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Saturday, October 4, 1986

CALL TO ORDER

At 10:02 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. Roberto R. Concepcion, to wit:

Merciful Father, fountain of all good,
As we look in retrospect
At the work of this Commission
During the last four months,
As we assess the magnitude and quality
Of our individual and collective endeavors,
As we ponder on the nature and significance
Of the conflicts and other obstacles
We have solved and surmounted
In the pursuit of our common objective,
We perceive the magnitude of our debt of
gratitude to You
For the beneficent influence of Your grace,
Our complete dependence upon Your
Holy Will
and the bigness of Your Sacred Heart.
We beg You, our Lord and Shepherd to sustain us,
To provide us with further strength
And impart to us the light of Your wisdom

To the end that we may complete the New
Constitution
In line with the demands of a just, humane
and democratic society,
With the honest conviction and collective will
of the Members of this Convention,
And, as far as practicable,
with the general requirements of Constitution
making.
As we approach the end of our undertaking,
With mixed feelings of joy
In the accomplishment of our mission as a
Body,
And with the hope and fervent prayer
That our fundamental law
May effectively contribute
to the stabilization of our government,
the promotion of understanding and unity
among the Filipino people,
and of their welfare and prosperity,
As well as of sorrow at the thought
that this Commission must soon be dissolved
and its Members will part ways,
for each to meet his own destiny.
Oh! Lord of lords; grant us
The grace to reach the finish line
In a spirit of brotherhood and friendship,
Fortified by the feeling
That we have done our level best
for our country and the people,
Bolstered up by the common anxieties

and warm associations,
And the enduring pleasure of being together
in the quest for truth and justice,
for freedom and equality,
and for a lasting peace for all.
For this Constitutional Commission
And its distinguished Officers and Members,
We earnestly pray to our Savior and Redeemer
To extend His bountiful blessings
That their work of love
and devotion to the Fatherland
may merit due recognition from all.
And lastly, please accept my heartfelt gratitude
for the courtesies extended to me by the
Commission and its Officers and particularly
for the expressions of personal consideration
and esteem of my dear Colleagues in this
Body, which I hope to fondly remember and
treasure till the end of my days.
This I ask You, Lord, to grant us.
Amen.

ROLL CALL

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

Aquino, F. S. Ople, B. F.

Azcuna, A. S. Padilla. A. B

Bernas, J. G. Muñoz Palma, C

Rosario Braid, F Quesada, M. L. M

De Castro, C. M Rama, N. G

Colayco, J. C. Regalado, F. D

Concepcion, R. R. Rodrigo, F. A

Davide, H. G. Romulo, R. J
Foz, V. B. Sarmiento, R V.
Guingona, S. V.C Suarez, J. E
Jamir, A. M. K. Sumulong, L. M
Laurel, J. B. Tadeo, J. S. L.
Lerum, E. R. Tan, C.
Maambong, R. E Uka, L. L
Nieva, M. T. F Villacorta, W. V.
Nolledo, J. N.

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

The following Members appeared after the Roll Call:

Abubakar Y. R. Garcia, E. G.
Alonto. A. D. Gascon, J. L. M. C.
Bacani, T. C. Monsod, C. S.
Bengzon, J. F. S Natividad, T. C
Bennagen, P. L De los Reyes, R. F
Calderon, J. D Treñas, E. B

Mr. Rosales was sick.

Mr. Tingson was on official mission.

Mr. Villegas notified the Constitutional Commission, through the Secretariat, of his absence.

READING AND APPROVAL OF THE JOURNAL

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

REFERENCE OF BUSINESS

On motion of Mr. Rama, 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. 1043 — Constitutional Commission of 1986

Letter from former MP Helena Z. T. Benitez, National President, Girl Scouts of the Philippines, 901 Padre Faura, Manila, submitting for consideration of the Constitutional Commission, proposed constitutional provisions concerning the child — its role in nation-building and the promotion of its physical intellectual, moral, emotional, and social well-being.

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 1044 — Constitutional Commission of 1986

Letter from Mr. Gregorio M. Batalla of Sipocot, Camarines Sur, urging the inclusion in the Constitution of a provision that would mandate the government to give salaries to barangay captains

TO THE COMMITTEE ON LOCAL GOVERNMENTS

Communication No. 1045 — Constitutional Commission of 1986

Letter from Ms. Patrocinio del Rosario, President, Aklan Public School Retirees Association, Batan, Aklan, seeking a constitutional provision that would relieve the plight of government retirees, especially the retired public school teachers

TO THE COMMITTEE ON SOCIAL JUSTICE

Communication No. 1046 — Constitutional Commission of 1986

Communication from Mayor Baltazar A. Gimolatan of the Municipality of Liloy, Zamboanga del Norte, transmitting Resolution No. 73 of the Sangguniang Bayan of Liloy, fully supporting Resolution No. 130 of the Sangguniang Panglungsod of the City of Dipolog, proposing the creation of a new region to be composed of the provinces of Zamboanga del Norte, Misamis Occidental, Zamboanga del Sur, the cities of Dipolog, Dapitan, Oroquieta, Ozamis, Tangub, and Pagadian

TO THE COMMITTEE ON THE LEGISLATIVE

Communication No. 1047 — Constitutional Commission of 1986

Letter from Mr. Tomas Crisologo Valeros of San Jose Norte, Manabo, Abra, submitting for consideration by the Constitutional Commission a xerox copy of "Constitution for the Republic of the Philippines", written by himself

TO THE STEERING COMMITTEE

Communication No. 1048 — Constitutional Commission of 1986

Letter from Mr. Manuel A. Argel of Vigan, Ilocos Sur, suggesting that in order to resolve the issue of unicameralism and bicameralism, two questions should be asked in the plebiscite — one asking for approval of the constitution, and the other, asking for the people's choice between unicameral and bicameral legislature.

TO THE COMMITTEE ON AMENDMENTS AND TRANSITORY PROVISIONS

Communication No. 1049 — Constitutional Commission of 1986

Letter from Mr. Juan J. Angeles of 1842 F. Agoncillo St., Malate, Manila, advocating that the President and the Vice-President should submit themselves to the elections of 1987

TO THE COMMITTEE ON AMENDMENTS AND TRANSITORY PROVISIONS

Communication No. 1050 — Constitutional Commission of 1986

Telegram from Ms. Nelia A. Mitra of Makati Metro Manila, seeking a no-vote on the proposed presidential election

TO THE COMMITTEE ON AMENDMENTS AND TRANSITORY PROVISIONS

Communication No. 1051 — Constitutional Commission of 1986

Letter from Mr. Romulo M. del Rosario, President, DEHECHO, Inc., Manila City Hall, transmitting a resolution adopted by DEHECHO, expressing several concepts on "The Rights and Protection of Children and Youth and the Rights, Responsibilities and Liabilities of Mothers" for possible inclusion in the constitution

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 1052 — Constitutional Commission of 1986

Letter from Mr. Vicente T. Ataviado, Maasin, Southern Leyte, suggesting that in the plebiscite on the proposed constitution, the controversial provisions should be presented separately, with the voters made to choose between two alternatives after voting yes or no on the whole document

TO THE COMMITTEE ON AMENDMENTS AND TRANSITORY PROVISIONS

UNFINISHED BUSINESS: COMMITTEE REPORT NO. 38 ON PROPOSED RESOLUTION NO. 540 ON THE ARTICLE ON TRANSITORY PROVISIONS

On motion of Mr. Rama, there being no objection, the Body resumed consideration, on Second Reading, of the Proposed Resolution No. 540 (Committee Report No. 38), entitled:

Resolution to incorporate in the new Constitution an Article on Transitory Provisions.

Thereupon, the Chair recognized the Chairman and Members of the Committee on Transitory Provisions.

POINT OF INFORMATION OF MR. SUAREZ

Mr. Suarez informed the Chair that in accordance with the arrangement agreed upon, the Members would consider the remaining proposals contained in the Addendum, specifically on:

1. the possible reversion of lands which may have exceeded the allowable ownership limit in the new Constitution, submitted by Mr. Regalado; and
2. the provision on the Declaration of Principles governing foreign military bases.

