the area of the Philippines by no less than 93 million hectares. I hope this will enlighten us in treating this national territory. This is found in the Record of the interim Batasang Pambansa, volume 4, page 708, and I quote:

The exclusive economic zone is one of the new concepts in the Convention on the Law of the Sea, as an additional maritime area of states. It is a belt around the archipelago of not more than 200 nautical miles wide, measured from the archipelagic base lines. Like other states, the Philippines has certain rights in this exclusive economic zone set forth in the Convention; namely:

- 1) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or nonliving, of the waters and the seabed and deep subsoil;
- 2) Sovereign rights with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water currents and winds, and;
- 3) Jurisdiction with regard to the establishment and use of artificial islands, installations and constructions to marine and scientific research and the protection and preservation of the marine environment.

The exclusive economic zone of the Philippines measures about 395,400 square nautical miles. The area that we have been claiming as our historic territorial sea extending to the limits of the Treaty of Paris measures 263,300 square nautical miles.

Now, I would emphasize. It says "territorial sea," not just territorial waters. I will continue:

And that is extending to the limits of the Treaty of Paris. The exclusive economic zone, therefore, is bigger than the territorial sea by 132,100 square nautical miles which is equivalent to 45,211,225 hectares. The Philippines will be entitled to all the resources, living and nonliving, in this vast additional area of the seas around the archipelago.

Would the Gentleman, therefore, maintain that we should not include the area consisting of the exclusive economic zone simply because we are afraid that under the Treaty of Paris we might be losing certain areas when, on the contrary, we will be increasing that particular area?

MR. NOLLEDO: I think I was misunderstood. I would like to explain to the Gentleman. As already stated by Commissioner Regalado, the things that the Commissioner has been talking about are now governed by existing laws — municipal legislations.

MR. DAVIDE: These are not governed by existing municipal legislations.

MR. NOLLEDO: That, is also governed by the Geneva Convention of 1958. Actually, that was a reproduction, and it did not add anything to the definition of the national territory.

In connection with that, we can reconcile our views, because one will find out that assuming we measure the 200 miles from these base lines, because actually there is a confusion of what territorial waters and territorial seas mean, and then we go to the other areas where there are no lengths specified in the Treaty of Paris. Then the Gentleman would be perfectly right, if we measure from the base line in this area, toward the Pacific Ocean and the China Sea on the left side. I would agree with him because it would really expand the territory of the Philippines as I explained in my sponsorship speech. But if we count from the base line downward enclosing the Sulu Sea, we will be infringing upon the jurisdiction of Borneo. One cannot measure anything else beyond 200 miles as permitted by the Petroleum Act and the Convention on the Law of the Sea. So, I think, it can be reconciled in this way and this is very important. If we assume that the 320 miles will be infringed, that would not be so because of the reservation of Assemblyman Tolentino when he signed the Convention on the Law of the Sea. And it runs like this — if the Gentleman does not mind, I would like to read:

. . . Such signing shall not in any manner affect the sovereign rights of the Republic of the Philippines as successor of the United States of America, under and arising out of the Treaty of Paris between Spain and the United States of America of December 10, 1898, and the Treaty of Washington between the United States of America and Great Britain of January 2, 1930.

In other words, Assemblyman Tolentino wanted to reserve, as a way of understanding, that he was signing the treaty on condition that the treaty limits set forth in the Treaty of Paris must be given full respect. And in all other cases, as stated in the observations of Assemblyman Tolentino and as read by the Gentleman, the national territory would really be expanded. I would say that the Gentleman's view and my view can be reconciled.

MR. DAVIDE: The expansion would be to the north, to the south, to the east and to the west of the Republic of the Philippines, because the basis for the measurement of the 200 nautical miles is from the archipelagic base line, and not just the original concept.

MR. NOLLEDO: That is why I am asking the Gentleman how he defines an archipelagic base line.

MR. DAVIDE: Now, any final question, just for clarifying the record: The next generation of Filipinos — our grandchildren, great grandchildren, and so on — can still claim Sabah. And this Article on National Territory will be their constitutional and legal basis for such a claim. Am I correct?

MR. NOLLEDO: Yes, if one uses the words "historic right or legal title."

MR. DAVIDE: That is the meaning there.

Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Suarez): What is the pleasure of the Floor Leader?

MR. RAMA: Commissioner Concepcion would like to make one short statement in connection with the previous interpellation.

THE PRESIDING OFFICER (Mr. Suarez): Commissioner Concepcion is recognized.

MR. CONCEPCION: Thank you, Mr. Presiding Officer.

I stand here only to say a few words about the well-pointed remarks of Commissioner Maambong concerning

specificity. It is really difficult to argue on these matters just by using words, but when the delegation of the Philippines batted for the archipelagic doctrine, they presented maps which I am sure are recorded in the proper section of the United Nations organization. I have been in that particular section and had the occasion to see a number of maps of the Philippines and its adjoining islands.

I have in my hands now an article by Justice Coquia, who was a member of the Philippine delegation, entitled, Development of the Archipelagic Doctrine, which is a recognized principle of international law. Perhaps, in justice to the University of the Philippines, I should say that this appears in the June 1983 issue, Volume 58, Second Quarter, of the Philippine Law Journal. I think if the Members of the Commission are furnished a copy of this sketch, much discussion could be avoided.

Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Suarez): Thank you.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Romulo be recognized.

