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Thursday, October 2, 1986

CALL TO ORDER

At 10:17 a.m., the Presiding Officer, the Honorable Jose C. Colayco, called the session to order.

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mr. Crispino M. de Castro, to wit:

Heavenly Father, as we approach the end of our labors in the making of a new Constitution for our people, we saw how You guided our minds and our hearts. We also saw how You enlightened us and opened our eyes and minds when we tried to understand and finally understood the ideals and proposals that differed from our own. We saw how You allowed the light of reason to shine on our discussions and debates and thus we were able to exchange ideas, thoughts and arguments with truth, clarity and sincerity.

For all these, we thank You, O Lord.

We pray that You continue to give us a little more strength, a little more wisdom and understanding to discern what is right and what is wrong; what is good and what is bad; what is true and what is not true, that our Constitution shall be truly reflective of the ideals of our people.

We pray for humility when our resolutions are favored and allow us to accept defeat graciously when our resolutions are voted down.

Guide us, Almighty God, in these final days to make this Constitution truly democratic and acceptable to our people.

These we ask You through our Lord.

Amen.

ROLL CALL

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

Azcuna, A. S Nollado, J. N.

Bengzon, J. F. S Ople , B. F.

Bennagen, P. L Padilla. A. B.

Bernas, J. G. Quesada, M. L. M

Rosario Braid, F Rama, N. G

De Castro, C. M Regalado, F. D

Colayco, J. C. De los Reyes, R. F

Concepcion, R. R. Rigos, C. A.

Davide, H. G. Rodrigo, F. A

Foz, V. B. Romulo, R. J

Gascon, J. L. M. C Suarez, J. E

Guingona, S. V.C Sumulong, L. M

Jamir, A. M. K. Tadeo, J. S. L

Lerum, E. R Tingson, G. J.

Maambong, R. E Treñas, E. B

Natividad, T. C Uka, L. L

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

The following Members appeared after the Roll Call:

A.M.

Abubakar Y. R.

Muñoz Palma,

Alonto, A. D.

Samiento, R. V

Aquino, F. S.

C.Tan, C.

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

Nieva, M. T. F

P.M.

Bacani, T. C. Monsod, C. S.

Mr. Laurel was absent.

Messrs. Calderon and Rosales were sick.

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

On September 29, 1986, Mr. Alonto, who was on official mission, was inadvertently marked absent.

READING AND APPROVAL OF THE JOURNAL

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

REFERENCE OF BUSINESS

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

REFERRAL TO COMMITTEES OF PETITION AND COMMUNICATIONS

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

PETITION

Petition No. 4 — Constitutional Commission of 1986

Petition of the Committee on the Judiciary signed by its Chairman, the Honorable Roberto R. Concepcion, earnestly requesting the Constitutional Commission to reopen Sections 3, 10, 11 and 14 of the Article on the Judiciary

TO THE STEERING COMMITTEE

COMMUNICATIONS

Communication No. 1031 — Constitutional Commission of 1986

Letter from Governor Ismael D. Sueno, Koronadal, South Cotabato, transmitting a resolution adopted by the OIC Provincial Governor and OIC Municipal Mayors of the Province of South Cotabato, seeking the creation of four (4) congressional districts for South Cotabato

TO THE COMMITTEE ON THE LEGISLATIVE

Communication No. 1032 — Constitutional Commission of 1986

Letter from OIC Governor Bantas W. Suanding of the Province of Benguet, transmitting Resolution No. 75 of the Sangguniang Bayan of Mankayan, Benguet, informing the Constitutional Commission that said municipality is strongly endorsing the regionalization of the Cordilleras as far as administration is concerned and not as an autonomous region

TO THE COMMITTEE ON LOCAL GOVERNMENTS

Two letters from the Honorable Anacleto D. Badoy, Jr., Commission on Elections, Manila, to wit:

Communication No. 1033 — Constitutional Commission of 1986

1) Letter seeking separate representation in the Lower House of Congress for cities whose charters prohibit their residents from voting in the elections for provincial elective officials

TO THE COMMITTEE ON THE LEGISLATIVE

Communication No. 1034 — Constitutional Commission of 1986

2) Letter seeking the deletion of the phrase "concurrence of the President" in Section 2(4) of Resolution No. 11 of the Constitutional Commission of 1986, incorporating in the Constitution the provisions on the Commission on Elections, and to add the following new paragraph to Section 12 of said Resolution, to wit: "Funds appropriated for the operating expenses of the Commission shall likewise be released automatically upon certification of the Chairman of the Commission."

TO THE COMMITTEE ON CONSTITUTIONAL COMMISSIONS AND AGENCIES

Communication No. 1035 — Constitutional Commission of 1986

Letter from Mr. Johnny Midnight of 821 J.P. Rizal, Makati, Metro Manila, urging the Constitutional Commission to incorporate in the Constitution an article that would clearly define what and who is a Filipino

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 1036 — Constitutional Commission of 1986 Communication from the North Philippine Union Mission of Seventh-day Adventists, Donada Street, Pasay City, signed by Espiritu B. Guadiz, objecting to any constitutional provision allowing the teaching of religion in public schools

TO THE COMMITTEE ON HUMAN RESOURCES

MOTION TO VOTE ON THIRD READING ON THE ARTICLE ON SOCIAL JUSTICE

Thereafter, Mr. Rama moved that the Body vote, on Third Reading, on the Proposed Resolution on Social Justice, entitled:

Resolution to incorporate in the new Constitution a separate Article on Social Justice,

copies of which were distributed to the Members of the Commission on August 13, 1986, pursuant to Section 27, Rule VI of the Rules of the Commission.

SUSPENSION OF SESSION

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

It was 10:26 a.m.

RESUMPTION OF SESSION

At 10:30 a.m., the session was resumed.

WITHDRAWAL OF MOTION TO VOTE ON THIRD READING ON THE ARTICLE ON SOCIAL JUSTICE

Upon resumption of session, in view of the request of some Members of the Committee on Social Justice to defer the voting on Third Reading on the Article on Social Justice, Mr. Rama withdrew his motion.

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

On motion of Mr. Rama, there being no objection, the Body resumed consideration, on Second Reading, of

Proposed Resolution No. 540 (Committee Report No. 38), entitled:

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

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

Mr. Rama stated that the Body was in the period of interpellations and amendments, in accordance with the revised rules.

PROPOSED AMENDMENT OF MR. DAVIDE

Mr. Davide proposed a substitute amendment on Section 3, which reads as follows:

SECTION 3. UNLESS THEY ARE INCONSISTENT WITH THE PROVISIONS OF THIS CONSTITUTION, ALL EXISTING LAWS SHALL REMAIN VALID, AND ALL EXISTING DECREES, EXECUTIVE ORDERS, PROCLAMATIONS, LETTERS OF INSTRUCTION AND OTHER EXECUTIVE ISSUANCES SHALL REMAIN OPERATIVE, UNTIL SUBSEQUENTLY AMENDED, MODIFIED, REPEALED OR REVOKED.

Mr. Maambong agreed with the deletion of the words "by Congress" so that the President can also repeal, modify or revoke decrees and other Presidential issuances even before Congress is convened.

Mr. Davide, however, clarified that the authority of the incumbent President to revoke would be exercised not necessarily because of her legislative power but because of her executive powers.

The Sponsor accepted Mr. Davide's amendment.

MR. RODRIGO'S AMENDMENT TO THE AMENDMENT

Mr. Rodrigo then proposed to delete the word "modified" stating that it is the same as "amended".

The Sponsor accepted Mr. Rodrigo's amendment the amendment.

Mr. Rodrigo likewise proposed to delete the word "revoked" as synonymous with "repealed", in reply to which, Mr. Maambong explained that "revoked" refers to the action of the President and not of Congress.