The second proposal, Mr. Suarez stated, could be taken up later with Section 7 on the tenure of the incumbent President and Vice-President and Section 8 on the Presidential Commission on Good Government which have been deferred.

Thereafter, he asked that the Body proceed to a discussion of new sections being proposed by the Members.

Apropos Mr. Regalado's proposal, Mr. Maambong suggested that the proponent consider the possibility that the proposal may not be necessary because of the law on reversion and escheat.

Thereupon, the Chair recognized Mr. Guingona for his proposal.

PROPOSED PROVISION OF MR. GUINGONA

Mr. Guingona proposed a provision coauthored by Mrs. Rosario Braid, Messrs. Treñas, Gascon, Uka and Foz, to wit:

CONGRESS SHALL BY LAW DETERMINE THE TIME FRAME FOR THE IMPLEMENTATION OF FREE PUBLIC SECONDARY EDUCATION.

Mr. Guingona explained that the new Section was proposed in compliance with the manifestation of Mr. Villacorta during the deliberations on the provision on free public secondary education in response to statements that the government may not be in a position to implement free public secondary education because of the present economic crisis.

Mr. Villacorta, by way of clarification, stated that as Chairman of the Committee on Human Resources which presented the Article on Education, Science and Technology, Arts, Culture and Sports, he was personally for the immediate implementation of free public secondary education but that there was a consensus in the Body that the government should be given time to undertake this task, hence, the Committee promised to present the Section in the Transitory Provisions. He stated that he did not sponsor the proposal but entrusted it to Mr. Guingona as Chairman of the Subcommittee on Education.

Upon inquiry of the Chair, Mr. Villacorta agreed with the proposal, although he opted for its immediate implementation.

Additionally, Mr. Guingona noted that with respect to the time frame, it is the sense of the Committee that free public secondary education should be given at the earliest possible time and not at the earliest convenience of the government. He expressed confidence that the House of Representatives would be able to provide a reasonable time frame for its implementation.

AMENDMENT OF MR. SARMIENTO

Mr. Sarmiento proposed to delete the words "by law" for purposes of uniformity, which was accepted by Mr. Guingona.

OBJECTION OF MR. PADILLA

Mr. Padilla observed that the words "by law" had been used in many sections and opined that Congress can act only by law or by statute.

He objected to the deletion of "by law".

Mr. Maambong suggested that the matter be left to the Committee on Style for realignment with the other provisions which contain the words "by law". He reiterated the Committee's acceptance of the deletion of the words "by law".

Mr. Guingona then informed that Mr. Nollado had advised that the Committee on Style had deleted, on at least one occasion, the words "by law".

AMENDMENT OF MR. SUAREZ

Mr. Suarez proposed and Mr. Guingona accepted the insertion of the words THE FIRST before the word "Congress" in view of the urgency to implement free public secondary education.

Mr. Guingona, likewise, accepted the suggestion to use the word PERIOD in lieu of "time frame".

As amended, the provision reads:

THE FIRST CONGRESS SHALL DETERMINE THE PERIOD FOR THE IMPLEMENTATION OF FREE PUBLIC SECONDARY EDUCATION.

PROPOSED AMENDMENT OF MR. DAVIDE

Mr. Davide proposed to insert the word FULL before the word "implementation".

Mr. Guingona stated that the original provision was for full implementation and that there had been a typographical error.

The Committee accepted the amendment.

INQUIRY OF MR. BENNAGEN

In reply to Mr. Bennagen's inquiry on the effect of the provision on barangay high schools, Mr. Guingona stated that it would not adversely affect existing barangay high schools but would, in fact, create more high schools. He also affirmed that the existing barangay high schools could continue offering free high school education.

Mr. Guingona informed that Messrs. Nollado and Davide are also coauthors of the proposed amendment.

PROPOSED AMENDMENT OF MR. PADILLA

Mr. Padilla's proposal to change the word "full" to ADEQUATE was not accepted by Mr. Guingona who opined that there should be full implementation of the provision.

Mr. Padilla observed that free secondary education in public schools is desirable but that the resources of government may not be adequate.

In reply, Mr. Guingona stated that Congress would determine the capability of the government to support these schools.

PROPOSED AMENDMENT OF MR. OPLE

Mr. Ople remarked that if the Body were to convey the exact sense of the Committee, the provision should state that the First Congress shall give priority to the implementation of free secondary education.

Mr. Guingona did not object to the suggestion but stated that it would be up to the Committee to accept.

Mr. Ople observed that among the new provisions of the draft Constitution, none has generated more hope and expectation than the one on free public secondary education, however, since it may run into difficulties, the Commission should allow Congress to do the prioritization.

Mr. Guingona maintained that the Constitution already expressed the priority in the Article on Education.

In reply, Mr. Ople stated that the provision on budget priority is for education in general and for teachers in

particular. He pointed out that the problem is essentially one of budgetary constraint and unless the provision is asserted as a priority, it will meet competing claims on the budget.

Mr. Ople opined that the provision could be amended, to wit:

THE FIRST CONGRESS SHALL GIVE PRIORITY IN DETERMINING THE PERIOD FOR THE FULL IMPLEMENTATION OF FREE SECONDARY EDUCATION.

Replying thereto, Mr. Guingona maintained that the provision would refer to the fixing of time by Congress and that priority on free public secondary education is already expressed in the Article on Education.

REFORMULATION OF THE PROVISION

Thereupon, Mr. Suarez proposed a reformulation to reflect the thinking of Messrs. Ople and Guingona, to wit:

THE FIRST CONGRESS SHALL GIVE PRIORITY IN DETERMINING THE PERIOD FOR THE FULL IMPLEMENTATION OF FREE PUBLIC SECONDARY EDUCATION.

The proposal was accepted by Messrs. Ople and Guingona.

INQUIRY OF MR. RODRIGO

Mr. Guingona affirmed Mr. Rodrigo's observation that it is possible for the First Congress to set a period of implementation after the term of the First Congress which would bind the Second Congress.

As to how the First Congress could foretell that the government would have enough funds to implement the program during the Second Congress, Mr. Guingona replied that the First Congress would have enough time to make a study which would be the basis of the enabling act.

Mr. Guingona affirmed that Congress may decide to implement free public secondary education at a much later date, perhaps during the Third Congress. He pointed out that there would be no sanction against the Third Congress should it fail to implement the program, although, there would be a moral and even a legal obligation.

On the enforcement of the legal obligation, Mr. Guingona replied that it is the Executive Department, through the Ministry of Education, Culture and Sports, which will enforce the provision. He informed that Minister Quisumbing had indicated that free public secondary education could be implemented within a few years.

In the event that the Third Congress would still face the problem of lack of funds, Mr. Guingona stated that full implementation of the provision may be justifiably suspended due to circumstances like budgetary constraints.

INQUIRY OF MR. RAMA

On Mr. Rama's observation that it would be better to provide for partial implementation in case of conflict between full implementation of free public education and present economic realities, Mr. Guingona stated that the free education program has already been partially implemented and that even the Minister of Education, Culture and Sports opined that the full implementation could be realized in the future. He pointed out, however, that "full implementation" is a relative term and that it does not presuppose education for all. He added that the students have also the option whether to go to public schools or to private educational institutions.

In this connection, Mr. Gascon underscored that the term "full implementation" should be interpreted as intended in the Article on Education, and that Congress is merely mandated to set the timetable to the full implementation of the education program so that it could also provide for partial implementation depending on the obtaining

situation.

Reacting thereto, Mr. Guingona stated that the proposal is actually a compromise because the Committee on Human Resources and the Subcommittee on Education wanted an immediate implementation of the program.

REMARKS OF MS. AQUINO

Ms. Aquino opined that Mr. Rama's observation was justified considering the present formulation of proposal which practically does not allow anything less than full implementation of the free public secondary education.

In view thereof, she reiterated Mr. Padilla's proposal to change the word "full" to ADEQUATE if only to avoid misinterpretations.

