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Wednesday, October 1, 1986

CALL TO ORDER

At 10:08 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. Hilario G. Davide, Jr., to wit:

Dear Lord, this is the third time in plenary session that I have been given the mission to pray for all of us and the Commission.

I am sure this will be my last, for before October 15 we will be through with our task in formulating the fundamental Charter which shall guide the destiny of a country to You so dear.

This then will be my opportune time to thank You for all things sublime which You in Your limitless goodness gifted forty-seven minds of varied approaches.

We thank You:

for. Your patience in staying with us even beyond our original timetable;

for the constancy of Your Divine inspiration without which we would have weakened or faltered;

for Your Divine light without which we would have walked in the dark;

for Your Divine strength without which we would have cowed in fear, yielded to pressures or intimidations;

for Your Divine love without which we could not have kept our togetherness in the search for ideals which shall bind our people in unity and understanding;

for Your Divine wisdom without which we could not have adopted proposals reflective of the inspirations and dreams of our people, and assure them justice, freedom, equality and peace.

Definitely our work does not end by our approval of the final draft. Our people will still render judgment on it.

We pray then, dear Lord, that just as You have been very kind to us, You shower upon our people Your Divine inspiration, light, strength, love and wisdom so that they will overwhelmingly approve, love, treasure and cherish the new Constitution.

This we ask through Your Son Jesus Christ who lives and reigns forever.

Amen.

ROLL CALL

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

Bacani, T. C. Padilla. A. B.
Benzon, J. F. S Muñoz Palma, C.
Bennagen, P. L Quesada, M. L. M
Bernas, J. G. Rama, N. G
Rosario Braid, F Regalado, F. D
De Castro, C. M De los Reyes, R. F
Colayco, J. C. Rigos, C. A.
Concepcion, R. R. Rodrigo, F. A
Davide, H. G. Romulo, R. J
Foz, V. B. Samiento, R. V
Garcia, E. G. Suarez, J. E.
Guingona, S. V.C Sumulong, L. M
Jamir, A. M. K. Tadeo, J. S. L
Lerum, E. R Tan, C.
Maambong, R. E Treñas, E. B
Monsod, C. S. Uka, L. L
Natividad, T. C Villacorta, W. V.
Nieva, M. T. F

With 35 Members present, the Chair declared the presence of a quorum.

The following Members appeared after the Roll Call:

A.M.

Abubakar Y. R.
Gascon, J. L. M. C
Alonto, A. D.
Nolledo, J. N.
Azcuna, A. S
Tingson, G. J.

P.M.

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

Dumas St., Makati Metro Manila, expressing his opinion on the country's reported negative economic growth rate saying that "we are poor because . . . too much of our money and the jobs and industries it could have created were stolen from us."

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

UNFINISHED BUSINESS: COMMITTEE REPORT NO. 31 ON PROPOSED RESOLUTION NO. 531 ON GENERAL PROVISIONS

On motion of Mr. Rama, there being no objection, the Body resumed consideration, on Second Reading, of Proposed Resolution No. S31 (Committee Report No. 31), entitled:

Resolution proposing to incorporate in the Constitution an Article on General Provisions and a Section in the Transitory Provisions.

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

WITHDRAWAL OF PROPOSED AMENDMENT TO SECTION 13

Mr. Romulo, upon consultation with the other proponents, Mr. Rigos, Ms. Aquino and Mrs. Rosario Braid, withdrew the proposed amendment to Section 13 on the understanding that in the absence of a provision on population welfare and responsible parenthood, the government would not be prevented from proceeding with these programs and that Section 3(d) of the Article on the Family would allow prospective parents to participate in the planning and implementation of policies and programs that affect them in order to acquaint themselves with their choices in this regard and thus arrive at an informed conscience.

INQUIRIES OF MR. DE LOS REYES

On Mr. de los Reyes' query whether Section 12 would mean that the police force would be separated from the Philippine Constabulary, Mr. Natividad replied in the affirmative, explaining that the Philippine Constabulary has a dual character in the sense that it is both the national police and a military force, being a major command of the Armed Forces. Furthermore, he stated that the police force should be separated from the military force in order to be consistent with the provision on the Article on Civil Service prohibiting the military from occupying any Civil Service position and in the light of the universal acceptance that a police force is a civilian function which should not be performed by the military force.

On whether this would mean that there would be two police forces, Mr. Natividad stated that this could not be possible because the country cannot afford two national police forces. He pointed out that what is envisioned in Section 22 is for the State to establish and maintain one police force which in a way would accomplish the original plan provided for in Section 12, Article XV of the 1973 Constitution, a plan which was never implemented during the past regime.

On whether the Philippine Constabulary would be absorbed by the National Police Force, Mr. Natividad replied in the affirmative, stating that under the concept, there would be a civilian National Police Force and the members of the Philippine Constabulary would be given enough time to choose either to join the civilian police force or to return to the ground force as part of the major military command of the Armed Forces.

With respect to provincial guards, Mr. Natividad stated that traditionally, they are under the office the Governor being the keepers of provincial jails and they are not part of the police force because they have no police power. He explained that those included under the term "Integrated National Police" are the local police forces, referring to the town and city police forces, the jail personnel and fire services.

As to how the provision which states that "the national police shall be administered and controlled by a National Police Commission and at the same time local executives will be granted a certain amount of authority over police units in their jurisdiction as provided by law" could be operationalized, Mr. Natividad stated that based on experience, it is not advisable to provide, either in the Constitution or by law, full control of the police by local executives because this might spawn warlordism and sanctuaries for vices and abuses. He explained that if the national government does not have a mechanism to supervise these fragmented police forces composed of 1,500 separate municipal police forces and 61 city police forces, it would be difficult to present a modern professional police force. It is for this reason, he stated, that a certain amount of supervision and control would have to be exercised by the national government. He stated that if the local executives are in complete control of the day-to-day business of their respective police forces, the national government would control only the administrative aspect like the standardization of salaries. He informed that, at present, the national government maintains 13 academies and one Philippine National Police Academy which is a cadet system similar to that of the Philippine Military Academy and it offers a four-year bachelor's degree in Public Safety.

Mr. Natividad affirmed that the usual duties being performed by the ordinary policemen would be under the supervision of the local executives but, in exceptional cases, when the situation is beyond the capacity of the local government, even the operational control could be taken over by the National Police Commission.

With respect to the payment of the salaries of members of the local police forces, Mr. Natividad stated that the pay would be standardized, the payment of which would be provided by law, in the sense that there would be an appropriation provided by the national government in addition to the contributions of local government units.

On the contributions of local government units, Mr. Natividad explained that in the past when the police forces were completely fragmented and they were not under the control of the national government there was a lot of discrepancy in salaries between policemen in the rural areas and those in the urban areas. It was for this reason, he stated, that a law was enacted so that there would be uniformity in their living wages. He pointed out that while the Committee would not want these police forces to be under the military, there is the desire to professionalize them because the police is the first line of defense against crime. Furthermore, he pointed out that there are 42 colleges in the country offering a bachelor's degree in Police Science or in Criminology which is recognized as one of the 36 professions. He stressed that it is the Committee's intent to have the police developed as a profession ready to implement a civilian police force in the country.

On whether the police force is at present under the Philippine Constabulary, Mr. Natividad replied in the affirmative and pointed out that the civilian police could not blossom into a full profession because most of the key positions are being occupied by the military. He stated that, at present, the police forces are of no help in the investigation of human rights violations because they are under the Philippine Constabulary and are sometimes victims of human rights violations themselves.

Relative to the second sentence of Section 22, on whether there is already an existing law or whether this contemplates a future law, Mr. Natividad stated that there is already a law which is Executive Order No. 1012, as amended by Executive Order No. 1027 which, in substance, provides that the local executives have the control of their police operations on a day-to-day business and direction over their respective police forces. He disclosed that the Committee would propose to change the word "direction" to "control" in order to give more emphasis to the

meaning of "day-to-day business" in police work.

INQUIRIES OF MR. RAMA

On Mr. Rama's queries, Mr. Natividad affirmed that there are already laws defining the powers of the police force in relation to the local governments and the Philippine Constabulary, which laws, he stated, are not satisfactory to him because they run counter to the basic tenets of a modern police organization which should be removed from the military.

On the possible controversy that may arise involving the jurisdiction or powers of the police between the Commission and the local authority, Mr. Natividad stated that any controversy could be settled by legislation.

On whether he would just be giving a guideline in the Constitution to the separation of powers between the Commission and the local authority, Mr. Natividad stated that he has to make lengthy explanations on this matter in order to serve as the guideline to the future legislature.

RESTATEMENT OF SECTION 22

Mr. Natividad restated Section 22, to wit:

THE STATE SHALL ESTABLISH AND MAINTAIN ONE POLICE FORCE WHICH SHALL BE NATIONAL IN SCOPE AND CIVILIAN IN CHARACTER TO BE ADMINISTERED AND CONTROLLED BY A NATIONAL POLICE COMMISSION. THE AUTHORITY OF LOCAL EXECUTIVES OVER THE POLICE UNITS IN THEIR JURISDICTION SHALL BE PROVIDED BY LAW.

MANIFESTATION OF MR. MAAMBONG

Mr. Maambong manifested for the record that Section 22, as formulated, carries the approval of the Chief of the Philippine Constabulary, Brig. Gen. Renato de Villa and that the provision was discussed with the participation of Deputy Minister Hjalmar Quintana, General Ahorro of the PC-INP and Colonels Aguirre, David and Cruz of the Armed Forces, Mr. Cicero Ocampo, Chairman of the National Police Commission, and Commissioners Mateo and Go of the same Commission.

Mr. Maambong, likewise, manifested for the record that the formulation of Section 22 was based on Resolution Nos. 174 and 243 authored by Messrs. Ople, Natividad, de los Reyes and Maambong; Resolution No. 142 authored by Mr. Davide; and Resolution No. 133 authored by Mr. Guingona.

INQUIRIES OF MR. GUINGONA

On Mr. Guingona's queries, Mr. Natividad stated that in case of minor offenses as defined by law, the mayors would have the exclusive jurisdiction and they could impose a 30-day suspension without pay but beyond the imposition of such penalty, the same shall be decided by the National Police Commission. He stated that Executive Order No. 1012 defines a major offense and a grave offense, which definitions were adopted by the Committee.

REMARKS OF MR. DE CASTRO

Mr. de Castro stated that the provision would professionalize the police service so that there would be two units carrying arms. He pointed out that at present, the Armed Forces and the Police are joined together such that both units could be used to topple the government by anybody strong and influential enough with these two units. He stated that through this provision, the police would be separated from the Armed Forces and it would be quite

difficult for any one man to topple the government.

Mr. de Castro cited the case of Indonesia when President Sukarno was toppled by the combined forces of the police and the armed forces used by Suharto and his men.

INQUIRY OF MR. PADILLA

In reply to Mr. Padilla's query on whether the phrase "minor offenses" would mean light felonies while the phrase "grave offenses" would include grave and less grave felonies as provided in Article 9 of the Revised Penal Code, Mr. Natividad pointed out that the proposal refers not to criminal offenses but to the administrative cases enumerated in Section 16 of Executive Order Nos. 1012.

INQUIRY OF MR. RODRIGO

On Mr. Rodrigo's query, Mr. Natividad affirmed that the National Police does not fall under the President as Commander-in-Chief of the Armed Forces but under the supervision and control of the Office of the President.

APPROVAL OF SECTION 22

Mr. Natividad restated Section 22, to wit:

THE STATE SHALL ESTABLISH AND MAINTAIN ONE POLICE FORCE WHICH SHALL BE NATIONAL IN SCOPE AND CIVILIAN IN CHARACTER TO BE ADMINISTERED AND CONTROLLED BY A NATIONAL POLICE COMMISSION. THE AUTHORITY OF LOCAL EXECUTIVES OVER THE POLICE UNITS IN THEIR JURISDICTION SHALL BE PROVIDED BY LAW.

Submitted to a vote, and with 36 Members voting in favor and none against, Section 22 was approved by the Body.

Mrs. Rosario Braid noted that this was the first proposed section of the Constitution that was not amended.

MANIFESTATION OF MR. MAAMBONG

Thereafter, Mr. Maambong manifested that the proviso to be included in the Transitory Provision as found on lines 13 to 16 of the Committee Report, which states that "All armed groups and paramilitary forces now existing contrary to law shall be dismantled" had been reformulated by the Committee on Transitory Provisions and would be included in Section 9 of Proposed Resolution No. 540, Committee Report No. 38, to read:

ALL ARMED GROUPS AND PARAMILITARY FORCES NOW EXISTING OUTSIDE OF THE REGULAR POLICE AND ARMED FORCES SHALL BE DISMANTLED.

He then moved that the provisions on lines 13 to 16 of Committee Report No. 31 be considered in Committee Report No. 38 on the Article on Transitory Provisions.

Mrs. Rosario Braid agreed, stating that even the Constitution of Egypt provides that no organization or group may establish military or paramilitary forces.

AMENDMENT OF MR. DAVIDE

Mr. Davide then proposed a new Section to be appropriately inserted by the Committee on Style in the Article on General Provisions, to wit:

SECTION — ALL PUBLIC OFFICERS AND EMPLOYEES SHALL TAKE AN OATH OR AFFIRMATION

TO UPHOLD AND DEFEND THIS CONSTITUTION.

He explained that the provision appeared in the General Provisions of the 1973 Constitution but had not been included even in the sections on the Civil Service Commission.