PROPOSED AMENDMENT OF MR. PADILLA

Thereafter, Mr. Padilla observed that the formulation of Mr. Davide did not make any clear distinction between statutory laws and presidential issuances. He suggested that the proposed Section be divided into two sentences to clarify the differences as he had proposed during the previous session.

Mr. Maambong pointed out that the distinction between laws and decrees was already set out in Section 3 of the Article on the Judiciary, specifically on the jurisdiction of the Supreme Court as to the constitutionality of executive orders and decrees as distinguished from laws, and such distinction would not be necessary in the Transitory Provisions.

Mr. Padilla insisted that Section 3 be divided into two sentences.

Mr. Maambong did not accept Mr. Padilla's amendment to Mr. Davide's amendment.

POINT OF INFORMATION OF MR. REGALADO

On Mr. Maambong's reference to Section 3(2) on the constitutionality of treaties and international agreements or laws in relation to Section 3(3) on presidential decrees and proclamations, Mr. Regalado pointed out that Section 3(2) requires a vote of majority plus one while Section 3(3) requires only a majority. He disclosed, however, that the Committee on the Judiciary proposed that there should be no distinction in the number of votes required with respect to treaties, international or executive agreements, as well as presidential decrees, proclamations and other issuances, so that the two subsections would be merged into just one section.

In view thereof, Mr. Maambong stated that it would not be necessary to make a distinction in the Transitory Provisions since no distinction was made in the body of the Constitution.

Mr. Regalado, however, clarified that it was only a proposal of the Committee on the Judiciary subject to the reconsideration of the said section and approval by the Body.

REMARKS OF MR. PADILLA

Mr. Padilla maintained that with the earlier acceptance by the Committee and Mr. Maambong of the distinction found in the Article on the Judiciary, it would be necessary to reflect such distinction in the Transitory Provisions. But as regards the constitutionality of treaties and international agreements and the presidential decrees and issuances, the Supreme Court has the judicial power to pass upon that constitutionality but he opined that the original distinction is necessary and that he would request for a copy of said proposal so that he could make suggestions to reflect such distinction.

SUSPENSION OF SESSION

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

It was 10:46 a. m

RESUMPTION OF SESSION

At 10:49 a.m., the session was resumed. Upon resumption of session, Mr. Davide stated that since the Committee has already accepted his proposal to insert the word "revoked", he would not accept Mr. Padilla's proposed amendment to his amendment because the concerns of the latter are already well taken care of. He then submitted the matter for decision by the Body.

REMARKS OF MR. PADILLA

Thereupon, Mr. Padilla expressed regret that as the original proponent of the amendment to divide the section into two sentences so as to make a distinction between existing laws and Presidential Decrees, which proposal was practically accepted by Mr. Davide after trying to reformulate it, he would now be completely disregarded and now it appears that he is merely reamending the latter's amendment. He added that since the Body is already satisfied therewith, he would no longer press his point but he hoped that the same incident of disregarding the original proponent of an amendment should not happen again in the future.

Mr. Maambong clarified that when Mr. Davide presented the amendment, he gave the assurance that it reflected the intention of Mr. Padilla. He stressed that Mr. Padilla was never left out in the formulation presented by Mr. Davide.

Mr. Padilla, however, pointed out that he had not been consulted with regard to the last formulation which was

accepted by the Committee.

Thereupon, Mr. Davide stated that the Committee did not accept his formulation. He explained that the Committee only recommended the deletion of the words "by Congress" and accepted his proposal to add REVOKED after "repealed".

APPROVAL OF SECTION 3

Thereafter, Mr. Suarez read the reformulated version of Section 3 as follows:

SECTION 3. ALL EXISTING LAWS, DECREES EXECUTIVE ORDERS, PROCLAMATIONS, LETTERS OF INSTRUCTIONS AND OTHER EXECUTIVE ISSUANCES NOT INCONSISTENT WITH THIS CONSTITUTION SHALL REMAIN OPERATIVE UNTIL AMENDED, REPEALED OR REVOKED.