Mr. Gascon maintained that the intention of the provision in the Article on Education is for the full implementation of free public elementary and secondary education and not merely adequate public education. He opined that what should be adjusted should be the time frame for its full implementation, which action would be left to Congress.

INQUIRY OF MR. DE CASTRO

On Mr. de Castro's query whether partial implementation could also mean implementation in some municipalities and non-implementation in others, Mr. Gascon explained that although the goal is full implementation, this could not be attained in one shot, so that it would be up to Congress to determine how the program could be implemented.

On whether such partial implementation would not be unfair for other public schools that would not be immediately covered by the free education program, Mr. Gascon pointed out that although it may seem unfair in the early stage of implementation, Congress would see to it that the program is eventually fully implemented. He affirmed that it would also be up to Congress to determine what percentage of the tuition fees would be initially free until they are fully free.

Mr. Guingona also explained that in coordination with the Ministry of Education, Culture and Sports, Congress would identify which areas need high schools most.

APPROVAL OF THE PROPOSED PROVISION, AS AMENDED

Thereafter, Mr. Suarez restated the proposed provision, as amended, to wit:

THE FIRST CONGRESS SHALL GIVE PRIORITY IN DETERMINING THE PERIOD FOR THE FULL IMPLEMENTATION OF FREE PUBLIC SECONDARY EDUCATION.

Submitted to a vote, and with 20 Members voting in favor, 7 against, and 5 abstentions, the same was approved by the Body.

Mr. Padilla stated that he was in favor of the proposal but against the word "full" which should have been substituted with the word ADEQUATE.

PROPOSED AMENDMENT OF MR. GUINGONA

Mr. Guingona, jointly with Messrs. Foz, Rigos, Uka, Tingson, Nollado, Azcuna and Abubakar, proposed a new Section, which reads:

THE PRESIDENT, MAY ALLOW THE INCUMBENT CHIEF-OF-STAFF WITHOUT REGARD TO HIS

RETIREMENT TO SERVE THE FULL THREE-YEAR MAXIMUM TOUR OF DUTY.

Mr. de Castro observed that, as formulated, the proposed amendment is in effect a motion for reconsideration of the approval of Section 12 (6) of the Article on General Provisions which provides for the tour of duty of the Chief of Staff, and is therefore out of order.

He also stressed that retireability is not in conflict with the tour of duty of the Chief of Staff who may not be retired until after the full three-year tour of duty, but what is prohibited is an extension of the tour of duty.

Mr. Guingona explained that the proponents merely considered the serious insurgency problem obtaining in the country and did not consider the stand of the incumbent Chief of Staff who, they believe, is in full control of the New Armed Forces of the Philippines, and, who, together with the Minister of National Defense, sparked the February revolution. He added that the proposal would actually implement the provisions on the tour of duty of the Chief of Staff considering the admission that the Chief of Staff may still continue to serve, even if at first some Members were doubtful about such interpretation. But since the provision that would subject certain officers to retirement without exception was disapproved, prior to any reconsideration, Mr. Guingona stated that the proposed amendment was in order.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 10:53 a.m.

RESUMPTION OF SESSION

At 10:56 a.m., the session was resumed.

REMARKS OF MR. GUINGONA

Upon resumption of session, Mr. Guingona stated that he and Mr. de Castro agreed to submit the proposal to a vote, after they have made their remarks.

Mr. Guingona disclosed that the main objection of Mr. de Castro is the applicability of the proposal to only one person. He also opined that the conflict lies in the provision regarding the retirement of retireable officers vis-a-vis the tour of duty of the Chief of Staff. He stated that because the retirement provision would have no exception, even the Chief of Staff would be covered by said provision.

REMARKS OF MR. DE CASTRO

Mr. de Castro pointed out that Section 12(6) of the Article on General Provision has prospective application and it would cover even the incumbent Chief of Staff, because he assumed his position only in late February 1986 from which date, he has three years to serve and such service may be extended pursuant to the second sentence thereof which provides for an extension in times of war or other national emergency; therefore, such proposal in the Transitory Provisions would not be necessary.

INQUIRY OF MR. RODRIGO

In reply to Mr. Rodrigo's query, Mr. Guingona affirmed that the word "incumbent" refers to whoever would be the Chief of Staff upon ratification of this Constitution.

OBJECTION OF MR. ROMULO

Mr. Romulo expressed his objection to the proposed amendment, firstly, on the ground that it would be inconsistent with the provision on three-year tour of duty with extension only in times of war or national emergency. Secondly, he opined that no man is indispensable and that retireable officers should be allowed to retire. And finally, he underscored that there are some doubts on the inclusion of the term of the incumbent President in the proposed Constitution, and the tenure of the incumbent Chief of Staff would not be an exception.

Reacting thereto, Mr. Guingona stated that there could be no declaration of war or national emergency before Congress is established, but the proposal is premised on the insurgency problem prevailing in the country.

RESTATEMENT OF MR. GUINGONA'S AMENDMENT

Mr. Maambong restated Mr. Guingona's proposed amendment to read:

THE PRESIDENT MAY ALLOW THE INCUMBENT CHIEF OF STAFF, WITHOUT REGARD TO HIS RETIREABILITY, TO SERVE THE FULL THREE-YEAR MAXIMUM TOUR OF DUTY.

The Sponsor did not accept the proposed amendment.

Mr. Padilla, likewise, registered his objection to the proposed amendment.

Submitted to a vote, and with 9 Members voting in favor and 24 against, the proposed amendment was lost.

PROPOSED AMENDMENT OF MR. DAVIDE

Thereupon, Mr. Davide proposed to add a new Section to read as follows:

SEC. _____ ALL EXISTING TREATIES OR INTERNATIONAL AGREEMENTS WHICH HAVE NOT BEEN RATIFIED BY THE BATASANG PAMBANSA BECAUSE OF SECTION 16 OF ARTICLE XIV OF THE 1973 CONSTITUTION SHALL REMAIN VALID UNTIL DISAPPROVED BY THE SENATE.

In reply to Mr. Maambong's query on whether treaties and international agreements alluded to refer to those entered into by the President, Mr. Davide replied in the affirmative stating that his proposal is precisely designed to correct the 1973 Constitutional provision by giving back to Congress, particularly the Senate, the power to review such treaties and international agreements.

On the status of treaties entered into by the former President should the Senate disapprove them, Mr. Davide stated that such treaties would become ineffective and without force.

In reply to Mr. Rama's query whether the agreements pertinent to the U.S. Military Bases are embraced within the phrase "existing treaties and international agreements", Mr. Davide opined that although technically considered executive agreements, they are actually treaties.

Mr. Rama pointed out that these agreements stipulate the payment of rental and aid. He inquired as to what would happen if said agreements would be disapproved by the Senate, to which Mr. Davide replied that the disapproval would not have retroactive effect.

On Mr. Rama's query as to what would happen to the monies still to be paid, Mr. Davide explained that if they represent payments for arrears in rentals, they could be collected because in the meantime the other contracting party enjoyed the benefits under the agreement.

On whether the provision would only create more complications, Mr. Davide explained that his proposal merely

intends to accord the Senate the authority to review all agreements entered into by the deposed President under an anomalous provision in the 1973 Constitution.

INTERPELLATION OF MR. GUINGONA

In reply to Mr. Guingona's query whether would be better to specify that the provision would not cover the treaties entered into by Mr. Marcos before he became a dictator, Mr. Davide pointed out that Mr. Marcos could not have entered into any treaty without the concurrence of the Senate.

Mr. Guingona contended that the provision is too broad, to which Mr. Davide disagreed by explaining that it refers only to treaties or international agreements entered into by the President pursuant to Section 16 of Article XIV of the 1973 Constitution.

INTERPELLATION OF MR. AZCUNA

Mr. Davide agreed with Mr. Azcuna's observation that the provision pertains to treaties and international agreements entered into by way of an exception in the 1973 Constitutional provision on National Economy under which the President, in the guise of national interest, may enter into treaties or agreements without the concurrence of Congress.