Mr. Maambong affirmed that such provision was not included in the sections on the Civil Service but similar provisions appear in the Article on the Executive and on the sections on the Armed Forces of the Philippines. He expressed no objection to its inclusion in the Article on General Provisions.

In reply to his query, Mr. Davide affirmed that elective public officials are included in the term "public officers."

Mrs. Rosario Braid, likewise, accepted the proposed amendment, and there being no objection, Mr. Davide's amendment was approved by the Body.

AMENDMENT OF MR. BERNAS

On Mr. Maambong's inquiry whether Mr. Bernas would insist on his proposal to transpose the first line of Section 17 of the Article on General Provisions to the Declaration of Principles, the latter stated that it is not only the first line but the first two sentences thereof, which read: "The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory."

Mr. Bernas explained that since all the underlying principles of the Constitution should be placed in the Declaration of Principles, the philosophy behind the armed forces should, likewise, be included therein.

Mr. de Castro expressed no objection to the proposed transposition provided that the composition of the armed forces would be retained in the General Provisions.

Thereupon, Mr. Maambong informed that the Subcommittee on Declaration of Principles had already finished sequencing the provisions of the Article according to General Principles and State Policies.

On Mr. Maambong's suggestion to place Mr. Bernas' amendment under the General Principles considering that, as suggested by Mr. Padilla, the maintenance of peace and order and the duty of the government to protect the people have been placed in the same classification, Mr. Bernas agreed, stating that it could follow the sentence on civilian supremacy over the military.

Mr. Bernas also agreed with Mr. de Castro that the provision on civilian supremacy over the military be made a separate section to be followed by the proviso which he proposed to transpose, but also in a separate section to emphasize both principles.

Mrs. Rosario Braid, likewise, agreed to such transposition to complement the other provisions on the military in the Declaration of Principles.

On behalf of the Committee on Declaration of Principles, Mr. Tingson acknowledged the proposed transposition to the sections on General Principles.

At this juncture, Mr. Maambong stated that there would be no need to vote on Mr. Bernas' proposal since it is the function of the Committees on Style and on Sponsorship to make the proper transposition.

MOTION TO TERMINATE THE PERIOD OF AMENDMENTS

Thereafter, there being no other amendments, Mr. Rama moved that the Body close the period of amendments subject to the reservation made by Mr. Uka.

The Chair suggested that the Body consider said reservation in order that it could finish with the amendments without any reservation, to which Mr. Maambong agreed.

SUSPENSION OF SESSION

At this juncture, on motion of Mr. de Castro, the Chair suspended the session.

It was 10:55 a.m.

RESUMPTION OF SESSION

At 11:09 a.m., the session was resumed.

MOTION FOR RECONSIDERATION OF SECTION 18(d)

Upon resumption of session, Mr. Bernas moved for the reconsideration of the approval of the deletion of Section 18(d) which reads: "The provisions of the existing laws on retirement of military officers shall be adhered to."

He explained that he would like to propose an amendment in response to the reactions of military officers who feel that the present practice on retirement is demoralizing. He added that he voted for the deletion of the same subsection.

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

PROPOSED AMENDMENT OF MR. BERNAS

Thereupon, Mr. Bernas proposed his amendment as follows: ALL MILITARY OFFICERS SHALL BE RETIRED AT THE AGE OF FIFTY SIX OR UPON COMPLETION OF THIRTY YEARS OF MILITARY SERVICE WHICHEVER IS EARLIER.

Mr. Bernas explained that although the provision is detailed, it is not the first time that a similar provision was proposed to the Body because it had approved the provision on the 70-year age limit for compulsory retirement of the members of the Judiciary. He stressed that the Constitution must be precise as far as retirement is concerned, otherwise, retirement would always depend on Congress or the President. He pointed out that if the proposal would be approved, then neither the President nor Congress could give extensions of duty to military officers.

In reply to Mr. Davide's query whether "officers" would include the Chief of Staff, Mr. Bernas stated that it would, but ending the tour of duty of the Chief of Staff would not necessarily mean retirement from the military.

On whether the proposal would also mean that the Chief of Staff should be retired once he reaches the retirement age during or within his tour of duty of three years, Mr. Bernas replied in the negative.

Mr. Davide then queried whether the tour of duty of a Chief of Staff could be extended even if he has already reached the retirement age in times of war or national emergency, to which Mr. de Castro replied that the tour of duty of the Chief of Staff is 3 years and an officer designated as Chief of Staff one day prior to reaching the age of fifty-six would have to end his tour of duty except in case of a national emergency.

MR. DAVIDE'S AMENDMENT TO THE AMENDMENT

Thereupon, Mr. Davide proposed to amend the proposal by inserting EXCEPT THE CHIEF OF STAFF between "officers" and "shall."

Mr. Bernas opined that the proposal is not necessary in view of the paragraph approved by the Body in the

previous session wherein it was understood that the Chief of Staff must be allowed to finish his tour of duty even if he goes beyond 30 years of service or upon reaching the age of fifty-six. He further explained that age fifty-six is based on the age required for entrance in the Philippine Military Academy which is 22 years old, the training of four years, and the additional 30 years military service.

INQUIRY OF MR. MAAMBONG

In reply to Mr. Maambong's query whether there is a difference as far as benefits are concerned if a military officer retires upon completion of thirty years of service from his retirement upon reaching the age of fifty-six, Mr. Bernas stated that he is not in a position to answer the query because the matter of benefits is covered by statutory laws.

INQUIRY OF MR. SUAREZ

On Mr. Suarez' query whether cadetship at the PMA is included in the years of military service, Mr. Bernas replied that for purposes of computing 30 years of service, cadetship is excluded.

Mr. Suarez then stated that a person who enters the PMA at the age of 18 would graduate at the age of 22 and would be retired at the age of 52. He recalled that General Douglas MacArthur was appointed as Supreme Commander of the Allied Forces in the Pacific in his sixties. He inquired whether talented Filipino military officers should be precluded from continuing their service to the country just because they have reached the retirement age, to which Mr. de Castro replied that the main reason why officers should be retired after 30 years of service or upon reaching the age of fifty-six is because the country has to maintain a strong armed forces and there are always enough officers who graduate from the PMA every year. He also stated that when MacArthur was designated Supreme Commander during World War II and the Korean War, he was already retired and was merely recalled to active duty.

Mr. Suarez maintained that there must be flexibility, hence, the matter of retirement must be left to Congress to decide, to which Mr. de Castro explained that the existing laws on retirement also provide for exceptional cases.

INQUIRIES OF MR. GUINGONA

In reply to Mr. Guingona's query whether the President could recall retired officers, Mr. de Castro replied that there is an existing law which allows the President to recall retired officers.

Mr. Guingona opined that perhaps the proposal should be reformulated so that it would not be circumvented because an officer may be retired today and immediately recalled to active duty a week later, to which Mr. Bernas stated that recall would only apply to the Chief of Staff and there may be no need to avail of it because the President could always extend his tour of duty. He also pointed out that once a Chief of Staff has been retired, he is replaced by a successor who must serve for three years. Mr. Guingona said recall could also apply to other officers.

On the query as to when the law which provides for retirement of military officers was enacted, Mr. de Castro stated that Mr. Marcos issued a Presidential Decree on the matter, which number or date of effectivity he could not recall.

Mr. Guingona stated that advances in medical science and other circumstances warrant some changes in the present rule on retirement. He then manifested his support of Mr. Suarez' proposal to leave the matter of retirement to Congress. He suggested that military officers be retired under existing laws without stating the specific age so that they could retire under the laws prevailing on the date of their retirement.

Mr. Bernas maintained that the proposal does not solve the demoralizing effect of extensions, to which Mr. Maambong pointed out that it would be better to simply state that retirement of military officers under existing laws should not be subject to any extension because this would not bind Congress from changing the rule on retirement if the circumstances so warrant.

Thereupon, Mr. Bernas expressed his concurrence with the general idea that whatever retirement law may be passed by Congress, that retirement law should not allow extension. He added that the Constitution must also contain a provision prohibiting Congress from enacting any law which would allow extension of military officers duty.

MR. DAVIDE'S AMENDMENT TO THE AMENDMENT

At this juncture, Mr. Davide proposed an amendment which reads as follows: NO LAW ON RETIREMENT OF MILITARY OFFICERS SHALL ALLOW EXTENSION OF THEIR SERVICE.

Mr. Bernas accepted the amendment.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 11:31 a.m.

RESUMPTION OF SESSION

At 11:34 a.m., the session was resumed.

Upon resumption of session, Mr. Rama stated that the fundamental reason why military officers should be retired earlier is to prevent them from becoming well-entrenched and thereby accumulating much power. In other countries where there is no system of early retirement of military officers, after long years of incumbency, they become strongmen who stage coups against constituted or civilian government.

PROPOSED AMENDMENT OF MR. DAVIDE JOINTLY WITH MESSRS. BERNAS, RAMA, GUINGONA AND THE MEMBERS OF THE COMMITTEE

Thereafter, Mr. Davide presented the compromise amendment as follows: NO LAW ON RETIREMENT OF MILITARY OFFICERS SHALL ALLOW EXTENSION OF THEIR SERVICE.

In reply to Mr. Bernas' query whether the approval of the provision and the ratification of the Constitution would mean that the exception in the existing retirement law is automatically repealed, Mr. Davide replied in the affirmative. He added that no extension would even be allowed either by the President or by Congress. He also stated that it would be up to Congress to determine what should really be the retirement age and the ideal length of service of military officials.

INQUIRY OF MR. BACANI

In reply to Mr. Bacani's query whether General Ramos would be affected by the reformulated provision, Mr. Davide stated that he would be affected if he falls under this proposal, but being the Chief of Staff, the President may grant him an extension only in times of war or national emergency.

On whether General Ramos' tour of duty would not be provided for in the General Provisions should there be no war or national emergency, Mr. Davide adverted to the explanation of Mr. de Castro stating that he should be

allowed to finish his tour of duty of three years.

MODIFICATION OF MR. PADILLA

Mr. Padilla expressed disagreement with the reformulation of the provision starting with "No law .. ." because it would make the provision negative and prohibitive even if the purpose is to avoid demoralization among the officers of the Armed Forces, He suggested that the provision read as follows:

CONGRESS SHALL APPROVE A LAW ON RETIREMENT OF PUBLIC OFFICERS WHICH SHALL NOT PERMIT EXTENSION OF SERVICE.

In reply, Mr. Davide stated that Mr. Padilla's suggestion could be accommodated by rewording the provision as follows:

LAWS ON RETIREMENT OF MILITARY OFFICERS SHALL NOT ALLOW EXTENSION OF THEIR SERVICE.

INQUIRY OF MR. BACANI

In reply to Mr. Bacani's query whether ANY extension would be acceptable, Mr. Davide answered in the affirmative.

REMARKS OF MR. PADILLA

Mr. Padilla stated that the law on retirement should not bind the Body because it was issued by the deposed dictator during martial law. He maintained that Congress should be allowed the judgment and the opportunity to provide for a retirement law for military officers, keeping in mind the nonextension of their service to avoid demoralization.

Responding thereto, Mr. de Castro recalled that Congress, indeed, enacted a retirement law but provided an exception, granting authority to the President to extend the service and President Marcos also issued a decree with the same exception. He stressed that the Constitution should clearly provide that no extension of service should be allowed.

INQUIRY OF MR. JAMIR

In reply to Mr. Jamir's query whether under the reformulated provision, Congress would thereafter be prohibited from passing any law fixing the retirement age at 60, Mr. Davide answered in the negative stating that the provision is very flexible. He stressed, however, that no extension would be allowed.

PROPOSED AMENDMENT OF MR. REGALADO

Mr. Regalado proposed to modify the provision by substituting "officers" after "military" with PERSONNEL to include all those in the military service.

Mr. de Castro stated, however, that "military personnel" includes the enlisted men who have no complaints about their status. He stated that their enlistment is by virtue of a three-year contract which is renewable at the instance of the AFP. He also stated that the enlisted personnel have their own retirement law which provides for retirement programs from which they could choose, otherwise, they could just opt for reenlistment.

He confirmed that it would serve as an exception to the rule, since enlisted personnel are exclusively governed by their own retirement law.

On whether all should be uniformly subjected to the same retirement law, Mr. de Castro stressed that military personnel are not subject to extension since their enlistment expires after every three years, renewable by reenlistment. He confirmed that it is the policy of the Armed Forces not to allow the reenlistment of personnel who have reached the retirement age.

Mr. Regalado pointed out that there should be no distinction between the retirement law for the enlisted personnel and that for the commissioned and noncommissioned officers.

On the status of civilian clerks, Mr. Regalado stated that they are civilian employees who are not covered by the Articles of War, for which reason Mr. de Castro did not accept the proposed modification.

Mr. Davide, likewise, did not accept Mr. Regalado's proposal.

INQUIRY OF MR. DE LOS REYES

In reply to Mr. de los Reyes' query whether the President would commit culpable violation of the Constitution as a ground for impeachment if he grants extension despite the existence of such provision, Mr. Davide replied in the affirmative.

APPROVAL OF MR. DAVIDE'S AMENDMENT AS MODIFIED BY MR. PADILLA

Upon direction of the Chair, Mr. Davide restated his proposed amendment as modified by Mr. Padilla, to wit:

LAWS ON RETIREMENT OF MILITARY OFFICERS SHALL NOT ALLOW EXTENSION OF THEIR SERVICE.