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

Mr. Padilla registered his objection to the approval of the Section.

PROPOSED AMENDMENT OF MR. REGALADO

Thereafter, Mr. Regalado proposed to reword Section 4 to read as follows:

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. THE PROVISIONS OF THE EXISTING RULES OF COURT, JUDICIARY ACTS AND PROCEDURAL LAWS NOT INCONSISTENT WITH THIS CONSTITUTION SHALL REMAIN OPERATIVE UNLESS AMENDED OR REPEALED BY THE SUPREME COURT OR CONGRESS.

REMARKS OF MR. DE CASTRO

At this juncture, Mr. de Castro stated that Section 3 should be submitted to a vote because of the objection of Mr. Padilla. He stated that he would like to register an abstention because Mr. Padilla's position was not taken into consideration.

Thereafter, on motion of Mr. de Castro, there being no objection, Section 3 was submitted to a vote, and with 26 Members voting in favor, one against and one abstention, Section 3 was approved by the Body.

INQUIRY OF MR. SARMIENTO

Mr. Sarmiento, adverting to the previous agreement that there should be interpellations before the amendments, queried as to why some Members were amending the sections without interpellations.

Replying thereto, Mr. Rama stated that the Body already had a long discussion, including interpellations, which led to the approval of the reformulated version of Section 3.

On Section 4, Mr. Suarez stated that perhaps Mr. Sarmiento would like to interpellate before Mr. Regalado presents his proposed amendment to Section 4.

Mr. Rama informed that it was only Mr. Regalado who manifested an intention to amend Section 4 and that he opted to present an amendment without interpellation .

Mr. Regalado confirmed that he would forego with the interpellation since the Committee had already annotated explanatory notes to Section 4.

Thereupon, Mr. Regalado restated the; first sentence of his proposal as follows: ALL COURTS EXISTING AT THE TIME OF THE RATIFICATION OF THIS CONSTITUTION SHALL CONTINUE TO EXERCISE THEIR JURISDICTION, UNTIL OTHERWISE PROVIDED BY LAW.

Mr. Suarez accepted the proposal.

Thereafter, Mr. Regalado restated the second sentence thereof, to wit: THE PROVISION OF THE EXISTING RULES OF COURT, JUDICIARY ACTS AND PROCEDURAL LAWS NOT INCONSISTENT WITH THIS CONSTITUTION SHALL REMAIN OPERATIVE UNLESS AMENDED OR REPEALED BY THE SUPREME COURT OR CONGRESS.

In reply to Mr. Suarez' query whether procedural laws" are not included in the phrase "existing Rules of Court", Mr. Regalado explained that aside from the Rules of Court, there are other procedural laws which are still enforced such as those contained in the old Code of Civil Procedure and procedural rules relative to ejectment proceedings which are often mistaken as substantive provisions but which are actually procedural provisions. He added that these procedural laws are not embraced within the meaning of "Rules of Court" but are supplementary and complementary rules of procedure.

On Mr. Maambong's query whether he would be amenable to simply use PROCEDURAL LAWS to cover the Rules of Court, the Judiciary Acts and the procedural laws still covered by the New Civil Code, Mr. Regalado replied in the affirmative but he pointed out that in the case of Judiciary Acts like R.A. 296 and B.P. 129, they are partly procedural and partly substantive. He opined that it is better to maintain the three classifications so that there would be no misconceptions.

Mr. Suarez likewise accepted Mr. Regalado's proposed second sentence.

At this juncture, Mr. Maambong proposed to insert a comma (,) after "judiciary acts" in line with the uniform procedure used by the Committee on Style which adopted the British rule as suggested by Mr. Rodrigo.

Mr. Regalado accepted the proposal.