On Mr. Azcuna's query whether the intention of the proposal is to make treaties, which were validly entered into, subject to disapproval by the Senate, Mr. Davide stated that such treaties would remain valid unless disapproved by the Senate.

On whether such a unilateral act would not be in violation of national commitments, Mr. Davide pointed out that rules of international law allows the abrogation or modification of treaties, which rules are applicable to the many treaties which were entered into by only one man under a very questionable constitution.

Mr. Davide agreed with Mr. Azcuna's statement that under the country's legal system, a statute could amend a treaty in the same way that a treaty could amend a statute so that whichever comes later, could amend or repeal the other.

Mr. Azcuna then asked whether the proposal would no longer be necessary since Congress can pass a law which is inconsistent with a treaty, thereby repealing the same, to which Mr. Davide replied that the process is circuitous than his proposal to give the Senate authority to review treaties and international agreements and to disapprove the same if found to be inconsistent with the national interest or public good.

Thereupon, Mr. Azcuna proposed to insert the sentence ALL SUCH EXISTING TREATIES SHALL NOT BE RENEWED OR EXTENDED WITHOUT THE CONCURRENCE OF THE SENATE

Mr. Davide accepted the proposal.

INTERPELLATION OF MR. NOLLEDO

In reply to Mr. Nollado's query, Mr. Davide reiterated that the 1973 Constitution is null and void.

Mr. Nollado then stated that all existing treaties and international agreements are likewise null and void because they do not have any constitutional basis, to which Mr. Davide replied that the conclusion is correct. He recalled, however, that their position with respect to the U.S. Military Bases Agreement was overturned by the Body and, in view of this, there must be some degree of respect to this agreement until disapproved by the Senate.

Mr. Nollado opined that Mr. Davide could still be consistent with his statement but he stated that the proposal

would seem to validate the existing treaties and international agreements for purposes of complying with international commitments, to which the latter agreed but subject to the disapproval of Congress.

On whether or not all these treaties may be disapproved because the Senate may apply, after all, the provision of Section 16 of Article XIV of the 1973 Constitution, Mr. Davide replied that there would be 24 Senators of different minds and whose thinking he could not foretell.

In reply to Mr. Nollado's query whether the principle *rebus sic stantibus* could now be applied because the country has a new Constitution, Mr. Davide replied in the affirmative not only because of a new Constitution but also because of the prevailing circumstances at the time the agreement was executed.

On whether it could be suggested to the Senate to review all those existing treaties and agreements entered into by virtue of Section 16 of Article XIV of the 1973 Constitution to determine whether they are for the national welfare and interest, Mr. Davide stated that he knows for a fact that many of these international agreements did not really take into account the interest and welfare of the country.

MANIFESTATION OF MR. GUINGONA

At this juncture, Mr. Guingona expressed his reservation relative to the statement that a later law could repeal a treaty because the Body had adopted a provision of international law as part of the laws of the land, to which Mr. Davide explained that the Body only adopted the generally accepted principles of international law.

INTERPELLATION OF MR. OPLE

In reply to Mr. Ople's query whether the proposal is equivalent to a selective repudiation policy for all treaties and international agreements entered into without the concurrence of Congress, Mr. Davide replied that generally it is.

On whether this would also cover agreements for foreign loans, Mr. Davide stated that these are merely executive agreements and would not be included.

In reply to Mr. Ople's query whether he could name at least one treaty which warrants review by the Senate, Mr. Davide stated that the Treaty of Amity, Navigation and Commerce with Japan was previously rejected by the Philippine Senate but approved by former President Marcos.

Mr. Ople suggested that it would be better to come up with a more substantial list of those treaties which are considered too onerous. He then queried whether the validity of a treaty could be brought before the Supreme Court on the ground of constitutionality, to which Mr. Davide replied that it could, but the matter is procedural. He stated that he merely wants to provide a transitory provision allowing the proper government authority to ratify or review treaties and international agreements which earlier have been entered into under anomalous conditions.

On whether conceding to the Senate the matter of selective repudiation of treaties and international agreements would not be one way of preempting the powers of the Supreme Court to review such treaties, Mr. Davide opined that the Members of the Senate should always take into account the national interest, the common good and the national welfare.

On whether the proposal is consistent with the provision which upholds the validity and the continuing operation of existing laws, executive orders and letters of instructions, Mr. Davide stated that it is not inconsistent therewith.

As to whether the proposal would, in effect, open the floodgates for indiscriminate review and possible repudiation of all existing treaties and international agreements, Mr. Davide opined that the Senate would not act

indiscriminately, and that it is precisely because of his confidence in the Senate that he proposed the amendment in the Transitory Provisions.

On Mr. Ople's query whether the proposal also includes the Tripoli Ceasefire Agreement, Mr. Davide stated that he was not in a position to know whether it was a treaty or an international agreement.

As to whether treaties and international agreements are generally entered into by the contracting States on the presumption of regularity and good faith, Mr. Davide replied in the affirmative, but he added that the anomalous character of the 1973 Constitution calls for a review of the treaties and international agreements entered into by Mr. Marcos.

Thereupon, Mr. Ople manifested that while his first reaction was to ask for the deletion of the proposal, he would desist from doing so because of the amendment of Mr. Azcuna.

INTERPELLATION OF MS. AQUINO

In reply to Ms. Aquino's query whether it is the intention of the proposal to allow unilateral revocation or repudiation of treaties which have become onerous because of supervening circumstances, Mr. Davide stated that it was not only in view of the supervening circumstances, but also of the circumstances attendant to the execution of the treaty or agreement. Mr. Davide affirmed that he would invoke the principle of *rebus sic stantibus* as a ground for the review of contracts or agreements.

Ms. Aquino observed that the principle of *rebus sic stantibus* always yields to the principle of *pacta sunt servanda* when there is a definitive period in the treaty or international agreement.

Mr. Davide opined that the intervening period from 1972 to the present would not be enough to allow the principle of *rebus sic stantibus* to supplant the *pacta sunt servanda* rule. He stated that the effect of the provision is to allow the review and disapproval of treaty or international agreement, although there is some degree of validity until disapproved by the appropriate body.

INTERPELLATION OF MR. REGALADO

On Mr. Regalado's query, Mr. Davide affirmed that under the proposed amendment, the questionable treaties would remain valid until disapproved by the Senate or unilaterally abrogated by the Senate.

In this connection, Mr. Regalado stated that disapproval by the Senate, which amounts to abrogation, would automatically terminate the effectivity of the treaty subject to certain post-abrogation conditions agreed upon by both parties, to which observation Mr. Davide concurred. He also stated that his understanding of the doctrine of *rebus sic stantibus* is that a treaty that is valid initially should, in the course of time when the circumstances change and the conditions which gave rise to it no longer control, come to a mutually happy end.

In response, Mr. Davide recalled that his position on the military bases was that the Agreement was void from the very beginning which view was overturned by the Commission. He stated that he made the proposal on the assumption that the treaties had to be accorded some degree of validity. He stated, however, that since these treaties were entered into under the anomalous provision of the 1973 Constitution, the Senate should review and may disapprove them if they were entered into outside the authority of the former President.

Reacting thereto, Mr. Regalado expressed concern on the country's standing in the diplomatic community. He stated that whether or not the Constitution was anomalous is our concern and not of the foreign contracting parties. He stressed that the Philippines should not appear before the international community to have observed the doctrine of *caveat emptor* even in the matter of international agreements.

In reply, Mr. Davide stated that he was not so concerned on how the Philippines would stand before the diplomatic community, his main concern being the country's integrity and national interest, especially if these treaties were entered into in gross violation of the laws on national patrimony and national economy and the common good.

Mr. Davide affirmed that Mr. Azcuna's proposed amendment would be a happy compromise.

TERMINATION OF THE PERIOD OF INTERPELLATIONS

On motion of Mr. Rama, there being no objection, the Body closed the period of interpellations.

PERIOD OF AMENDMENTS

On motion of Mr. Rama, there being no objection, the Body proceeded to the period of amendments.