Submitted to a vote, and with 36 Members voting in favor and none against, the Body approved Mr. Davide's amendment as modified by Mr. Padilla.

WITHDRAWAL OF MR. UKA'S MOTION FOR RECONSIDERATION

At this juncture, Mr. Uka stated that he pondered on his motion for reconsideration to lift the approval on the 70:30 equity ratio on advertising.

Adverting to President Corazon Aquino's speech before the New York Economics Club, he stated that he found himself in a fix, and considering that the exception only applies to advertising, he stated that he decided to concede.

Thereupon, he withdrew his motion for reconsideration.

REMARKS OF MRS. ROSARIO BRAID

Mr. Rosario Braid expressed the Committee's gratitude for Mr. Uka's withdrawal of his motion for reconsideration. She stated for the record that advertising is not capital-intensive because only P50,000 is required to start an advertising agency, doing away with dependence on foreign technology or expertise.

She stated that local capability should be encouraged to make it more responsive to the goals of cultural identity and value formation, which would discourage the overloading of colonial advertisements carrying foreign symbols and lifestyles.

Adverting to the 1973 Constitution, she stated that advertising is classified as mass media with 100 percent Filipino equity. She stated that construction thereof deserves great respect, pursuant to the ruling in Bengzon vs. Secretary of Justice.

She stated that under Article 68 of the Omnibus Investments Code, as amended, foreign investments are not allowed in enterprises already exploited by Filipinos, the advertising industry, being one of them.

Finally, she stated that advertising whets appetite for consumer goods and that the exception is most appropriate.

REMARKS OF MR. PADILLA

Mr. Padilla observed that the fact that advertising is not capital-intensive is an argument for not retaining the second paragraph of Section 11. He questioned the constitutionalization of the provision since there are other private endeavors that involve more essentially and substantially the interest of the general welfare which were not included in this Constitution.

The Chair, however, stated that Section 11 had already been approved and that Mr. Uka was accommodated because of his reservation on the issue.

TERMINATION OF THE PERIOD OF AMENDMENTS

On motion of Mr. Rama, there being no objection, the Body terminated the period of amendments on the Article on General Provisions.

MANIFESTATION OF MR. BENGZON

Mr. Bengzon manifested, on behalf of the Steering Committee, that the Body proceed to the period of sponsorship, interpellations and debate on the Article on Transitory Provisions in the afternoon session.

In connection thereto, Mr. Suarez stated that mimeographed copies of his sponsorship remarks had been distributed to the Members. He appealed that the Members read it during the suspension of the session in order to abbreviate the proceedings.

In reply to the Chair's query on any suggestion as to the proceedings, Mr. Suarez stated that Mr. Monsod suggested that each section be subjected to interpellation and amendment, finalizing each before proceeding to another.

The Chair stated that the suggestion is reasonable and directed the Members to be guided accordingly.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session until two-thirty in the afternoon.

It was 12:01 p.m.

RESUMPTION OF SESSION

At 3:06 p.m., the session was resumed with the Honorable Serafin V.C. Guingona presiding.

CONSIDERATION OF 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 proceeded to the consideration of Proposed Resolution No. 540 (Committee Report No. 38) on the Article on Transitory Provisions, entitled:

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

Mr. Rama manifested that as agreed upon during the morning session, the Rules had been modified to allow

interpellations and amendments section by section. He informed that the procedure was proposed by the Chairman of the Committee on Transitory Provisions and was approved by the Body.

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

REMARKS OF MR. SUAREZ

Mr. Suarez, as Chairman of the Committee on Transitory Provisions, stated that three papers have been distributed, namely: the sponsorship speech in Support of the Article on Transitory Provisions; the addendum which was prepared by the Committee for consideration after it had prepared the 12 sections of the Article; and the abstract of the various resolutions presented before the Committee.

Mr. Suarez explained that the Committee proposes a brief Article on Transitory Provisions which consists of 12 sections, 4 sections less than in the 1973 Constitution. The Transitory Provisions, he stated, are intended principally to cover the transition from the old to the new government to pave the way for an orderly change and by their very nature and characteristics have temporary or transient application. He added that the provisions are of a passing nature designed at times to qualify permanent provisions or to limit their operations to a specific period.

He informed that the Committee offers a mixed package of constitutional provisions and that in the drafting process, a number of suggestions from the Members of the Commission and private citizens were considered, although not all could be accommodated while some could be left to Congress. The Committee Members, he stated, felt that the Article should consist of provisions necessary to ease the transition from the provisional Freedom Constitution which replaced the 1973 Constitution into the 1986 Constitution. The Article, he observed, is a mixture of standard transitory provisions and provisions borne of necessity. He noted that the political ferment which brought about the Constitutional Commission also brought about a situation requiring the imposition of provisional measures. He stated that the transitory provisions linked up with these provisional measures would facilitate the stabilization of political structure.

Thereafter, Mr. Suarez, in the light of the distribution of copies of the sponsorship speech, dispensed with its reading and requested that it be inserted into the records of the Commission.

Additionally, Mr. Suarez informed that when the Committee submitted the addendum it overlooked a section governing the requirement to set up a scaling of salaries of top officials such as the President, the Vice-President, Chief Justice of the Supreme Court, the Associate Justices of the Supreme Court and Members of the three Constitutional Commissions. With this reservation, Mr. Suarez requested that the Body proceed to the period of interpellations.

Thereupon, the Chair instructed the Secretary-General to include in the records the portions of the sponsorship speech which was not read by Mr. Suarez.

SPONSORSHIP SPEECH OF MR. SUAREZ

The following is the text of the sponsorship speech:

The Committee on Amendments and Transitory Provisions proposes a relatively brief article on the addendum which was prepared by the Committee for consideration after it had prepared the 12 Transitory Provisions. It originally consists of twelve (12) sections, four (4) sections less than the 1973 Constitutions.

The transitory provisions in a Constitution are intended principally to cover the transition from the old to the new government in order to pave the way for an orderly change. By their very nature and characteristics, Transitory

Provisions have temporary or transient application. They are of a passing nature, designed at times to qualify permanent provisions or to limit their operation to a specific period. They do not possess permanent or enduring quality. The Committee on Amendments and Transitory Provisions, by necessity, has become the receptacle of a number of provisions, totally unrelated to each other. We thus offer a mixed bag of Constitutional provisions. In drafting the article, a number of suggestions both from the members of the Commission and from private citizens were considered by the Committee. They were mostly sound and reasonable proposals. Unfortunately, not all of them can be accommodated under the Article on Transitory Provisions. Indeed, some of them can properly be taken care of by Congress in due time.

The members of the Committee felt that the Article on Transitory Provisions should consist only of provisions that are necessary to ease the transition from the Provisional Freedom Constitution which replaced the repudiated 1973 Constitution, into the new Constitution that this Commission is drafting.

The proposed article is a mixture of standard transitory provisions and provisions borne of necessity. The social and political ferment which brought about this Commission also brought about a situation that required the imposition of provisional measures.

The transitory provisions link up with these provisional measures and facilitate the stabilization of the political structure.

ARTICLE ____

TRANSITORY PROVISIONS

Section 1. The first election of members of the Senate and the House of Representatives shall be held no sooner than sixty days nor later than one hundred twenty days after the ratification of this Constitution.

One of the first acts of the new government was the abolition of the legislative structure. President Aquino's Freedom Constitution (Proclamation No. 3) promulgated on 24 March 1986 superseded Article VIII (The Batasang Pambansa), effectively dissolving the Batasang Pambansa. Meanwhile, pending the establishment of a new legislature convened and elected under a new Constitution, the legislative power continues to be exercised by the President (Section 1, Article II, Proclamation No. 3).

The election and convening of the new legislature under the new Constitution is thus seen as the final act that restores full constitutional government. The need to accomplish this act without further delay cannot be overemphasized.

In this section, the Committee schedules the date of the first election of members of the Senate and the House of Representatives between sixty. (60) to one hundred twenty (120) days after the ratification of the new Constitution.

The Committee feels that the range of sixty to one hundred twenty days is both convenient and reasonable not only in terms of preparation but also in terms of the early termination of presidential exercise of legislative power.

The range presumes that the date of the plebiscite for ratification is sometime in December 1986. A December plebiscite gives an allowance of one month to the Commission and sufficient time for COMELEC to prepare for said plebiscite. The preparations, according to the COMELEC Chairman, may involve the general registration of voters and the preparation and printing of ballots voters' affidavit and voters list.

A December ratification would also mean that the date of the first election would be sometime between February and April 1987, before the rains start pouring.

Section 2. The incumbent President shall continue to exercise legislative power until the convening of Congress.

There are two main reasons for this provision:

One, it avoids a hiatus created between the time of the ratification of the Constitution and the actual election and convening of the legislature; and two, it explicitly provides for a termination date for the President's exercise of legislative power.

Note that this provision is necessary considering the abolition of the Batasang Pambansa by Proclamation No. 3 last 25 March 1986 and the consequent exercise by the President of the legislative power by virtue of the same proclamation.

Upon the establishment of the legislative structure and the convening of the first Congress, there is obviously no more need for the exercise of the legislative power by the President since the Congress is already in place.

The termination of the President's legislative prerogative also puts back the presidency into co-equal status with that of the legislative and judicial departments of government. The tripartite system of government would become fully operational.

Section 3. All existing laws, decrees, executive orders, proclamations, letter of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, modified or repealed by Congress.

This provision is really an ordinary transitory provision and, strictly speaking, not really necessary in the sense that the transition from the 1973 Constitution and the Freedom Constitution to the new Constitution does not involve a change of sovereignty.

The period, however, between martial law up until late February of this year was most abnormal. The 1973 Constitution (Sec. 3, Subsection 2, Article XVII) made all proclamations, orders, decrees, instructions and acts promulgated, issued, or done by former President Marcos as "part of the law of the land" and "shall remain valid, legal, binding, and effective even after lifting of martial law or the ratification of this Constitution unless modified, repealed or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly." Almost fourteen (14) years of presidential legislation have created a body of laws that has permeated all sectors of our society. These laws have affected government organization and even our own private lives. They number in the thousands — some published, a great number unpublished. By actual reckoning, these are the figures we obtained: 2,036 Presidential Decrees, 2,419 Proclamations, 1,091 Executive Orders, 1,525 Letters of Instructions, 157 Letters of Implementation, 504 Administrative Orders, and 1,297 Memo Circulars.

The inclusion of decrees, executive orders, proclamations, letter of instructions and other executive issuances with statutory laws thus made this provision a little problematic. In the Committee, it was a series of discussions and repeated debates on the matter before it was finally agreed that the provision as it now stands would be the most practical and judicious under the circumstances.

There were two schools of thought on the matter. One school sought to declare all existing laws, decrees, executive orders, proclamations, letters of instruction and other executive issuances as valid, legal, binding and effective unless inconsistent with the new Constitution or unless amended or repealed by Congress. The other school of thought wanted to declare all of them invalid unless re-enacted by Congress. In both schools of thought, the intention is to segregate the Presidential decrees and other executive issuances from the statutory laws and, further, to segregate the good and valid P.D.s from those that are not. In both instances, the stupendous job of

reviewing each and every P.D. and repealing or affirming them is perceived, considering that there are about 2,036 Presidential Decrees.

A number of these P.D.s appear to be modifications or amendments of previous laws (Acts of the Philippine Legislature, Commonwealth Acts or Republic Acts). A number of them govern the operation of government and its agencies and still a number of them affect individuals and individual rights. They have vested rights, as well as created obligations.

While it was accepted that rights once vested cannot be impaired by subsequent legislation, the possibility of confusion and endless court litigations that will result from an outright blanket invalidation of all existing laws, is nevertheless perceived.

It was also pointed out that the incumbent President herself, out of necessity, has been issuing her own set of Proclamations which have the effect of law. Our cursory investigation yielded the fact that President Aquino had, since February 25, 1986 issued the following: 9 Proclamations, 43 Executive Orders, 6 Memo Circulars and 10 Memo Orders. The Committee, however, feels that it doesn't seem prudent nor does it seem judicious to distinguish between two sets of Presidential proclamations.

While it may be admitted that some enactments of the former President are unacceptable, it was considered by the Committee that it is an act of prudence to declare all decrees, executive orders, proclamations, letters of instruction and other executive issuances not inconsistent with the Constitution as operative until amended, modified, or repealed by Congress.

Note that the provision incorporates the general safety valve clause "not inconsistent with this Constitution", from which it may reasonably be implied that those that are inconsistent with it are deemed inoperative. My committee felt that there should be no disruption in the smooth and orderly functioning of the administration. The stability of governing operations during the period of transition from the Freedom Constitution to our permanent Constitution should be insured.

Also, this section, taken together with the proposed Section 2, would indicate that pending the election and convening of the first Congress, the President, who is authorized to exercise legislative power during the period, may amend or repeal existing laws, including presidential enactments. It was revealed to the Committee members that a thorough review of all President Marcos' enactments is currently being undertaken by the commission headed by Minister Luis Villafuerte.

Section 4. All courts existing at the time of the ratification of this Constitution shall continue to exercise their jurisdiction, until otherwise provided by law in accordance with the Constitution, and all cases pending in said courts shall be heard, tried, and determined under the laws then in force. The provisions of the existing Rules of Court not inconsistent with this Constitution shall remain operative unless amended, modified or repealed by the Supreme Court or Congress.