THE PRESIDING OFFICER (Mr. Suarez): The Honorable Romulo is recognized.

MR. ROMULO: Mr. Presiding Officer, the Chair will find my question refreshingly brief because the World Cup is going to be shown at seven-thirty tonight. The first question is: Does the term air space include airwaves?

MR. NOLLEDO: That is a very interesting question. I said, it is claimed that airwaves belong to the people. And, therefore, naturally, it must necessarily refer to the people of the Philippines. Airwaves above us should belong to the people of the Philippines and not to the State. There is an opinion to that effect, but with respect to air space above us, the rule in international law and followed apparently by the Law of the Sea, will be up to the point where we can have effective control — limits.

MR. ROMULO: So, the Gentleman is saying that the term "airwaves" is not included in the term "air space." Am I correct?

MR. NOLLEDO: That is highly technical; I am not an expert on that. I would not conclude it that way, but from a layman's point of view, it should be included in the air space. But because of its peculiar functions, and as claimed by technical experts that they belong to the people, my conclusion would seem to jibe with the conclusion contemplated by the Gentleman's question.

MR. ROMULO: Thank you.

Just so I understand this Sabah question, is it the position of the Committee, rather than the individual Members, that we should retain or drop the Sabah claim insofar as the government is concerned as opposed to the private rights of parties?

MR. NOLLEDO: The members of the Committee are divided. That is why we did not include Sabah in the definition. We, however, agreed in principle that any claim over Sabah or any other territory should fall under the words "historic right or legal title." We have not decided on that.

MR. ROMULO: Thank you.

MR. RAMA: Mr. Presiding Officer, as our last interpellator, I ask that Vice-President Padilla be recognized.

THE PRESIDING OFFICER (Mr. Suarez): The honorable Vice-President Padilla is recognized.

MR. PADILLA: Thank you.

Article 2 of the Revised Penal Code mentions, "within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone." I suppose this short statement of our national territory, where the Revised Penal Code applies, because it is general and territorial, is essentially the same as Article I on the National Territory.

MR. NOLLEDO: I would say so.

MR. PADILLA: The second sentence that was introduced or adopted by the 1971 Constitutional Convention explains the words "internal waters." But the first sentence does not contain the term "internal waters"; whereas the Revised Penal Code expressly mentions "interior waters." In other words, while the second sentence of the 1973 Constitution explains "internal waters," there is no mention of "internal waters" in the first sentence. Does not the Gentleman think that we should include "interior or internal waters" or "inland waters" in the first sentence so that the second sentence would be an explanation of the terms "internal, interior or inland waters"?

MR. NOLLEDO: It is a very good observation, but when we did not mention "internal waters" in the first sentence, it was because of the use of the term "Philippine Archipelago." So we put there "with all the islands in waters embraced therein." As I already stated, according to the observations of Ambassador Arreglado, our country is considered just as one big basin. So, because of the use of the word "archipelago," we did not mention the words "internal waters" anymore.

MR. PADILLA: Article 2 of the Revised Penal Code also mentions "Philippine Archipelago, including its atmosphere, its interior waters and maritime zone." The third sentence was recommended by the Committee.

MR. NOLLEDO: Yes.

MR. PADILLA: Why does it start with "Sovereignty or Jurisdiction of the Philippines"? Why do we not just say: THE NATIONAL TERRITORY SHALL ALSO EXTEND OR INCLUDE THE STRAITS CONNECTING THESE WATERS? Why not say ITS TERRITORIAL WATERS WITH THE ECONOMIC ZONE PROVIDED IN THE CONVENTION ON THE LAW OF THE SEA?

MR. NOLLEDO: That is a matter of style. I agree with the Vice-President. He may present his amendment at the appropriate time.

MR. PADILLA: I realize that the Article already states "over which the Philippines has sovereignty or jurisdiction." But then the third sentence stresses sovereignty or jurisdiction when we are talking of the national territory. So, perhaps, in the period of amendments . . .

MR. NOLLEDO: Yes. We can amend it at the appropriate time.

MR. PADILLA: The last point is, it mentions territorial sea, then the air space, the subsoil, the seabed, the insular shelves and other submarine areas. Are not the later phrases extensions of the term "territorial sea" rather than territorial air space, because if we talk of the air space — the atmosphere — then there is no direct connection with the seabed, insular shelves, and so forth?

MR. NOLLEDO: I think this is also a matter of style. The observation is well-taken.

MR. PADILLA: I was going to suggest that we probably say TERRITORIAL SPACE OR ATMOSPHERE. Now, I do not know whether the term "subsoil" refers to land or land below the sea. If it refers to land below the sea, then after the phrase AIR SPACE OR ATMOSPHERE, we transpose "the sea." Then all these subsequent phrases — seabed, insular shelves, etc. — would refer to the sea rather than to air space.

MR. NOLLEDO: Yes. I agree with the observations.

MR. PADILLA: Thank you very much.

MR. NOLLEDO: We are amenable to amendments.

THE PRESIDING OFFICER (Mr. Suarez): What is the pleasure of the Floor Leader?

ADJOURNMENT OF SESSION

MR. RAMA: I move that we adjourn the session until tomorrow at five o'clock in the afternoon.

THE PRESIDING OFFICER (Mr. Suarez): The session is adjourned until tomorrow at five o'clock in the afternoon.

It was 7:09 p.m.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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