PROPOSED AMENDMENT OF MR. AZCUNA

Mr. Azcuna proposed to insert between the words "shall" and "remain" on line 4, the words NOT BE RENEWED OR EXTENDED WITHOUT THE CONCURRENCE and to delete the words "remain valid until disapproved". As amended, the proposal would read:

ALL EXISTING TREATIES OR INTERNATIONAL AGREEMENTS WHICH HAVE NOT BEEN RATIFIED BY THE BATASANG PAMBANSA BECAUSE OF SECTION 16 OF ARTICLE XIV OF THE 1973 CONSTITUTION SHALL NOT BE RENEWED OR EXTENDED WITHOUT THE CONCURRENCE BY THE SENATE.

INQUIRY OF MR. RODRIGO

On Mr. Rodrigo's inquiry whether the phrase "without the concurrence of the Senate" refers to majority of the Members of Senate, Mr. Azcuna stated that it should be two-thirds vote as provided in Section 21 of the Article on the Executive Department.

INQUIRY OF MR. MAAMBONG

In response to Mr. Maambong's query, Mr. Azcuna affirmed that the provision on the renewal and extension of treaties or international agreements shall apply only after the draft Constitution shall have been ratified.

Mr. Maambong inquired as to the purpose of the provision inasmuch as upon the ratification of the Constitution all treaties and international agreements shall be subject to the concurrence of the Senate, to which Mr. Azcuna replied that there is doubt as to whether the renewal or extension of existing treaties would be submitted to the Senate as these are old treaties which were entered into without the concurrence of the Legislature. The Transitory Provision, he stressed, makes it clear that any further renewal or extension of such treaties would need the concurrence of the Senate.

Mr. Davide accepted the amendment of Mr. Azcuna

POINT OF INFORMATION OF MR. NOLLEDO

Apropos the comments of Mr. Maambong, Mr. Nollado pointed out that there are some treaties which contain renewal clauses and that the Azcuna amendment, therefore, would not be out of place.

INQUIRY OF MR. OPLE

Mr. Ople then inquired whether executive agreements are included under "treaties and international agreements" in the proposed amendment, to which Mr. Azcuna replied in the negative.

Mr. Ople then remarked that executive agreements are routinely renewed and that it would be unfair to the Philippine Government to oblige it to submit such agreement to the Senate for further proceedings.

INQUIRY OF MR. NOLLEDO

On Mr. Nollado's query whether the proposed amendment would preclude the President from negotiating with other parties on a new treaty which may be apart and different from the existing treaties, Mr. Azcuna replied in the negative. He noted that, in this case, the new treaty would be subject to the concurrence of the Senate under the regular provision.

INQUIRY OF MR. DE LOS REYES

On the query of Mr. de los Reyes relative to "renewal" and "extension", Mr. Azcuna affirmed that renewal would refer to an entirely new agreement while extension to an old agreement.

Mr. de los Reyes then asked whether it would not be better to delete the word "renewal" and to limit the provision to EXTENSION inasmuch as "renewal", which is an entirely new agreement, necessarily requires concurrence of the Senate.

Mr. Azcuna replied that a renewal pursuant to a renewal clause in the treaty itself is technically an extension, in which case, there is doubt as to whether or not it would need concurrence.

Mr. Azcuna observed that both terms should be used.

MR. SARMIENTO'S AMENDMENT TO THE AMENDMENT

In view of the reply of Mr. Azcuna to Mr. Rodrigo's interpellation that concurrence would refer to two-thirds of all the Members of the Senate which are the same wordings used in the 1935 Constitution, Mr. Sarmiento proposed to incorporate the phrase: CONCURRENCE BY AT LEAST TWO-THIRDS OF ALL THE MEMBERS OF THE SENATE.

Mr. Azcuna accepted the amendment.

In reply to Mr. Suarez' request for clarification on the use of the words "renewed" and "extended" should there be an automatic extension or renewal clause in case of failure of either party to indicate a desire to terminate it within a period of 60 days before the expiration of the treaty or international agreement, Mr. Azcuna affirmed that under such circumstances, it would be deemed extended or renewed. He also affirmed the need for concurrence by two-thirds vote of the Senate although the government should indicate this requirement to the other contracting party prior to the automatic renewal.

In view thereof, the Committee accepted Mr. Azcuna's amendment as amended.

PROPOSED AMENDMENT OF MR. PADILLA

On lines 2 to 4, Mr. Padilla proposed to delete the clause "by the Batasang Pambansa because of Section 16 of Article XIV of the 1973 Constitution" so that Section 3, as amended would read:

ALL EXISTING TREATIES OR INTERNATIONAL AGREEMENTS WHICH HAVE NOT BEEN RATIFIED SHALL NOT BE RENEWED NOR EXTENDED WITHOUT THE CONCURRENCE BY THE SENATE.

Mr. Padilla clarified that there is a provision in Section 14, Article VIII, which lays the fundamental rule that all treaties and international agreements should have the concurrence of the Senate and that, as amended, Section 15, Article XIV of the 1973 Constitution, reads:

"Any provision of paragraph 1, Section 14 Article VIII and of this Article notwithstanding, the Prime Minister may enter into international treaties or agreements as the national welfare and interest may require."

He observed that the insertion of this amendment was considered by Mr. Davide as anomalous because it is in conflict with the other provision that requires the Senate's concurrence.

Mr. Padilla opined that there is no need to mention the Batasang Pambansa or the Section because it is related to another Section and that it will be simpler to restate Section 3.

Mr. Davide accepted the proposed amendment.

Thereupon, Mr. Azcuna, on behalf of the Committee also accepted Mr. Padilla's amendment.

Mr. Azcuna restated Section 3, as amended, to read:

ALL EXISTING TREATIES OR INTERNATIONAL AGREEMENTS WHICH HAVE NOT BEEN RATIFIED SHALL NOT BE RENEWED OR EXTENDED WITHOUT THE CONCURRENCE OF AT LEAST TWO-THIRDS OF ALL THE MEMBERS OF THE SENATE.

INQUIRY OF MR. RODRIGO

On the query of Mr. Rodrigo, Mr. Azcuna affirmed that the provision refers to renewal and extension of existing treaties upon ratification of the Constitution, by two-thirds vote of the Senate.

On whether this would imply that new treaties entered into after the ratification of the 1986 Constitution would come under the rule should they be renewed or extended in the future, Mr. Azcuna opined that under the general rule, there is no need for a statement to that effect.

INQUIRY OF MR. DAVIDE

On the query of Mr. Davide relative to the two-thirds vote, Mr. Azcuna stated that this would be two-thirds of all the Members of the Senate.

VOTING ON MR. AZCUNA'S AMENDMENT, AS AMENDED

Upon direction of the Chair, Mr. Azcuna restated the amendment, to wit:

ALL EXISTING TREATIES OR INTERNATIONAL AGREEMENTS WHICH HAVE NOT BEEN RATIFIED SHALL NOT BE RENEWED OR EXTENDED WITHOUT THE CONCURRENCE OF AT LEAST TWO-THIRDS OF ALL THE MEMBERS OF THE SENATE.

Submitted to a vote, and with 34 Members voting in favor, and none against, the proposed section was approved by the Body.

MANIFESTATION OF MR. MAAMBONG

Mr. Maambong manifested that for purposes of the record, the newly approved Section would be denominated as Section 19 while the provision on free public secondary education would be denominated as Section 18.

PROPOSED PROVISION OF MR. DAVIDE

Mr. Davide proposed, as a new Section in the Transitory Provisions, the following:

ALL EXISTING CONTRACTS ENTERED INTO BY THE FORMER PRESIDENT OR BY THE GOVERNMENT OR ANY OF ITS SUBDIVISION, INSTRUMENTALITY OR AGENCY, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS BETWEEN SEPTEMBER 21, 1972 AND FEBRUARY 25, 1986, AS WELL AS ALL CONTRACTS, CONCESSIONS, PERMITS, OR OTHER FORMS OF PRIVILEGES OR AUTHORIZATIONS FOR THE EXPLORATION, DEVELOPMENT, EXPLOITATION OR UTILIZATION OF NATURAL RESOURCES OR FOR THE OPERATION OF PUBLIC UTILITIES ENTERED INTO, GRANTED ISSUED OR ACQUIRED BEFORE THE RATIFICATION OF THIS CONSTITUTION MAY BE REVIEWED BY THE INCUMBENT PRESIDENT.