This provision recognizes the principle that the judiciary is an independent and co-equal department of government and should, therefore, be respected as such. It also guarantees the rights of all parties in pending litigations that their claims shall be resolved according to the laws existing at the time when the acts involved took place. And lastly, this provision ensures the continuity of the administration of justice, by allowing courts to function according to existing rules, until compelling reasons cause the competent authorities to modify them.

Section 5. The Supreme Court must, within six months after the ratification of this Constitution, adopt a systematic plan to expedite the decision or resolution of the entire backlog of cases or matters filed with the Supreme Court or the lower courts prior to the effectivity of this Constitution.

This provision was indorsed by the Committee on the Judiciary for inclusion in the Article on Transitory Provisions.

The provision takes notice of the clogged dockets of our courts and thus gives a constitutional mandate for the Supreme Court to adopt a plan to expedite the disposition of the entire backlog of cases which have been filed with the courts prior to the effectivity of the new Constitution.

Preliminary data from the Office of the Court Administrator reveal that there were 358,961 cases pending in all lower courts as of the end of 1985. During that year, the lower courts started with 370,918 cases to which were added 357,552 cases filed. At the end of the year, the courts disposed a little above one half of the total 728,470 cases. In the case of the Supreme Court, Chief Justice Claudio Teehankee, in a letter addressed to the Judiciary Committee, acknowledged that there were about 1,976 cases submitted for decision as of the year 1980, still undecided. It would, according to his estimate, take about 3 1/2 years for a division composed of five (5) justices to decide the same.

A study made by the College of Public Administration of the University of the Philippines also revealed that it takes the courts an average of two and a half (2 1/2) years to dispose of a single case.

The study indicates that delay in the disposition of cases contributes to the clogging of court dockets. It further indicates that there is rampant denial of justice by virtue of the delay in the disposition of cases.

From the above, it may be said that the greater end of the provision is not only the clearing of court dockets but more importantly, the dispensation of swift justice for all.

Section 6. The incumbent members of the judiciary shall continue in office until they reach the age of seventy years or removed for cause.

This section provides for the security of tenure of the members of the judiciary. It is corollary to Section 4, as security of tenure is a vital element of judicial independence.

The civil service principle that guarantees against arbitrary impairment of the right to continue in the position held also applies to the members of the Judiciary. The members of the judiciary may only be removed "for cause."

The phrase "for cause" has acquired a well-defined meaning in Philippine jurisprudence. As enunciated by the Supreme Court in the case of *De los Santos vs. Mallare*, 87 Phil. 293 (1950), it means, "for reasons which the law and sound public policy recognize as sufficient for removal, that is, legal cause, and not merely causes which the appointing power in the exercise of discretion may deem sufficient. It is implied that officers may not be removed at the mere will of those vested with the power of removal, or without cause. Moreover, the cause must relate to and effect the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public."

Section 7. The incumbent President and Vice-President shall hold office for a term of six years starting at noon of February 25, 1986 until noon of February 25, 1992.

This provision recognizes the existence of a de jure government under the leadership of the incumbent President and Vice-President as ruled upon by the Supreme Court in three cases questioning the legitimacy of the present government.

The provision fixes the term of the incumbent President and Vice-President for a period of six (6) years starting at noon of February 25, 1986, when President Corazon Aquino and Vice-President Salvador Laurel took their oaths at the Club Filipino and ending at noon of February 25, 1992.

There are two main reasons for fixing the term in such manner. First, the snap elections of February 7, 1986 in which the incumbent President and Vice-President ran for their respective positions would result in a six-year term of whoever may be elected. The result of said elections as declared by the defunct Batasang Pambansa was repudiated by the people in. assertion of its sovereignty and installed the incumbent President and Vice-President. Second, and corollary to the first, the incumbent President and Vice-President took their oaths of office as such on February 25, 1986.

From the circumstances attending the installation of the incumbent President and Vice-President, it may be conclusively presumed that the people intended to grant them a six-year term. Now, since the incumbents took their oath of office on February 25, 1986, the same should be the point from which to reckon the six-year period.

The intention of the provision is thus to give them a term of exactly six (6) years.

In consideration of the need to synchronize future elections, however, the Committee approved this provision on the understanding that elections shall be synchronized in such a way that the terms of the first nationally elected officials shall ultimately coincide with the date of termination of office of the incumbent President and Vice-President. With that end in view that the term might, theoretically, be extended by some months after February 25, 1992, the corresponding appropriate amendment to this section may then have to be introduced.

It should be stated, however, that some members of the committee, who made some reservations about Section 7, feel rather strongly that President Aquino and Vice-President Laurel should obtain a fresh mandate from the people in order to clear once and for all whatever doubts may have been cast on their assumption of office. Referring the matter to the people in a separate referendum is suggested. There are even clamors in some sectors for the calling of a presidential election immediately after the ratification of the new Constitution. The Committee, however, decided to recommend the approval of Section 7 for the following cogent and practical reasons, among others: That the true winners in the February 7, 1986 elections were Aquino and Laurel; that the massive frauds and cheating brought about the February EDSA revolution which led to the departure of Marcos and the proclamation of Aquino and Laurel thru the exercise by the people of their Sovereign will; that the proclamation was accepted by the people and due recognition of the Aquino government had been accorded by the community of nations; and that the matter had been laid to rest with the decision of our Supreme Court in 3 cases (G.R.L. Nos. 73748, 73972, and 73990) that the people "have accepted the government of President Corazon C. Aquino which is in effective control of the entire country so that it is not merely a de facto government but is in fact and law a de jure government."

Section 8. Any writ of sequestration, freeze, search and seizure order issued or which may be issued in relation to the recovery of ill-gotten wealth shall continue to be operative within six months after the convening of the first Congress; provided that Congress, in the national interest, as certified by the President, may extend said period.

This provision is the result of almost a dozen meetings and public hearings that hoped to settle a most problematic issue involving the Presidential Commission on Good Government (PCGG).

The main issue revolves around the manner by which the Presidential Commission on Good Government (PCGG) exercise its broad powers and authority in its pursuit of ill-gotten properties amassed by MF. and Mrs. Marcos, their families, relatives, subordinates and friends cronies.

There are three main points involved in this issue. One, is the recovery of ill-gotten properties amassed by the leaders and supporters of the previous regime, a declared element of the national policy "to implement reforms mandated by the people" as enunciated in Article II, Section 1 (D) of Proclamation No. 3. Another point is the due process requirements in the issuance of writs of sequestration and freeze and/or hold orders, the observance of

which is a basic element that makes effective the guarantees of civil, political and human rights of the people. And lastly, a possible future Constitutional infirmity in the issuance of writs of sequestration, freeze/hold orders by the PCGG under the new Constitution. This is because the new Bill of Rights, Section 3 thereof, no longer allows non-judicial officers to issue search warrants or warrants of arrest, including necessarily, writs of sequestration or freeze orders of assets or accounts.

After a thorough consideration of these main points, the Committee arrived at this provision which reflects a compromise between what was observed by the Committee as conflicting considerations. Section 8 would thus constitute an exception to Section 3, Article III on the Bill of Rights. The enormous tasks involved in the recovery of the nation's wealth plundered by Marcos and his family and close associates justify, in the minds of the Committee members, the grant of this extra-ordinary power to the PCGG.

This provision terminates the powers of the PCGG to issue writs of sequestration, freeze, search and seizure orders six months from the time the first Congress convenes. However, upon certification of the President, that it is in the national interest to extend the period within which said powers may be exercised, the Congress may extend said period. The extension presupposes a prior determination by the Congress that it is indeed in the national interest to extend the exercise of said power by the PCGG. The certification by the President thus functions as some sort of a recommendation to Congress. Needless to add, Congress does not possess the power to limit or terminate the extraordinary right granted to the PCGG before the expiration of the six months' constitutional period.

Upon the termination of said period, the power of the PCGG to issue writs of sequestration, freeze, search and seizure order would automatically cease, and the PCCG will then have to go to the regular courts to apply for the issuance of any writ or order.

Section 9. All armed groups and paramilitary forces now existing outside of the regular police and armed forces shall be dismantled.

This section is an amended version of the resolution passed on to the Committee by the Committee on General Provisions which reads thus, "All armed groups and paramilitary forces now existing contrary to law shall be dismantled."

The "armed groups and paramilitary forces" being referred to in this provision are the Civilian Home Defense Forces (CHDF) and private armies which have been defined as "armies maintained by politicians either directly or indirectly in cooperation with the Armed Forces of the Philippines (AFP)". The term excludes guards and watchmen of legitimate private and government security agencies licensed under the Private Security Law.

The provision does not prohibit the people from voluntarily organizing themselves for the defense of their homes and families against armed attacks in the absence of the police or the armed forces.

Section 10. Civil service employees who may be separated from the service as a result of the reorganization pursuant to the Provisions of Article III of Proclamation No. 3 issued on March 25, 1986 and the reorganization following the ratification of this Constitution shall enjoy priority for employment in the government or be entitled to a separation pay in addition to retirement and other benefits accruing to him under the laws then in force at the time of his separation.

This provision seeks to protect civil servants who were affected by the reorganization brought about by Proclamation No. 3 and those civil servants who will be affected by the reorganization that will be undertaken after the ratification of the new Constitution.

The employees covered under this provision are those who are civil service eligibles who have not been convicted of any violation of the Civil Service Law. The provision further excludes casuals and contractuels in the government service. The provision thus benefits only permanent employees in the government service. Two reasons may be advanced for limiting the benefits to this group of employees. First, under civil service rules, it is only the permanent employees who enjoy security of tenure and second, it would overburden the government to grant separation pays for each and every separated employee whether they are permanent, temporary, casuals or contractuels. As proposed, the civil service employees affected "shall enjoy priority for employment in the government" or "be entitled to a separation pay in addition to retirement and other benefits accruing him under the laws in force at the time of his separation."

Section 11. All records, equipment, buildings, facilities and other properties of the Office of the Prime Minister and the defunct Batasang Pambansa and Interim Batasang Pambansa are hereby transferred to Congress.

The Office of the Prime Minister under the parliamentary system forms part of the legislative body. Logically, therefore, records, equipment, buildings, facilities and other properties of the Office of the Prime Minister, together with those of the Batasang Pambansa and the Interim Batasang Pambansa (1978 to 1984) should be transferred to the incoming Congress under the new Constitution. Special note should be taken of the fact that the provision does not mention the personnel of the abolished bodies.

Section 12. This Constitution shall take effect immediately upon its ratification in a majority of the votes cast in a plebiscite called for the purpose and shall supersede all previous Constitutions.

This provision contemplates the submission to the people in a plebiscite of the draft of the entire Constitution. Upon ratification, the new Constitution will be deemed to have superseded the 1935 Constitution, the 1973 Constitution and the Freedom Constitution of 1986 (Proclamation No. 3). There are moves to "package" the draft Constitution into controversial and non-controversial articles, thus accommodating the possibility of partial ratification and a partial rejection. The Committee, however, felt that it is best that the traditional method of ratification be adopted.

At this juncture, Mr. Rama reminded the Body that all interpellations should concentrate on Section 1 and thereafter the Body would proceed immediately to the amendments.

INTERPELLATION OF MR. NOLLEDO

Mr. Nollado prefaced his interpellation by stating that he was made to understand that he could ask questions not only on Section 1 but also on the other Sections.

The Chair stated that as had been explained by Mr. Rama, the Body shall consider the Article section by section and that it would limit its debate, interpellations and amendments to Section 1, for the time being.

Thereupon, Mr. Nollado requested that he be allowed to ask questions on other sections, in reply to which Mr. Suarez reiterated the procedure agreed upon in the morning session.

In view thereof, Mr. Nollado reserved the right to interpellate and introduce amendments, after commending the Committee for its well-worded and appropriately prepared report.

On Section 1, Mr. Nollado observed that the first election of the members of the Senate and the House of Representatives shall be held no sooner than 60 days nor later than 120 days after ratification of the 1986 Constitution although there is no provision on the time of election of local officials.

In reply thereto, Mr. Suarez stated that the Committee refrained from making a recommendation regarding the

holding of local elections, but Article XVIII, Section 1 provides that local elections shall be called by the President and that national elections shall be held on the second Monday of May, 1987.

On whether it would be possible to proceed with the election of the Members of Congress, as had been fixed in the Committee Report, and then leave it to Congress to determine when local elections shall be held and perhaps come up with a revised Election Code, Mr. Suarez noted that while this may be correct, the Committee is only concerned with determining the period when national elections shall be held. He stated that if the Committee's suggestion is harmonized with the suggestion of the Committee on the Legislative, the 60/120 days period would cover the second Monday of May, 1987, assuming that the plebiscite is held on January 19, 1987.

Mr. Nollado observed that the Members of the Commission on Elections appeared before the Suarez Committee and recommended separate elections for local and national officials, to which Mr. Suarez replied that the COMELEC Commissioners suggested it as the government would spend about P670 million in simultaneous elections as against P190 million in separate elections.

On the official position of the Committee with regard to the two alternatives: 1) leaving it to the President to fix the elections; and 2) leaving it to Congress to determine when local elections shall be held, considering that the League of Governors and City Mayors wanted to defer and allow Congress to determine the date of elections, Mr. Suarez replied that were it not for Proclamation No. 3, the Committee would agree with Mr. Nollado's suggestion to allow Congress to fix the date for local elections; however the only limitation to the President's calling for national elections is the proviso that it should not be held earlier than the date of the plebiscite. He averred that from a constitutional and legal standpoint, the matter is in the hands of the President.

On inquiry, Mr. Suarez affirmed that the Constitutional Commission has the plenary power to qualify the provisions of Proclamation No. 3.

INQUIRY OF MR. OPLE

On the query whether he was aware of the various declarations made by President Aquino in the United States that she looked forward to the first local and national elections in 1987 and to a plebiscite on the Constitution before the end of 1986, Mr. Nollado affirmed that he was aware of the declarations and observed that her pronouncements seemed to rely on the Members of the Commission to fix the date of the local and national elections.

INTERPELLATION OF MR. RODRIGO

On the inquiry of Mr. Rodrigo as to what specific event would determine the exact date of the ratification of the Constitution, Mr. Suarez informed that during the Committee's meeting with the COMELEC, several suggestions were made: 1) a schedule for the general registration which would fall on the last two days of November and the first 2 days of December or a four-day registration; and 2) a schedule for the plebiscite after the general registration which would require time because of the printing, preparation, shipments and deliveries of ballots. Mr. Suarez also stated that no significant date is being considered, although the Committee is recommending January 19 as the day for the plebiscite.

As to whether there would be a need for an official statement from the COMELEC that the Constitution has been ratified on a specific date, Mr. Suarez replied that if the precedents set by Mr. Marcos were to be followed, it would require a proclamation stating that the proposed amendments had been ratified by the people in a plebiscite held on a particular date. He explained that the operative act shall be the proclamation by the President, as certified by the COMELEC.

POINT OF INFORMATION OF MR. MAAMBONG

Mr. Maambong informed that based on precedents, the canvassing body in a plebiscite is the COMELEC. He noted that once the COMELEC tabulates the returns, the result of the plebiscite is given to the President who then normally issues the proclamation and the date of the proclamation would be the operative act in determining the date of ratification.

INTERPELLATION OF MR. RODRIGO

(Continuation)

As to whether this should be spelled out in the Constitutional provisions, Mr. Maambong observed that it might not be needed as precedents could be followed.

On who would determine the date of the first election of the Members of Congress, Mr. Suarez stated that it would be the President and not the COMELEC.

On whether there is a need to spell out in the Constitutional provision the terms of the 24 senators to be elected in the first election and to determine who would serve for only 3 years and who would serve for a full 6-year term, Mr. Suarez replied that in the first Congress, the first 24 senators to be elected would serve the full 6 years and that in the 1991 election, the adjustment would have to be made. This, he pointed out, is the Committee's understanding of the provision in the Article on the Legislative.

At this juncture, the Chair called attention to the time limit for interpellations.

PARLIAMENTARY INQUIRY OF MR. RODRIGO

Mr. Rodrigo observed that the Body is in the period of general debate and interpellations at which time, the 3 to 5 minute rule is not allowed. The rule, he pointed out, is applied only during the period of amendments.

The Chair replied that the time limit is being observed inasmuch as the Body has combined the period of debate and the period of amendments. The Chair added that it has not restricted the Members, to and in view of Mr. Rodrigo's manifestation, dispensed with the 3 minute rule.

Upon inquiry of Mr. Rodrigo, Mr. Suarez clarified that the Members could interpellate on Section 1 and thereafter proceed with their amendments.

RESTATEMENT OF THE PARLIAMENTARY SITUATION

On the parliamentary situation, Mr. Rama stated that the Body would first finish with the period of interpellations or debate before going into the period of amendments and would not follow the three minute rule.

INQUIRY OF MR. COLAYCO

Adverting to Section 33 of the Rules, Mr. Colayco noted that it is not correct to say that there is no time limit for debate.

In response thereto, the Chair stated that it was referring to the three-minute time limit which would apply during the period of amendments and affirmed that Mr. Colayco was correct in his assertion that interpellations would follow the ten-minute rule.

MANIFESTATION OF MR. SUAREZ

In connection with the inquiry of Mr. Rodrigo, Mr. Suarez read into the record the unnumbered section that is being proposed under Resolution No. 544 by Mr. Davide with regard to the legislative power of the Senators who would be elected in 1992, to wit:

THE FIRST TWELVE OBTAINING THE HIGHEST NUMBER OF VOTES SHALL SERVE FOR SIX YEARS AND THE REMAINING TWELVE FOR THREE YEARS.

MANIFESTATION OF MR. MAAMBONG

Mr. Maambong likewise read into the record the addendum in the same unnumbered section of proposed Resolution No. 544 to wit:

THE FIRST ELECTION UNDER THIS CONSTITUTION FOR THE MEMBERS OF CONGRESS AND FOR PROVINCIAL, CITY AND MUNICIPAL ELECTIVE OFFICIALS SHALL BE ON THE SECOND MONDAY OF MAY, 1987.

He also stated that under Resolution No. 241 introduced by Messrs. Ople, Natividad, de los Reyes and himself, they also addressed this particular point and thereafter expressed the hope that the same be discussed at the proper time.

PERIOD OF AMENDMENTS

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

PROPOSED AMENDMENT OF MR. DAVIDE

Mr. Davide proposed to reformulate the Section, to wit:

THE FIRST ELECTIONS UNDER THE CONSTITUTION OF MEMBERS OF THE CONGRESS, AND, UNLESS OTHERWISE FIXED BY THE INCUMBENT PRESIDENT, OF ELECTIVE PROVINCIAL, CITY, AND MUNICIPAL OFFICIALS SHALL BE HELD ON THE SECOND MONDAY OF MAY, 1987.

Mr. Davide stated that the proposal is an affirmation of the statement of the Chairman of the Committee on Transitory Provisions that in the matter of local elective officials, the incumbent President under Proclamation No. 3 is vested with the authority to fix the date of their election, so that unless the incumbent President fixes another date for local elections, the same must be simultaneous with the parliamentary election on the second Monday of May, 1987.

At this juncture, Mr. Nollado manifested that he had another proposal and suggested that he present it with Mr. Davide's amendment so that the Committee may be given a chance to determine which amendment is acceptable to them.

INQUIRY OF MR. AZCUNA

In reply to Mr. Azcuna's query, Mr. Davide stated that the matter left to the incumbent President would refer exclusively to the date of local elections while, insofar as the Members of Congress are concerned, it is fixed on the second Monday of May, 1987.

PROPOSED AMENDMENT OF MR. NOLLEDO

Mr. Nollado manifested that his proposal is not an amendment to Mr. Davide's amendment but an amendment to maintain the provisions as reported by the Committee, such that after the word "constitution", add the sentence: CONGRESS SHALL BY LAW AND WITHIN A PERIOD OF ONE YEAR FROM ITS ORGANIZATION FIX THE ELECTIONS FOR ALL LOCAL OFFICIALS.

Mr. Nollado explained that his proposal would override the provision of Proclamation No. 3 with respect to the Presidential power to call for local elections because he felt that the Members of Congress should be elected first. He observed that there are many loopholes in the present Election Code and Congress may determine if there is a need to amend the Election Code and fix the elections for local officials ;in accordance with the request of the League of Governors and City Mayors.

Thereupon, the Chair stated that the Body would act on Mr. Davide's amendment first considering that Mr. Nollado's amendment was not an amendment to the amendment.

INQUIRY OF MR. OPLE

In reply to Mr. Ople's query, Mr. Davide affirmed that his proposal for simultaneous local and national elections was made with President Aquino's statement in mind relative to her speech in the United States that approximately one year from the installation of a revolutionary government, the Philippines would move swiftly to full constitutional government through the adoption of a new Constitution and the holding of elections for local and national officials.

Mr. Davide, likewise, affirmed that under Proclamation No. 3, President Aquino is vested with lawmaking power and one of the transitory provisions states that she could continue to exercise this power until a new Congress shall have been convened.

On whether the proponent would be amenable to changing the phrase "unless the President decides otherwise" to "unless a special law decides otherwise" because the former phrase would give a public officer a superior position relative to the Constitution, Mr. Davide stated that his original proposal used the word "simultaneous" but he had to reassess his position in the light of the stand of the Committee that the Freedom Constitution provides for local elections as may be mandated by the incumbent President, thereby settling on a compromise in order to have some degree of flexibility.

On whether the proponent took into account, when he made the proposal, the prevailing perception that political stability in the countryside would remain doubtful until the issue of elected governors and mayors would have been resolved, Mr. Davide agreed that it was one of the considerations he had taken into account, but his attention had been called to the position of the Committee regarding Proclamation No. 3 as well as the provision of Proclamation No. 9 which mandates that local elections may be held not earlier than the plebiscite which shall be held not later than 60 days from the conclusion of the work of the Constitutional Commission.

Quoting the provisions of Article VI of the Freedom Constitution, Mr. Davide gave the assurance that the proposal would not impair the authority vested in the President.

INQUIRY OF MS. AQUINO

In reply to Ms. Aquino's query, Mr. Davide stated that when he said that his proposal would not impair the authority of the President to set the date of the elections for local officials, he was not challenging the authority of the Commission, but allowing the widest possible room for the President to exercise her authority under the

Freedom Constitution.

Ms. Aquino then observed that if the Commission adopts Mr. Davide's proposal and the President so exercise her prerogative under this amendment to set a date for local elections, the officers-in-charge, in effect, would still be in place by the time the national elections are called, which, she opined, may present some serious implications because in real politics, it would put the majority party at a decided advantage as against the other political parties in that election.

INQUIRY OF MR. MAAMBONG

In reply to Mr. Maambong's query, Mr. Davide affirmed that the national election would be fixed by the new Constitution while local elections would be held on the date to be determined by the President which, if the President does not so determine, would be simultaneous with the parliamentary elections.

On the contention that Article VI of Proclamation No. 3 does not provide that local elections shall be simultaneous with the parliamentary elections, Mr. Davide stated that it is within the authority of the Constitutional Commission to provide for such eventuality.

REMARKS OF MR. RAMA

Responding to the arguments of Mr. Ople and Ms. Aquino, Mr. Rama stated that as argued by Mr. Ople, if the President would be allowed to determine the date of the local elections, it may appear that the President is superior to the Constitutional Commission and, also as stated by Ms. Aquino, it may appear that this Commission is abdicating its right to set that date of elections. He pointed out, however, that the legislative arguments are of no moment. In fact whether or not the President is superior to the Commission is a lame argument considering that it was she who appointed and created this Commission. There is, he argued, a compelling and practical reason for allowing the President to fix the date of the local elections. Nobody knows what would really happen several months from today. In view thereof, he opined that the person best qualified to determine the circumstances prevailing at such time is the President and, therefore, this Commission should allow the President to determine whether or not the country would indeed need such local elections and at what time.

REMARKS OF MR. ABUBAKAR

Mr. Abubakar stated that the Members of the Commission are not familiar with the situation in the provinces with respect to provincial elections and, therefore, for this Commission to legislate on the time element of the election would be presumptuous, since the situation prevailing all over the country should determine the holding of such election. In this regard, he stated that he would rather entrust the choice of the date to the President upon the recommendation of the Commission.

REMARKS OF MR. PADILLA

Adverting to the provisions of Proclamation No. 3, Mr. Padilla expressed agreement with Mr. Davide's amendment although he would prefer the suggestion of Mr. Nollado to adopt Section 1 of the Committee Report and to add another sentence for the holding of the local elections.

SUSPENSION OF SESSION

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

It was 4:03 p.m.

RESUMPTION OF SESSION

At 4:09 p.m., the session was resumed.

REFORMULATION OF SECTION 1

Upon resumption of session, Mr. Davide read the new formulation of Section 1 with Messrs. Padilla, Nollado, Ople, Rama and Bernas as coauthors, to wit:

THE FIRST ELECTION UNDER THIS CONSTITUTION OF MEMBERS OF THE CONGRESS SHALL BE HELD ON THE SECOND MONDAY OF MAY, 1987.

THE FIRST LOCAL ELECTIONS SHALL BE HELD ON THE SAME DATE, UNLESS OTHERWISE FIXED BY THE PRESIDENT.

INQUIRIES/AMENDMENT OF MR. MONSOD

On Mr. Monsod's suggestion that the second paragraph be worded to simply state that the local elections shall be held on the date fixed by the President, Mr. Davide stated that the original idea was a simultaneous election but taking into account the provision of the Freedom Constitution, the proposed amendment grants the President the authority to exercise her right thereunder and to fix a date different from the date for a simultaneous election.

Mr. Monsod maintained that from the practical point of view, the holding of national and local elections at the same time would be very difficult because of the number of names that would be written on the ballot. It is for this reason, he stated, that these elections should be held separately.

In this regard, Mr. Monsod proposed the adoption of the provision in the Freedom Constitution with an amendment therein so that it would read:

THE FIRST LOCAL ELECTIONS SHALL BE HELD BY THE PRESIDENT WHICH MAY BE SIMULTANEOUS WITH THE NATIONAL ELECTIONS.

Reacting thereto, Mr. Davide stressed that his proposed amendment is merely recommendatory since this would only give full accord to the authority of the President. He disagreed that simultaneous elections could not be held, pointing out that simultaneous elections would simply mean that it is held in one day but it may be separate in the sense that there may be separate ballot for local officials and another one for national officials. He expressed the view that there are certain remedies in having simultaneous elections as against the contention that there are many names to be written on the ballot, among which is the proposal to limit the number of voters to a given voting center so that the voting could be finished in one day regardless of the number of candidates for any particular office.

Mr. Monsod contended that this is practical because there are about 87,000 precincts and there would be three public schoolteachers in each precinct and with the proposal to limit the number of voters to 150 per precinct, there may not be enough public schoolteachers, aside from doubling the cost of holding such elections.