INQUIRY OF MR. MAAMBONG

Mr. Maambong inquired into the period within which the President can exercise such power, to which Mr. Davide replied that he did not provide for a time limit, but he would welcome an amendment thereon.

Mr. Maambong observed that the proposal is, in effect, an exception to the Bill of Rights clause on non-impairment of obligation of contracts, to which Mr. Davide replied that in the Freedom Constitution, among the objectives of the government is the removal of all vestiges, institutions or structures of oppression, and injustice. He stressed that the provision would only be on agreements or contracts prejudicial to the national interest.

In reply to Mr. Maambong's inquiry, Mr. Davide affirmed that the Body could make a valid exception to the Bill of Rights in the same Constitution which provides a clause on non-impairment of contracts. He added that the 1973 Constitution has a similar provision.

Mr. Maambong observed that the wordings of Mr. Davide's proposal were based on Section 2, Article IV of Proclamation No. 3 and inquired why Mr. Davide deleted the phrase "and when the national interest requires, amend, modify or revoke them".

In reply, Mr. Davide maintained that if the President is given such authority to review, those matters shall be taken into account. He stated that he has no objection to inserting the same phrase.

Thereafter, upon suggestion by Mr. Maambong, Mr. Davide agreed to the deletion of the word "incumbent".

INQUIRY OF MR. BENGZON

Mr. Bengzon pointed out that Mr. Davide would perhaps agree that the only way by which existing contracts can be reviewed and repudiated would be if there are instances or circumstances attendant to the treaties which would vitiate their validity, otherwise, it would impair vested rights and obligations under valid contracts.

In reply, Mr. Davide stated that he was willing to accept the Committee proposal to insert the qualification "when national interest so requires".

Mr. Bengzon expressed apprehension that unscrupulous persons may utilize the proposed Section 4 by using the

President's name to harass and make money from people and companies who had been awarded such contracts. He maintained that with or without the provisions if the administration finds that the contracts are attended by fraud or circumstances which vitiate validity, the administration could motu proprio review the contracts. He cited the precedent when the administration motu proprio reviewed the Westinghouse contract on the nuclear plant in Bataan.

In reply thereto, Mr. Davide stated that the review was made pursuant to Proclamation No. 3 which vests such authority in the President.

Mr. Davide underscored the need to give the President a constitutional shield, otherwise, it may be difficult, on the ground of non-impairment, to order the review of a contract entered into by the previous regime. He stated that the President could take refuge on such provision.

Mr. Bengzon also opined that even without such provision in the Freedom Constitution, the President and the Administration could still review or repudiate the contracts if there are circumstances that would vitiate the validity of said contracts. He reiterated that he was against any provision that could be used to justify the action of unscrupulous people who might use the name of the President or people close to her in order to harass other people and make money.

Mr. Davide, however, underscored the need of the provision on review by citing a similar provision in the Freedom Constitution. He maintained that the possibility of abuse by unscrupulous people is not ample justification for rejecting the proposal.

INQUIRY OF MR. NOLLEDO

Mr. Nollado observed that Mr. Davide's proposal would widen the scope of the provisions in the Freedom Constitution, in that it would entail a review of all existing contracts entered into by the former President and contracts and concessions pertaining to the development of natural resources or operation of public utilities, and therefore would cover all contracts even for a period of 100 years, to which Mr. Davide explained that it was precisely the reason why he used the words "may be".

Citing the ruling of the Supreme Court in the case of *Ayug vs. The Honorable Vicente N. Cusi*, Mr. Nollado stressed that the Constitution must respect the vested rights theory, except when demanded by the police power of the State. In reply thereto, Mr. Davide pointed out that he already expressed agreement to the insertion of the qualifying phrase "when public interest so requires".

On whether the phrase "review by the President" would mean declaring the contract null and void, or imposing certain terms, or reviewing other aspects of the contract, Mr. Davide stated that his proposal contemplates the kind of review done on the Bataan Nuclear Plant contract, whereby modifications may be made to remove onerous terms and conditions.

Thereupon, Mr. Nollado expressed support of the sentiments expressed by Mr. Bengzon.

REMARKS OF MR. MONSOD

Mr. Monsod stated that one of the purposes of writing the Constitution is to stabilize the government and country, but Mr. Davide's open-ended proposal would make investors think twice before entering into contracts. He opined that anything which tends to increase insecurity in contracts and anxiety in business relationships should not be constitutionalized.

In reply, Mr. Davide maintained that his proposal, rather than destabilize the situation, would eradicate the unjust

and oppressive structures and the inequitous vestiges of the previous regime.

Mr. Monsod stated that there would be stability if contracts had been reviewed and affirmed but since the proposal would open them to review, there would be uncertainty until they are affirmed.

WITHDRAWAL OF MR. DAVIDE'S PROPOSED AMENDMENT

At this juncture, Mr. Maambong inquired if Mr. Davide would insist on his proposed amendment.

Mr. Davide withdrew his proposed amendment on the understanding that, even without it, the President may at any time review contracts.

Mr. Davide also manifested withdrawal of his proposed amendment on the priority to be given to measures for economic recovery and reconstruction.

PROPOSED AMENDMENT OF MRS. ROSARIO BRAID

Thereafter, Mrs. Rosario Braid, jointly with Mr. Davide, proposed a new Section, to read:

ALL FRANCHISE CERTIFICATES OR ANY FORM OF AUTHORITY FOR THE OPERATION OF PUBLIC UTILITY INCLUDING COMMERCIAL TELECOMMUNICATIONS GRANTED OR ISSUED. AFTER THE RATIFICATION OF THIS CONSTITUTION UNTIL THE CONVENTING OF THE FIRST CONGRESS SHALL BE SUBJECT TO REVIEW BY THE LATTER.

She explained that this proposal would be different from the addendum she proposed on Mr. Davide's proposal which was withdrawn, considering that this proposal refers to the responsibility of Congress to review franchise certificates granted between the ratification of the Constitution and the convening of the First Congress.

Mr. Monsod observed that the proposal would not be necessary considering that it only refers to a six-month period between the ratification of the Constitution and the convening of the First Congress and considering that Section 15 of the Article on National Economy and Patrimony already provides that "neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration or repeal by Congress when the common good so requires."

In view of Mr. Monsod's explanation, Mrs. Rosario Braid withdrew her proposed amendment.

PROPOSED AMENDMENT OF MR. MONSOD

Mr. Monsod proposed a new Section, to read:

ADVERTISING ENTITIES AFFECTED BY SECTION _____ ARTICLE _____ OF THIS CONSTITUTION SHALL BE GIVEN FIVE YEARS FROM THE RATIFICATION TO COMPLY ON A GRADUATED BASIS WITH THE MINIMUM FILIPINO OWNERSHIP REQUIREMENT THEREIN.

He explained that the proposed amendment would provide for the period of implementation of the Section on advertising entities which had been previously approved. He pointed out that a five-year period on a graduated basis would be reasonable enough to comply with the minimum required Filipino equity.

INQUIRY OF MS. AQUINO

In reply to Ms. Aquino's query, Mr. Monsod affirmed that the proposed amendment may be self-executory and that an implementing law would not be necessary.

Mr. Bengzon agreed that a statutory implementation would not be necessary because the Executive Department through the Board of Investments could provide for the details of implementation and enforce it with greater dispatch.

Mr. Monsod, in turn, agreed with Mr. Bengzon's statement.

INQUIRY OF MR. OPLE

In reply to Mr. Ople's query, Mr. Monsod affirmed that the schedule of graduated divestment would be on a proportionate basis during the five-year period as suggested by Ms. Aquino, which scheme could be provided by the Board of Investments, under the Ministry of Trade and Industry.