Mr. Monsod reiterated his proposed amendment so that the second paragraph would read: THE LOCAL ELECTIONS WILL BE HELD ON A DATE DETERMINED BY THE PRESIDENT WHICH MAY BE SIMULTANEOUS WITH THE NATIONAL ELECTIONS, explaining that this would be consistent with the general rule acknowledging that it is the President who would set the date for the local elections.

In reply thereto, Mr. Davide stated that it would not really make any difference although he opined that it should be so worded in that it would allow simultaneous election on the second Monday of May, 1987 providing,

however, flexibility to the President to fix another date for local elections.

REMARKS OF MR. RODRIGO

Mr. Rodrigo stated that there is a substantial difference between stating in the provision that there shall be simultaneous elections on a certain date except when the President sets another date for the local elections and stating that the President shall set the date for both the national and local elections. He pointed out that the first formulation presumes that there is a consensus in the Constitutional Commission that there should be simultaneous elections for national and local officials when, in fact, there is no such consensus. He stated that, personally, he would not favor simultaneous elections for local and national officials not only because of the practical difficulties but also because of the issues involved. He stressed that the issues in local elections are different from the issues in national elections especially the senatorial elections or the presidential and vice-presidential elections. He expressed preference to leave the decision on the holding of local elections to the President.

RESTATEMENT AND APPROVAL OF THE FIRST PARAGRAPH OF SECTION 1

Mr. Davide restated the first paragraph of Section 1, to wit:

THE FIRST ELECTION UNDER THIS CONSTITUTION OF MEMBERS OF THE CONGRESS SHALL BE HELD ON THE SECOND MONDAY OF MAY, 1987.

The Committee accepted Mr. Davide's proposed amendment.

Submitted to a vote, and with 24 Members voting in favor and none against, the first paragraph of Section 1 was approved by the Body.

RESERVATION OF MR. OPLE

Mr. Ople made a reservation to take up the issue of elections at the presidential level when the Body takes up Section 7, which reservation was noted by the Chair.

RESTATEMENT OF THE SECOND PARAGRAPH OF SECTION 1

Mr. Davide restated the second paragraph of Section 1, to wit:

THE FIRST LOCAL ELECTIONS SHALL BE HELD ON THE SAME DATE, UNLESS OTHERWISE FIXED BY THE PRESIDENT.

MR. MONSOD'S AMENDMENT TO THE AMENDMENT

Mr. Monsod proposed an amendment to the second paragraph so that it would read:

THE FIRST LOCAL ELECTIONS SHALL BE HELD ON A DATE TO BE DETERMINED BY THE PRESIDENT WHICH MAY BE SIMULTANEOUS WITH THE ELECTION OF THE MEMBERS OF CONGRESS.

SUSPENSION OF SESSION

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

It was 4:31 p.m.

RESUMPTION OF SESSION

At 4:33 p.m., the session was resumed.

Upon resumption of session, Mr. Davide, on behalf of the other proponents of the second paragraph, manifested that he is prepared to accept Mr. Monsod's proposed amendment. He then asked Mr. Monsod to restate his proposed amendment.

RESTATEMENT OF MR. MONSOD'S AMENDMENT

Mr. Monsod restated his proposed amendment, to wit:

THE FIRST LOCAL ELECTIONS SHALL BE HELD ON A DATE TO BE DETERMINED BY THE PRESIDENT WHICH MAY BE SIMULTANEOUS WITH THE ELECTION OF THE MEMBERS OF CONGRESS.

INQUIRIES OF MR. NOLLEDO

On Mr. Nollado's inquiries, Mr. Monsod affirmed that under his proposal, it would be possible for the incumbent President to call for local elections even before the elections on the second Monday of May, 1987, the only limitation being that she could not call it earlier than the date of the plebiscite; He further affirmed that his proposed amendment would not in any way amend Section 2, Article VI of the Freedom Constitution.

INQUIRY OF MR. SUAREZ

On Mr. Suarez' inquiry whether the local elections referred to would also include barangay elections, Mr. Monsod stated that it would not, because it would only refer to provincial, city and municipal elections.

Thereupon, Mr. Suarez asked that Mr. Monsod's proposed amendment be submitted to a vote.

APPROVAL OF MR. MONSOD'S AMENDMENT

Submitted to a vote, and with 33 Members voting in favor, none against and one abstention, the Body approved Mr. Monsod's amendment.

RESTATEMENT AND APPROVAL OF SECTION 1, AS AMENDED

Mr. Suarez restated the entire Section 1, as amended, to wit:

THE FIRST ELECTION UNDER THIS CONSTITUTION OF MEMBERS OF THE CONGRESS SHALL BE HELD ON THE SECOND MONDAY OF MAY, 1987.

THE FIRST LOCAL ELECTIONS SHALL BE HELD ON A DATE TO BE DETERMINED BY THE PRESIDENT WHICH MAY BE SIMULTANEOUS WITH THE ELECTION OF THE MEMBERS OF CONGRESS.

Submitted to a vote, and with 34 Members voting in favor and one against, the Body approved Section 1, as amended.

INQUIRY OF MS. TAN

On Ms. Tan's query as to when would be the barangay elections, Mr. Suarez opined that it would be provided by law. He, however, asked Mr. Monsod for his interpretation.

REMARKS OF MR. MONSOD

Mr. Monsod expressed the view that the term of the incumbent barangay officials would end in 1988 so that unless Congress changes that date, then the next elections for barangay officials would still be in 1988.

INQUIRIES OF MR. FOZ

Relative to local elections, on Mr. Foz' query as to who are the elective local officials, Mr. Suarez stated that these would refer to the provincial governor, the vice-governor and the eight members of the provincial board; the city mayor, the city vice-mayor and the eight members of the Sangguniang Panlungsod; and the municipal mayor, the municipal vice-mayor and the eight members of the Sangguniang Bayan. These positions, he explained, are provided for under the existing Local Government Code including the manner of their election. He added that their election is likewise covered by the Omnibus Election Code.

POINT OF INFORMATION OF MR. MAAMBONG

Mr. Maambong stated that the Local Government Code recognizes the existence of subprovinces which are transitory in the sense that they are given ten years to qualify as a province, otherwise they would revert to the mother province to which each of them belongs. He expressed the view that the local officials referred to would include the officials of these subprovinces unless in the interim the incumbent President, under her authority, would abolish the subprovinces altogether.

INQUIRY OF MR. NOLLEDO

In reply to Mr. Nollado's query, Mr. Suarez affirmed that it would be theoretically be possible that the local officials which he mentioned might be changed by Congress. He agreed with Mr. Nollado's observation that it may be possible for the President to call the local elections much later than the second Monday of May, 1987 and Congress may amend the Local Government Code to provide for a new set of officials citing as an example greater participation in the city council level.

PROPOSED AMENDMENT OF MR. DAVIDE

Mr. Davide proposed a new Section immediately following Section 1, to read as follows:

THE INCUMBENT PRESIDENT SHALL PRESIDE AT THE JOINT INAUGURAL SESSION OF CONGRESS.

INQUIRY OF MR. OPLE

On Mr. Ople's inquiry whether this provision is necessary, Mr. Davide opined that this is necessary because this would be the first Congress and the Members thereof would still have to elect the officers of both Houses. He stated that his proposal would only be for the purpose of the inaugural session so that there would be somebody who would preside during the formal inauguration of both Houses of Congress.

Mr. Ople accepted Mr. Davide's justification of the proposal, it being transitory in character.

Mr. Davide stated that he would be willing to amend his proposal so that it would read:

THE INCUMBENT PRESIDENT SHALL PRESIDE AT THE JOINT INAUGURAL SESSION OF THE FIRST CONGRESS.

INQUIRIES OF MR. NATIVIDAD

Mr. Natividad recalled that in the interim Batasang Pambansa, it was the President who presides because the government at that time was semi-parliamentary. He pointed out, however, that in the defunct Congress, the Secretary of the House elected by the Members presided in the absence of an elected Speaker. He then questioned the proposal of requiring the President to preside over Congress considering that under a presidential system of government, there is separation of powers between the Executive and the Legislative branches.

But Mr. Davide pointed out that the practice was applicable only to the defunct Congress but in the coming First Congress there could be no Secretary because he would be elected only after its convening.

Mr. Natividad observed that with the proposal the President would be performing the work of the Secretary even if there should be separation of powers between the Executive and the Legislative.

MR. BERNAS' AMENDMENT TO THE AMENDMENT

Thereupon, Mr. Bernas proposed that instead of the President, the oldest senator-elect should be designated to preside over the opening ceremonies of the First Congress, which would be a joint inaugural session.

Mr. Davide accepted the amendment to his amendment.

OBSERVATION OF MR. PADILLA

Mr. Padilla opined that such provision would not be necessary because the practice has been that a temporary Presiding Officer, not necessarily the Secretary, is chosen to preside over the opening ceremonies of Congress and thereafter the President of the Senate and the Speaker of the House of Representatives are elected.

In view of the explanations, Mr. Davide withdrew his proposed amendment.

PROPOSED AMENDMENT OF MR. MAAMBONG

Mr. Maambong read the proposed Section 2, to wit:

THE INCUMBENT PRESIDENT SHALL CONTINUE TO EXERCISE LEGISLATIVE POWER UNTIL THE CONVENING OF CONGRESS.

He pointed out that the proposed Section 2 was based on Resolution No. 262 which adopted the provision of Section 1 of Proclamation No. 3 which states that "Until a legislature is elected and convened under a new Constitution, the President shall continue to exercise legislative power."

INQUIRY OF MR. OPLE

In reply to Mr. Ople's query on whether the treaty-ratifying power of the Legislature could be exercised by the President between the adoption of this Constitution and the convening of Congress, Mr. Suarez explained that the President may enter into treaties, both in her capacity as the Chief Executive and as one who exercises legislative power.

Mr. Ople observed that although it would be extraordinary and since the other signatory nations might not

recognize a treaty, it would be necessary and prudent on the part of the President that she wait until the convening of Congress before ratifying a treaty, which actually requires the ratification by the Senate, to which Messrs. Suarez and Abubakar agreed.

AMENDMENT OF MR. JAMIR

Mr. Jamir proposed to proposed change the phrase "the convening of Congress" to THE CONGRESS IS CONVENED.

The Sponsor accepted the amendment.

Mr. Davide further proposed to insert the word FIRST between "the" and "Congress", which amendment to the amendment was, likewise, accepted by the Sponsor.

APPROVAL OF SECTION 2, AS AMENDED

Thereupon, Mr. Maambong restated Section 2, as amended, to wit:

THE INCUMBENT PRESIDENT SHALL CONTINUE TO EXERCISE LEGISLATIVE POWER UNTIL THE FIRST CONGRESS IS CONVENED.

Submitted to a vote, and with 35 Members voting in favor and none against, Section 2, as amended, was approved by the Body.

PROPOSED AMENDMENT OF MR. VILLACORTA

Thereafter, Mr. Villacorta, jointly with Messrs. Monsod, Tadeo, Ople, Lerum, Suarez, Bernas, Sarmiento, Rigos, Bennagen, Uka, Garcia, Gascon, Nollado, Foz and Treñas, and Mrs. Quesada, Ms. Aquino, Mrs. Nieva, Ms. Tan and Mrs. Rosario Braid, proposed to insert a new Section after Section 2, to read:

SECTION ____ DURING THE FIRST ELECTIVE TERM OF THE HOUSE OF REPRESENTATIVES, THE REPRESENTATIVES OF THE SECTORS UNDER ARTICLE ____ SHALL BE APPOINTED BY THE PRESIDENT FROM A LIST OF RECOMMENDATIONS BY THEIR RESPECTIVE SECTORS. IN DETERMINING THE NUMBER OF SEATS FOR EACH SECTOR, THE PRESIDENT SHALL GIVE PROPORTIONATELY MORE SEATS TO THE PEASANTS' AND WORKERS' SECTORS.

Mr. Villacorta explained that the proposed amendments would fill up the reserved seats provided in the Article on the Legislative for the sectoral representatives in the absence of national and district elections for sectoral representatives, and it would mandate that the President shall give proportionately more seats to the peasants' and workers' sectors.

REMARKS OF MR. SARMIENTO

In reply to Mr. Sarmiento's query, Mr. Villacorta stated that "respective sectors" refer to youth, peasants, cultural communities, women and workers.

On how the President would select the representatives for the women's sector from among several women's organizations, Mr. Villacorta pointed out that the proposal would give the President the discretion to choose the representatives in the same manner as the selection of the Members of the Constitutional Commission. He added that each sector may also hold a sectoral congress to narrow down their recommendees, but the proposal is silent on such sectoral congress because it might lead to divisiveness rather than unity.

On the reason for allotting more seats to the peasants and workers, Mr. Villacorta explained that sectoral representation would be in favor of the marginalized, disadvantaged sectors because they comprise the majority of the population.

REMARKS OF MR. RODRIGO

Mr. Rodrigo observed that Section 5 of the Article on the Legislative provides that the party list and sectoral representation would be provided by law, in order to avoid the possible doubts in the election or selection of sectoral representatives. He underscored that it was clearly provided that Congress would enact the enabling law for the selection or election of sectoral representatives. He believed that it would be premature to provide the manner of selecting such sectoral representatives because other sectors may still be provided by law.

REMARKS OF MR. DAVIDE

Speaking against the proposed amendment, Mr. Davide pointed out that Section 5 of the Article on the Legislative does not provide for the start of the three consecutive terms of the sectoral representatives who will occupy one-half of the reserved seats in the party list system, because if their term is fixed to begin from the First Congress, it would not give Congress the authority to prescribe for sectoral representation.

He affirmed that it would prevent Congress or even the incumbent President in the exercise of her legislative power, from determining what other sectors would be represented.

He stated that the proposal would be inconsistent with what had been approved and would, in effect, reopen Section 5 of the Article on the Legislative.

REMARKS OF MR. VILLACORTA

In response thereto, Mr. Villacorta pointed out that the Transitory Provisions would precisely fill the gap between the ratification of the Constitution and the convening of the First Congress, by immediately implementing the provisions of the Constitution. He added that without such provisions the seats allotted to the sectoral representatives in the First Congress would be vacant.

On the phrase "other sectors as may be provided by law" found in Section 5 of the Article on the Legislative, Mr. Villacorta opined that it would not prevent the President from enacting a law, to implement it and therefore, it would not be inconsistent with the proposed amendment.

He suggested, however, that because of the reservation of Mr. Davide on the second sentence of the proposal, the voting should be done sentence by sentence.

REMARKS OF MS. AQUINO

Ms. Aquino took exception to Mr. Davide's observation that the proposed amendment is improper, stating that during the deliberations on Section 5 of the Article on the Legislative, the Body deferred the voting on the amendment because it would be proper to place it in the Transitory Provisions. She pointed out that the proposal would not be inconsistent with the provisions on the Article on the Legislative but would precisely implement the provision on the reserved seats for sectoral representatives, which would be an innovative political mechanism that would attempt to democratize popular representation, so that they could be part of the First Congress that would enact the statutory implementation of sectoral representation.

REJOINDER OF MR. DAVIDE

Reacting to Ms. Aquino's statements, Mr. Davide reiterated that the First Congress may still have sectoral representatives because the President can exercise her legislative power in the absence of the Legislature and may promulgate an executive order providing for sectoral representation.

In this connection, Mr. Villacorta pointed out that the proposal would precisely mandate the President to pass a law on sectoral representation, in the absence of Congress, to ensure that they would be proportionately represented in the First Congress.

INQUIRY OF MR. DE CASTRO

In reply to Mr. de Castro's query whether the urban poor are included in the proposal, Mr. Villacorta stated that according to Mr. Gascon, they are.

On whether the President could include representatives from other sectors other than the six already identified, Mr. Villacorta stated that it is possible.

On the rationale for giving more seats to peasants and workers, Mr. Villacorta explained that they compose the majority of the population and they are the most marginalized.

On whether this could be proven by statistics, Mr. Villacorta pointed out that the same query was raised during the period of interpellations, but since he did not expect that the query would be brought up again, he did not bring the statistics.

As to whether the urban poor are not also marginalized, Mr. Villacorta stated that they are, but the peasants and the workers are greater in number.

REMARKS OF MR. LERUM

At this juncture, Mr. Lerum manifested his support for the proposal because there would be no representatives from the sectors in the First Congress. He pointed out that sectoral representation is not something new because there were sectoral representatives in the interim Batasang Pambansa as well as the regular Batasang Pambansa, with the sector already defined, including the manner of election or selection of their representatives. He added that since there would be no Congress yet, it would be better to provide for the election or selection of sectoral representatives in the Transitory Provisions.

REMARKS OF MR. OPLE

Speaking in support of Mr. Villacorta's proposal, Mr. Ople stated that during the interim and regular Batasang Pambansa, there were 4 reserve seats for the industrial labor and 4 reserve seats for the agricultural labor sector and another 6 reserve seats for the youth sector thereby having the precedent for Mr. Villacorta's proposal. He added that during such time, the elected members of the interim and regular Batasang Pambansa tried to delay the seating of the sectoral representatives on the ground that they owed their seats to a constitutional provision and since they were not elected, they could not rise to the same level and status of dignity enjoyed by those who were elected by the people. He opined that there is inherent discrimination and unless the Body supports Mr. Villacorta's amendment, the sectoral seats would not be filled if the Body would allow Congress to enact the implementing law for sectoral representation.

AMENDMENT OF MR. BERNAS AS MODIFIED BY MESSRS. MAAMBONG AND DAVIDE

Thereafter, Mr. Bernas proposed to amend Mr. Villacorta's proposal by substituting the first paragraph with the following: UNTIL A LAW IS PASSED ON THE SUBJECT THE PRESIDENT MAY FILL BY APPOINTMENT THE SEATS RESERVED FOR SECTORAL REPRESENTATION UNDER SECTION 5 OF ARTICLE ____ OF THIS CONSTITUTION.

Mr. Villacorta accepted the proposal.

In reply to Ms. Aquino's query whether once appointed, the term of the sectoral representatives would also pertain to the term of Congress, Mr. Bernas replied in the affirmative.

On whether a law passed during the term of the first Congress would affect the term of the appointed sectoral representatives, Mr. Bernas stated that such law would not unseat them.

Thereupon, Mr. Ople proposed to substitute "until a law is passed" with UNTIL A LAW IS ENACTED BY CONGRESS in order not to foreclose the exercise by the President of the legislative power in Section 2 until Congress is convened. He added that the President may also find the need to promulgate an Executive Order dealing with the essentials of the manner of selection or election until such time that Congress could deal with them in full.

Mr. Bernas explained that he used the phrase "until a law is passed" in order to allow the President to appoint before a law is enacted. He added that this would not foreclose the exercise of the President's legislative power because any law relative to the appointment of sectoral representatives would have to be passed by her.

Mr. Bernas agreed with Mr. Gascon's observation that the intent of Mr. Villacorta's proposal is to ensure that there would be sectoral representatives in the first Congress after the Constitution is ratified.

Mr. Bernas agreed to Mr. Gascon's suggestion to substitute "may" with SHALL.

OBSERVATION OF MR. MONSOD

At this juncture, Mr. Monsod opined that it would be better to retain the word "may" rather than "shall" because the President may not have the time to make the proper selection since according to Mr. Lerum, the candidates for sectoral representatives would have to undergo various processes and they may not have enough time to make the proper selection.

Mr. Gascon maintained that there should be an assurance that all sectors mentioned in Section 5 of the Article on the Legislative would be represented in the First Congress. He pointed out that there would be five months from the ratification of the Constitution to the election of the first Congress, hence, the process of selection could be done in the same manner as the Members of the Commission were chosen.

Replying thereto, Mr. Monsod stressed that the process between selecting the Members of the Commission and the sectoral representatives is different. He stated that it is enough that a provision is included in the Constitution and for the Body to remain silent because the President would abide by her commitments.

Mr. Bernas suggested that the Body should first vote on whether to change "may" to SHALL.

Mr. Davide sought permission from the Chair to speak against the change of the word "may" to SHALL.

The Chair, however, recognized Mr. Colayco who, in turn, queried as to the reason why Mr. Villacorta favored the peasants and workers sectors as against the women, indigenous communities, youth and urban poor sectors, to which the latter replied that his proposal is not discriminatory but merely preferential.

Mr. Colayco opined that Mr. Villacorta's proposal is discriminatory and that he would propose for the deletion of

the second paragraph thereof.

The Chair stated that the proposal would be taken up later on.

At this juncture, Mr. Gascon proposed to reinsert the phrase FROM A LIST OF RECOMMENDATIONS BY THEIR RESPECTIVE SECTORS which had been deleted by virtue of Mr. Bernas' proposed amendment to encourage the members of the different sectors to participate in the selection of the appointees to the First Congress.

Mr. Villacorta stated that when he accepted Mr. Bernas' proposal, it was with the understanding that those belonging to the different sectors would be allowed to participate in the process of choosing their representatives.

Mr. Bernas agreed that that would be the sense of his proposal.

Mr. Villacorta, however, stated that in order to make it clearer, Mr. Bernas' proposed amendment should read as follows:

UNTIL A LAW IS PASSED ON THE SUBJECT, THE PRESIDENT MAY FILL BY APPOINTMENT THE SEATS RESERVED FOR SECTORAL REPRESENTATION FROM A LIST OF RECOMMENDATIONS BY THEIR RESPECTIVE SECTORS UNDER ARTICLE ____ OF THIS CONSTITUTION.

At this juncture, Mr. Rodrigo questioned the propriety and practicability of limiting the President's choice to a list submitted by the different sectors because labor, for example, has many unions all over the country and they may not have enough time to submit their respective lists.

Responding thereto, Mr. Lerum stated that in the last regular Batasang Pambansa, the sectors were allowed to submit their recommendees from which former President Marcos chose the appointees. He added that there were certain criteria followed such as the recommending organization must be national in character and must also follow the rule of law.

On whether Mr. Marcos was limited in his choice to the list submitted by the sector or whether he had the freedom to appoint somebody who was not included in the list, Mr. Lerum stated that Mr. Marcos appointed only those who were included in the list because there is a law which provided that the appointees must come only from among the recommendees of the various sectors. He stated, however, that the appointments made by Mr. Marcos were 17 months late which, in effect, was a violation of the law.

REMARKS OF MR. MONSOD

Thereupon, Mr. Monsod stated that 80 to 90 percent of labor are unorganized, for which reason there is a reservation about using the word "shall" because an exhaustive selection process might take more than 5 months.

Mr. de Castro added that he supports Mr. Rodrigo's view that using the list submitted by the various sectors as basis for selecting their representatives would unduly restrict the hand of the President from making her own choices.

Thereafter, Mr. Maambong suggested the deletion of the phrase "on the subject", to which Mr. Bernas agreed.

He then proposed to reword the proposal as follows:

UNTIL A LAW IS PASSED, THE PRESIDENT MAY FILL BY APPOINTMENT FROM A LIST OF RECOMMENDATIONS OF THE RESPECTIVE SECTORS THE SEATS RESERVED FOR SECTORAL REPRESENTATION UNDER SECTION 5 OF ARTICLE OF THIS CONSTITUTION.

Mr. Villacorta accepted the rewording of the proposal.

Thereafter, Mr. Bernas' suggestion for the Body to vote on either "may" or SHALL was submitted to a vote, and with 14 Members voting for SHALL and 15 voting for "may", the latter word was approved by the Body.

PROPOSED AMENDMENT OF MR. DAVIDE

Thereupon, Mr. Davide proposed to insert a comma (,) and the word PREFERABLY after "appointment" and to substitute "recommendations" with NOMINEES.

Mr. Gascon, however, objected stating that it would be awkward if the appointee would not even come from the list of nominees submitted by the sectors. He suggested that the proposal be submitted to a vote.

The Chair inquired on the Committee's reaction to the proposal, in reply to which Mr. Suarez sought clarification as to what would be voted upon.

In response thereto, the Chair stated that the word PREFERABLY proposed by Mr. Davide has been rejected by the Committee and would be submitted to the Body for a vote.

Thereupon, submitted to a vote, and with 11 Members voting in favor, 15 against and 1 abstention, the proposed amendment was lost.

RESTATEMENT OF THE FIRST SENTENCE

Upon direction of the Chair, Mr. Villacorta read the first sentence of the proposed Section as follows:

UNTIL A LAW IS PASSED, THE PRESIDENT MAY FILL BY APPOINTMENT FROM THE LIST OF NOMINEES BY THE RESPECTIVE SECTORS, THE SEATS RESERVED FOR SECTORAL REPRESENTATION UNDER ARTICLE OF THIS CONSTITUTION.

Mr. Colayco registered his objection to the submission of the first sentence of the first paragraph to a vote for the reason that his vote on the entire Section would depend on how the second paragraph is disposed of. He suggested that the entire Section be first debated upon before submitting any portion thereof to a vote, and in case the second paragraph is not deleted, he would not be voting in favor of the first paragraph because it is affected by the merits of the second paragraph.

INQUIRY OF MR. MAAMBONG

In reply to Mr. Maambong's query whether the first paragraph could stand alone without the second paragraph, Mr. Villacorta answered in the affirmative.

COMMENT OF MR. PADILLA

Mr. Padilla pointed out that voting on a single word, such as "may" or "shall" and "preferably" is unprocedural and unparliamentary suggesting that the second sentence be first voted upon.

Mr. Colayco stated that he has to present his amendment to the second paragraph, after which, if rejected by the Committee, he would ask that it be submitted to a vote.

SUSPENSION OF SESSION

At this juncture, upon request of Mr. Villacorta, the Chair suspended the session.

It was 5:42 p.m.

RESUMPTION OF SESSION

At 5:43 p.m., the session was resumed.

MANIFESTATION OF MR. VILLACORTA

Upon resumption of session, Mr. Villacorta stated that his coauthors had expressed their willingness to delete the second paragraph.

UNTIL A LAW IS PASSED, THE PRESIDENT MAY FILL BY APPOINTMENT FROM A LIST OF NOMINEES BY THE RESPECTIVE SECTORS THE SEATS RESERVED FOR SECTORAL REPRESENTATION UNDER ARTICLE OF THIS CONSTITUTION.

Submitted to a vote, and with 28 Members voting in favor, none against and 1 abstention, the Body approved the same.

INQUIRY OF MR. ROMULO

In reply to Mr. Romulo's query whether the President could ask for a new listing until she is satisfied, Mr. Villacorta opined that, theoretically, the President could do so, but knowing her, she would not.

Mr. Bernas stated that the President may ask for another list if she wants to, but if she is not satisfied, she might decide not to appoint anybody. He affirmed that the President has the discretion on whether or not she would appoint on the basis of the list presented to her.

Mr. Ople volunteered the information that in the past, guidelines were drawn by the Office of the President to guide sectoral organizations in choosing their nominees.