INQUIRY OF MR. QUESADA

On Mrs. Quesada's query as to how the five-year period of compliance was arrived at, Mr. Monsod explained that the ten-year period of compliance for the nationalization of retail trade was too long and it was decided that five years would just be reasonable time within which to divest. He pointed out the problem of lack of Filipino resources to purchase 70% of the companies. He disclosed that although one of the advertising companies that would be affected intimated that more than five years would be favorable, he felt that the Body would not agree to a period longer than five years.

Mr. Bengzon pointed out, however, that Filipino executives and businessmen in the advertising industry believe that a period shorter than five years would make it difficult for them to take over 70 percent of the companies.

In reply to Mrs. Quesada's query as to why the advertising entities are given special consideration in the Transitory Provisions, Mr. Monsod underscored that it is only the advertising entities which the draft Constitution provides for a new ownership requirement for Filipinos.

INQUIRY OF MR. PADILLA

On Mr. Padilla's contention that the equity provision on advertising agencies should be prospective rather than retroactive, Mr. Monsod pointed out that the intent of the proposal is to apply it to existing businesses, hence the need to provide it in the Transitory Provisions.

Adverting to the Constitutional provision limiting the area for domestic corporation to own public agricultural lands not exceeding 1,000 hectares, which provision is prospective and not retroactive, Mr. Padilla stated that corporations which have already been granted 1,024 hectares should not be required to divest themselves of the 24-hectare excess. In reply thereto, Mr. Monsod recalled that existing advertising companies would not be exempted if they have not complied with the minimum Filipino requirement. He explained, however, that the difference of 24 hectares was arrived at considering the 24 hectares allowed to individuals in addition to 1000 hectares allowed for corporations, therefore, the limitation of 1000 hectares applies to corporations while the individual could still own 24 hectares.

Mr. Padilla also pointed out the prospective effect of the provision limiting the 24 hectares allowed to Private homestead to 12 hectares, in reply to which, Mr. Monsod stated that his proposal intends that the 70 percent requirement should apply to existing companies operating in the country.

Furthermore, Mr. Padilla underscored that even the regulation of the 70:30 equity ratio has prospective application on companies engaged in advertising.

Mr. Monsod opined that the whole issue of ownership of telecommunication companies centered on whether the

provision pertinent thereto would be made to require a higher percentage of Filipino ownership resulting in the mandate for divestment. He pointed out that the records show the same intent for advertising companies.

Mr. Padilla pointed out that a retroactive application of the law may impair some vested rights and may only be justified by the exercise of police power by the State.

At this juncture, Mr. Bacani stated that it was the understanding of the Committee that the provision would affect existing advertising agencies.

Mr. Padilla pointed out that if the provision would be applied retroactively it would affect only three foreign firms and may be viewed as doubtful in terms of its validity, legality and constitutionality.

REMARKS OF MS. AQUINO

Ms. Aquino informed that the ruling in the case of *People vs. Quasha* explicitly stated that the new equity ratio for public utility franchises would not apply only to new but also to existing corporations. She stressed that the Body is empowered to determine the applicability or even the retroactivity of the provision since it is a settled rule that the principle of retroactivity applies only to ordinary statutes and legislation.

INQUIRY OF MR. MAAMBONG

In reply to Mr. Maambong's query as to whether he would be amenable to stating the agency which would implement the provision, Mr. Monsod stated that it would be sufficient to put on record what the implementing agency should be.

INQUIRY OF MR. RODRIGO

In reply to Mr. Rodrigo's query, Mr. Monsod affirmed that "graduated and proportionate" means that the corporation could accelerate the Filipinization process without violating the Constitution.

INQUIRY OF MR. SUAREZ

In reply to Mr. Suarez' query whether a corporation would have to cease operation in case it would not be able to comply with the Filipinization process within the period of five years, Mr. Monsod replied in the affirmative.

INQUIRIES OF MS. AQUINO

On the acceleration process, in reply to Ms. Aquino's query whether a corporation could "balloon" at the beginning but not at the end of the five-year period, Mr. Monsod replied in the affirmative.

Mr. Maambong, adverting to the case of *People vs. Quasha* cited by Ms. Aquino, pointed out that the ruling therein is the exception to the general rule, to which Ms. Aquino replied that the Body could decide on the applicability of the provisions and if it so decides, it could give the provisions retroactive application even without the *Quasha* ruling.

To clarify matters, Ms. Aquino agreed with Mr. Maambong's statement that if the intention of the Body is not specific, the general rule is that the constitutional provision has prospective application; but if it is the Body's intention to provide a retroactive effect, then the provision would have retroactive application.

At this juncture, Mr. Padilla pointed out that in the case of *People vs. Quasha* the accused therein was acquitted for falsification of public documents on the ground that there was no law requiring it a duty to include in a truthful narration of facts other facts which may be considered as false.

Thereafter, Mr. Davide proposed to substitute "be given" with HAVE and to insert ITS before "ratification".

Mr. Monsod accepted the proposal. Thereupon, he read the proposed amendment as follows: ADVERTISING ENTITIES AFFECTED BY SECTION ____ OF ARTICLE ____ OF THIS CONSTITUTION SHALL HAVE FIVE YEARS FROM ITS RATIFICATION TO COMPLY ON A GRADUATED AND PROPORTIONATE BASIS WITH THE MINIMUM FILIPINO OWNERSHIP REQUIREMENT THEREIN.

Submitted to a vote, and with 30 Members voting in favor, and 1 against, the same was approved by the Body.

Mr. Maambong stated that the approved Section would be designated as Section 20.

Thereupon, Mr. Ople requested Mr. Bengzon to report to the Body its schedule for the final week.

ANNOUNCEMENT OF MR. BENGZON

Thereupon, Mr. Bengzon announced the schedule for the following week which was prepared by the Committee and approved by the President:

1. Monday, October 6, 1986 — Last day for the consideration of the Article on the Transitory Provisions;
2. Tuesday and Wednesday, October 7 and 8, 1986 — Deliberation on all pending Sections of the various Articles;
3. Thursday, Friday and Saturday, October 9, 10 and 11, 1986 — Consideration of the Report of the Committees on Sponsorship; and Style on the final draft of the Constitution.

Mr. Bengzon stated that the Body might hold sessions the whole day of Saturday, October 11, 1986 and approve, on Second Reading, the draft of the entire Constitution on Sunday, October 12, 1986.

He added that Monday and Tuesday, October 13 and 14, 1986, would be allocated for the printing of the Constitution and on Wednesday, October 15, 1986 the Body would approve the Constitution on Third Reading; sign the Constitution; and hold the closing ceremonies after which, the Members would proceed to Malacañang to present the signed Constitution to the President of the Philippines.

MANIFESTATION OF MR. GUINGONA

Mr. Guingona manifested that the Committee on Style would be sponsoring the corrections for three plenary session days with the Sponsorship Committee. He suggested that the members of the Committees on Style and Sponsorship join the members of the Steering Committee in overseeing the printing of the Constitution.

Thereupon, Mr. de Castro suggested that the Body start its daily sessions at exactly 9:30 in the morning and at 2:00 o'clock in the afternoon.

The Chair took note of the suggestion.

On whether the Members would be allowed until October 15, 1986 to correct the transcripts of the proceedings, the Chair stated that the corrections could even be done after said date. The Chair urged the Members to make their corrections on the transcripts so that the entire Record of the Commission could be printed soon.

Mr. Guingona also stated that the computer support may be able to produce at least 10 articles which have already been corrected by the Committee on Style and reviewed by the Committee on Sponsorship for distribution the following week.

MANIFESTATION OF MR. FOZ

Mr. Foz appealed to the Committees on Style; and Sponsorship not to revise the provisions already approved on the floor.

Mr. Bengzon explained that it is precisely for this reason that the Steering Committee allowed the Committees on Style; and Sponsorship to have three days within which to present the Constitution's final draft to the Body.

In reply to the Chair's query whether the Transitory Provisions could be finished by Monday, Mr. Suarez replied that it is possible to finish it with cooperation from the Body.

MANIFESTATION OF MR. OPLE

Mr. Ople manifested that Section 7 had aroused much interest from the Members and a consensus was reached to have it taken up as the last item of the agenda for the Transitory Provisions.

MANIFESTATION OF MR. RODRIGO

Mr. Rodrigo stated that the Committee on Style had been working very hard to improve the phraseology of the provisions. He then expressed regret to hear statements that it would revise the substance of the provisions.

In reply to the Chair's query whether the Body could proceed with the consideration of Sections 8 and 9, Mr. Suarez replied in the affirmative. He added that the Body would start its discussions on Monday with the proposal to fix the salary of the President at P200,000.00 annually; P150,000.00 for the Vice-President and the Chief Justice; P120,000.00 for the Associate Justices and the Senators; and P100,000.00 for all the others.

AMENDMENT OF MR. CONCEPCION

Thereafter, Mr. Concepcion stated that the Committee on the Judiciary proposed that Section 8 should read as follows:

SECTION 8. THE LEGAL EFFECT OF THE LAPSE BEFORE THE ADOPTION OF THIS CONSTITUTION, OF THE APPLICABLE PERIOD FOR THE DECISION OR RESOLUTION OF A MATTER SUBMITTED FOR ADJUDICATION SHALL BE DETERMINED IN APPROPRIATE JUDICIAL PROCEEDINGS.

Mr. Concepcion explained that the provision is being proposed in response to questions as to what would happen to cases on which period for action by the courts have lapsed before the ratification of the new Constitution. He stated that since this is a legal question which is beyond the jurisdiction of the Committee on the Judiciary to decide, it was agreed to simply place the aforesaid provision in the Transitory Provisions.

AMENDMENT OF MR. MAAMBONG

On paragraph 8, Mr. Maambong suggested and Mr. Concepcion accepted the insertion of the words CASE OR before the word "matter" to align it with Section 5. As amended, it would read: "decision or resolution of a case or matter".

INQUIRY OF SUAREZ

Upon inquiry of Mr. Suarez, Mr. Concepcion affirmed that the legal effect of the lapse shall be determined in appropriate judicial proceedings.

In answer to Mr. Suarez's query whether the Parties adversely affected would have to file appropriate judicial

proceedings in order that their rights can be properly determined, Mr. Concepcion stated that if the parties could not agree, they have to settle the matter judicially.

Reacting thereto, Mr. Suarez stated that it might result in endless litigations and inquired whether it would not be better if the Body put in a more effective control and direction to the Supreme Court so that such lapses would not happen.

Mr. Concepcion stressed that the lapses have already caused a problem and the Committee would welcome suggestions on how to resolve the problem. He informed that one suggestion is to apply the provision at the existing Constitution which provides that "in the case of appealed cases the decisions appealed from shall be deemed affirmed, and in the case of original petitions, that the petitions are deemed dismissed."

Mr. Concepcion stated, however, that the appellant in appealed cases and the petitioners in original petitions, are not to blame for the lapse of the period and should not be made to suffer.

INQUIRY OF MR. DE LOS REYES

On Mr. de los Reyes' inquiry, Mr. Concepcion clarified that "appropriate judicial proceeding" as envisioned in the proposal would be a question of law which the court would have to decide, the question being whether the cases submitted before it are proper or improper. In many cases, he observed that much would depend on the manner by which counsels for both parties present the issue to the court.

He affirmed, however, that the matter shall be determined on a case-to-case basis and that there would be no uniform rule.

PROPOSED AMENDMENT OF MR. SUAREZ

Mr. Nollado suggested the retention of the term "appropriate proceedings" and to allow the Supreme Court to promulgate the rules involving procedural matters to be embodied in the Rules of Court.

He then proposed to add the phrase AS MAY BE PROVIDED IN THE RULES OF COURT after the words "appropriate proceeding".

REMARKS OF MR. REGALADO

Mr. Regalado stated that the use of the phrase "appropriate judicial proceedings" may invite additional cases in court. He informed that there are two matters to be considered which may not really approximate the gravity of that concern, namely: the doctrine of stare decisis wherein the parties to a case are bound by the decision of the Supreme Court in a previous case wherein the period, facts and circumstances are in pari materia; and that a separate proceedings may not be necessary because if the Supreme Court for instance, reverses the decision of the lower court, or denies an original petition, the party need not file a separate action but file a motion for reconsideration in the same case. Mr. Regalado pointed out that the Supreme Court shall clarify its decision right in the case on appeal or in the original petition. In case the Supreme Court does not do so, Mr. Regalado stated that the party may ask for reconsideration.

Mr. Regalado then proposed to change "period" to PERIODS because it refers to the different periods corresponding to the Supreme Court, the Court of Appeals and Regional Trial Courts; and after the word "adjudication", to insert the words BY THE COURTS as found in the Article on the Judiciary, so that the Section would read:

THE LEGAL EFFECT OF THE LAPSE BEFORE THE ADOPTION OF THIS CONSTITUTION OF THE

APPLICABLE PERIODS FOR THE DECISION OR RESOLUTION OF A CASE OR MATTER SUBMITTED FOR ADJUDICATION BY THE COURTS SHALL BE DETERMINED IN APPROPRIATE JUDICIAL PROCEEDINGS AS MAY BE PROVIDED IN THE RULES OF COURT.

INQUIRY OF MR. DE LOS REYES

Mr. de los Reyes observed that there is nothing in the existing Rules of Court about such situation and asked if the Committee is contemplating that the Supreme Court would promulgate supplemental rules to cover the situation, in reply to which Mr. Regalado added that such supplemental rules would, in fact, implement the provisions of the Constitution as the provisions of the 1973 Constitution on the time constraint was later expanded by the Supreme Court by way of three resolutions.

INQUIRY OF MR. FOZ

Upon inquiry of Mr. Foz, Mr. Concepcion affirmed that the Supreme Court had ruled in a number of decisions that the periods mentioned in the Constitution are merely directory.

On whether such rulings would already resolve the problems presented in the provision insofar as the parties are concerned, Mr. Concepcion explained that the present Constitution provides that in case of lapse, the decision appealed from would be considered affirmed or the petition would be dismissed, which is a patent manifestation of the unusual result reached by the Supreme Court. Mr. Concepcion added that if it is directory, it could not produce the effect stated in the 1973 Constitution.

Mr. Foz remarked that in spite of the Supreme Court ruling that it is merely directory, private parties claim that their rights have been violated, in reply to which, Mr. Concepcion stated that it is not within the power of the Constitutional Commission to judge because the Commission's function is merely to draft the Constitution.

In view thereof, Mr. Foz suggested that the Commission should not provide anything in the Transitory Provisions, in reply to which Mr. Concepcion noted that it may be the reason why the Commission had been blamed for not saying anything. He adverted to a communication or article of Mr. Jeremias Montemayor stating that the administration of justice would be worse because of the Commission's failure to introduce a provision to this effect.

Mr. Foz maintained that it would be a distortion of the provision just approved by the Body.

On whether the Supreme Court and other courts can be expected to finally decide the cases, Mr. Concepcion remarked that the Commission is faced with the dilemma of either satisfying the demands of the Bar or doing nothing to answer objections from the members of the Bar.

In view of the controversy which has arisen on the section under consideration, Mr. Suarez requested for adjournment of session.

ADJOURNMENT OF SESSION

At this juncture, Mr. Bengzon manifested that the Body would finish with the Article on the Transitory Provisions on Monday.

On motion of Mr. Suarez, there being no objection, the Chair declared the session adjourned until nine-thirty in the morning of Monday, October 6, 1986.

It was 1:21 p.m.

I hereby certify to the correctness of the foregoing.

(SGD.) FLERIDA RUTH P. ROMERO
Secretary-General

ATTESTED:

(SGD.) CECILIA MUÑOZ PALMA
President

Approved on October 6, 1986

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