SUGGESTION OF MR. MAAMBONG

At this juncture, Mr. Maambong suggested that the new Section be denominated as Section 13 to avoid confusion and in order not to disturb the numbering of the Committee Report.

INQUIRY OF MR. NOLLEDO

In reply to Mr. Nollado's query whether "laws" on Section 3 would refer to Acts of the Philippine Commissions the Philippine Legislature, the Philippine Commonwealth and Republic Acts, Mr. Suarez answered in the affirmative. He also affirmed that "Executive Orders" would also include those issued by President Corazon Aquino.

Mr. Maambong volunteered the information that President Aquino had already issued nine Proclamations, forty-three Executive Orders, six Memorandum Circulars and ten Memorandum Orders.

With respect to Executive Agreements, Mr. Suarez affirmed that they are not covered by Section 3. He also affirmed that under Section 3 the Supreme Court may declare the laws, decrees, orders, proclamations, instructions and other executive issuances unconstitutional.

On whether the Committee would be amenable to insert the words THE INCUMBENT PRESIDENT UNDER SECTION 2 HEREOF OR between the words “repealed” and “by” considering that the provision, as worded, states that Congress alone has the power to amend, modify or repeal existing laws, Mr. Maambong stated that the same is already covered by Section 2.

PROPOSED AMENDMENT OF MR. DAVIDE

Mr. Davide proposed to add after “Congress”, a comma (,), followed by the words OR REVOKED OR SUPERSEDED BY SUBSEQUENT EXECUTIVE ORDERS, PROCLAMATIONS, OR OTHER EXECUTIVE ISSUANCES, stating that without it, the authority to repeal, modify or supersede Executive Orders or Proclamations would be limited to Congress alone.

Adverting to his answer to Mr. Nollado's query, Mr. Maambong stated that the Committee could not accept the proposed amendment because the power is already inherent in the President. He stated that the legislative power vested in the President under Section 2 carries with it the power to issue and revoke Executive Orders.

Mr. Davide pointed out, however, that such power holds true only until Congress convenes, beyond which, executive issuances could only be superseded, repealed or amended by Congress because said legislative power of the President ceases by then.

In reply to Mr. Maambong's query whether an enabling law would be necessary to grant the President her inherent powers such as the issuance of Executive Orders, Memorandum Circulars, Administrative Orders and Proclamations, Mr. Davide answered in the negative, stating that under the Committee's proposal, all existing laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances consistent with the Constitution shall remain operative, unless amended, modified or repealed by Congress. He stated that, in effect, the executive orders and proclamations are institutionalized perpetually unless superseded or amended by Congress.

Mr. Maambong expressed agreement with the views of Mr. Davide, but requested for a reformulation so as not to make Section 3 too lengthy, to which Mr. Davide agreed.

Mr. Suarez proposed to add OR THE PRESIDENT AS THE CASE MAY BE after “Congress”, which Mr. Davide rejected stating that even a law may be amended or repealed by the President under such formulation.

As to Executive Orders, Mr. Davide expressed agreement thereto.

SUGGESTION OF MR. PADILLA

Mr. Padilla observed that in Section 3, all existing laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances are all placed in the same category. He suggested that statutory laws be distinguished from Presidential Decrees, especially those issued by the past regime.

He suggested the reformulation of Section 3 to read as follows:

ALL EXISTING LAWS NOT INCONSISTENT WITH THIS CONSTITUTION SHALL REMAIN OPERATIVE UNTIL AMENDED, MODIFIED OR REPEALED BY CONGRESS. ALL PRESIDENTIAL DECREES, EXECUTIVE ORDERS, PROCLAMATIONS, LETTERS OF INSTRUCTIONS AND OTHER EXECUTIVE ISSUANCES OF THE PAST REGIME SHALL NOT BE OPERATIVE UNLESS CONFIRMED BY THE PRESIDENT OR APPROVED BY THE CONGRESS.

INQUIRY OF MR. LERUM

In reply to Mr. Lerum's query whether the executive orders issued by President Aquino would become ineffective unless validated, Mr. Padilla stated that presidential issuances could be adopted by the President in the exercise of her legislative power until Congress is convened, or that they could also be confirmed, adopted or enacted by Congress.

Mr. Lerum inquired about Wage Orders No. 1 to No. 6 in the meantime that no validation is made. Mr. Padilla stated that during the past regime, six wage orders had been successively issued, which were imposed on the private sector but which are not even implemented for government employees. He stated that he is against impositions of all kinds of control even of wage orders especially when they are imposed on the private sector without their previous consent.

On a point of information, Mr. Nollado stated that Section 1, Article 4 of Proclamation No. 3 answers Mr. Padilla's concern as it, in effect, validates the decrees and other executive issuances of the past regime.

Reacting thereto, Mr. Maambong explained that when he, Messrs. Ople, Natividad and de los Reyes filed Resolution No. 262 which was the basis of the present formulation, and when Mr. Davide filed his Resolution No. 476, there were a lot of debates at the Committee level because of the objection of Mr. Padilla and that in view of the debates, the members had decided to adopt the wording of Section 1, Article IV of the Freedom Constitution which was quoted by Mr. Nollado. Mr. Padilla, he observed, would again seek to amend the formulation.

He noted that as far as executive orders, proclamations, letters of instructions and executive issuances are concerned, there is a presumption of legality until they are repealed. He manifested that he had volunteered an information, at the Committee level, that in his conversation with Minister Villafuerte, he was informed that there was an instruction to all Cabinet Ministers to compile all the repressive decrees, LOIs and issuances of the previous administration and report them to Malacañang. He stated that before Congress is convened, all these presidential decrees, orders and issuances shall have been compiled by the ministries and shall have been repealed by an Executive Order or Proclamation issued by President Aquino.

He argued that to accept Mr. Padilla's suggestion to make exceptions would damage the whole section as there are so many decrees, letters of instructions and other issuances which, if repealed outright, might paralyze the government.

Mr. Rama informed that Mr. Davide has an amendment and that Mr. Padilla has an amendment to the amendment.

Mr. Padilla stated that he is aware of Section 1, Article IV of the Freedom Constitution but observed that it is not very clear whether it intends to keep alive as operative, valid and effective all the issuances of the former regime. He noted that all these issuances, some of which are not published and known, could not even be validated. He remarked that even if the intention is assumed, which he perceived is not an intention to validate, the Commission can make the distinction between existing laws or statutory laws and unilateral presidential issuances of the past regime.

MODIFIED AMENDMENT OF MR. DAVIDE

On the Chair's inquiry whether he is accepting the amendment, Mr. Davide proposed a modified amendment, which would, split Section 3 into two paragraphs, to wit: .

ALL EXISTING LAWS NOT INCONSISTENT WITH THIS CONSTITUTION SHALL REMAIN VALID UNTIL AMENDED, MODIFIED, OR REPEALED BY CONGRESS. ALL DECREES, EXECUTIVE ORDERS,

PROCLAMATIONS, LETTERS OF INSTRUCTIONS, AND OTHER EXECUTIVE ISSUANCES NOT INCONSISTENT WITH THIS CONSTITUTION SHALL REMAIN IN FORCE UNTIL AMENDED, MODIFIED OR REPEALED BY THE INCUMBENT PRESIDENT OR BY CONGRESS.

Mr. Padilla observed that the reformulation is in line with his amendment to divide the section into two sentences.

INQUIRY OF MR. MAAMBONG

In response to Mr. Maambong's query whether decrees are included in the second paragraph, Mr. Davide stated that the decrees would remain in force in order to accommodate the position of Mr. Padilla. Additionally, he stated that inasmuch as the decree is in force, it is operative until the incumbent President or Congress modifies, amends or repeals it.

As to whether the second paragraph would allow the President to amend, modify or repeal presidential decrees even after Congress shall have convened, Mr. Davide replied in the negative. Mr. Maambong remarked that it is not clearly indicated in the formulation, to which Mr. Davide pointed out that by then, the President shall no longer exercise legislative power to enact decrees.

Mr. Maambong observed that the second paragraph may run counter to the approved provision on the judicial department in which the validity of presidential decrees, as far as enforceability is concerned, is impliedly admitted and that it even requires a certain number of votes, either majority of all the members of the Supreme Court or in certain cases majority of those present, in declaring the decrees unconstitutional or unenforceable. He pointed out that the Body is giving validity to presidential decrees under the judicial department but the formulation of Mr. Davide would revert to the opinion that presidential decrees are just like executive orders.

In reply, Mr. Davide stated that he is not too sure of the provision on the Judiciary, although he remembers that declaring a proclamation, decree, letter of instruction, unenforceable or void, a lesser number of votes would be required, unlike in the case of a treaty, international agreement or law.

Mr. Maambong concurred with the observation but pointed out that in the matter of presidential decrees a lesser number of votes is required to declare a decree unenforceable but not to declare it unconstitutional. He stressed the need for consistency in all the constitutional provisions.

INQUIRY OF MR. NATIVIDAD

On the query of Mr. Natividad, Mr. Davide explained that insofar as the first paragraph is concerned, existing laws remain valid until modified, amended or repealed by Congress.

On the difference between the first and second paragraphs, Mr. Davide clarified that the word "valid" is in the first and the words "remain in force" are in the second paragraph. The first, he clarified, allows Congress while the second allows the President or Congress to amend, modify or repeal decrees and other executive issuances.

Mr. Natividad adverted to Presidential Decree No. 769 or the Adult Probation Law under which 50,000 sentenced offenders are serving their terms, not in prison but in certain communities, under the terms and conditions of the law.

Mr. Natividad observed that the country has adopted a liberal approach of not sentencing old People to jail for all types of offenses. He informed that for the first time in Philippine history and in accordance with resolutions passed in the U.N. Congresses on Crime Prevention, the government has adopted through PD No. 769, complemented by PD No. 603, the Adult Probation System and Juvenile Probation System, respectively. Under the former, he informed that the government has opted for suspension of the implementation of the sentence on

adults, while in the latter, the suspension of actual sentencing on the juvenile. He noted that through the Law, some P300 million had been saved and that the U.N. has found the Philippine system, in terms of rate of violation of probation, as one of the best in the world. He noted that the Philippine rate of violation of probation is only 2% compared to the U S's and England's 25%.

As to whether the formulation would affect the operation of the system, Mr. Davide maintained that the laws shall remain in force and operative until otherwise repealed, amended or modified by Congress or by the President. He added that the President or Congress cannot just set aside a very good law affecting both adult and youth offenders.

INQUIRY OF MR. OPLE

Mr. Ople stated that over the years, millions of transactions between and among citizens and with foreign countries had taken place on the basis of the decrees and executive orders issued by the former President which resulted in thousands of earned and vested rights, including those based on contracts. He asked whether the formulation would deny the validity of such decrees and executive powers which were authored by President Marcos without the participation of an elected Congress, and in so doing, vitiate all the earned vested rights and the integrity of contracts and even international agreements based on them.

Mr. Davide drew attention to Section 3 which he stated, does not even mention validity but says only "shall remain operative?" referring to all existing laws. He stated that in his proposal, he had used "valid" in reference to existing laws and used "shall remain in force" with respect to others, which have the same effects as the original wording of the Committee Report. He stressed that Congress, taking into account the vested interests acquired under a particular law, would not just repeal, amend or modify an existing law or executive order.

On whether there shall be a deleterious effect on contracts, agreements, earned rights and vested rights, Mr. Davide opined that such an effect would follow if Section 3 is approved. He underscored that Congress shall take into consideration everything affecting a particular Executive Order.

Upon inquiry, Mr. Davide affirmed that his amendment is to put the laws in clearer arrangement and perspective.

REMARKS OF MR. PADILLA

Mr. Padilla stated that contractual and vested rights shall not be impaired. He concurred with Mr. Natividad that some presidential decrees are good laws.

Apropos the observation of Mr. Maambong, Mr. Padilla opined that there is no need to mention the Judiciary inasmuch as it is a fundamental rule that it is the Judiciary's prerogative and power to declare any law or executive order invalid or unconstitutional if it contravenes any provision of the Constitution.

Thereupon, he accepted the amendment of Mr. Davide.

MR. SARMIENTO'S AMENDMENT TO THE AMENDMENT

Mr. Sarmiento observed that Mr. Davide's amendment does not cover unpublished decrees issued by the former President and proposed an amendment which would be a third sentence, to read:

UNPUBLISHED DECREES SHALL BE INOPERATIVE UNLESS VALIDATED BY THE INCUMBENT PRESIDENT OR CONGRESS.

Mr. Davide remarked that although it is a good proposal, he could not agree on the last part thereof inasmuch as

the President cannot validate a decree which is unknown and unpublished.

Mr. Sarmiento insisted that eventually, such decrees would be discovered.

POINT OF INFORMATION OF MR. FOZ

Mr. Foz informed that a recent Supreme Court ruling states that the presidential issuances and decrees of the former President are not valid until or unless published.

SUSPENSION OF SESSION

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

It was 6:28 p.m.

RESUMPTION OF SESSION

At 6:29 p.m., the session was resumed.

Upon resumption of session, Mr. Sarmiento withdrew his amendment.

SUSPENSION OF SESSION

The Chair suspended the session on the request of Mr. Davide.

It was 6:30 p.m.

RESUMPTION OF SESSION

At 6:31 p.m., the session was resumed.

Mr. Rama informed that Messrs. Davide and Padilla are still conferring over their proposed amendment.

ADJOURNMENT OF SESSION

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

It was 6:31 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 2, 1986

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