In reply to Mr. Ople's query whether "procedural laws" would include also the rules and regulations of quasijudicial bodies like the Securities and Exchange Commission, Mr. Suarez replied in the affirmative.

Additionally, Mr. Maambong informed that the Body had approved a provision stipulating that the rules of procedure adopted by quasijudicial bodies shall remain operative until they are revoked by the Supreme Court.

APPROVAL OF SECTION 4

Thereupon, Section 4, as reformulated by Mr. Regalado, was submitted to a vote, and with 27 Members voting in favor and none against the same was approved by the Body.

CONSIDERATION OF SECTION 5

Thereafter, on motion of Mr. Rama, there being no objection, the Body proceeded to the consideration of Section 5.

INTERPELLATION OF MR. NOLLEDO

Mr. Nollado stated that the Article on the Judiciary provides for certain periods within which courts of different levels may decide cases. He then queried whether these periods would apply until such time that the Supreme Court has formulated a systematic plan to expedite the decision of pending cases.

Replying thereto, Mr. Regalado informed that in the last meeting of the Committee on the Judiciary, there was a change in the proposed amendments for the Transitory Provisions regarding the matter, in view of which, it would ask for reconsideration of the approval of the Article on the Judiciary. He then requested for a suspension of the session so that he could clarify the matter.

In reply to Mr. Suarez' query whether the Body should defer consideration of Section 5 in order that it could reconsider the approval of the Article on the Judiciary, Mr. Regalado replied in the affirmative.

MOTION TO DEFER CONSIDERATION OF SECTION 5

At this juncture, Mr. Suarez moved to defer the discussion of Section 5 until after reconsideration of the approval of the Article on the Judiciary.

SUSPENSION OF SESSION

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

It was 11:14 a.m.

RESUMPTION OF SESSION

At 11:16 a.m., the session was resumed.

Upon resumption of session, Mr. Suarez manifested the request of the members of the Committee on the Judiciary to suspend the discussion on Section 5 for one hour. He then moved to suspend the discussion on Section 5 for one hour, which motion, there being no objection, was approved by the Body.

CONTINUATION OF MR. NOLLEDO'S INTERPELLATION

On Section 6, Mr. Nollado stated that the 1973 Constitution has a similar provision for members of the Judiciary to continue in office until they reach the retirement age. He noted, however, that the 1973 Constitution gave President Marcos the power to terminate their term or tenure of office. He observed that the draft provision contains two alternatives, namely, reaching the age of seventy years or removal for cause.

On the procedure for removal in the phrase "or are removed for cause," Mr. Suarez stated that with respect to the members of the Supreme Court, their removal would be by impeachment, while all other members of the Judiciary could be removed by the Supreme Court by way of administrative proceedings.

He confirmed that Section 6 does not envision removal by the incumbent President, and that the modes of removal shall be limited to those provided for in the Constitution. He stressed that the Article on the Judiciary substantially prohibits reorganization after ratification of the new Constitution. He also confirmed that the grounds for impeachment are provided in the Article on Accountability of Public Officers.

In reply to Mr. Ople's query whether it is proper to take cognizance of the fact that all the members of the Judiciary have submitted their individual resignations which were accepted by the President and which amounts to removal from office without having reached the age of 70 years; Mr. Nollado answered in the affirmative, stating, however, that it should no longer apply to the members of the Supreme Court and of the Court of Appeals as said Courts have already been reorganized and that appointments thereto have already been made by the President.

Mr. Ople stated that he would like to be clarified whether the provision intends to protect the security of tenure of

all other members of the Judiciary, other than those which have already been reorganized.

Responding thereto, Mr. Nollado opined that the provision should apply only to those holding judicial positions upon ratification of the Constitution.

Mr. Suarez confirmed, however, that the provision would apply to both the Supreme Court and the Court of Appeals.

In reply to Mr. Ople's query whether the President may no longer accept the long pending resignations of those that fall under the classification, Mr. Suarez stated that with respect to voluntary resignation, the President would not have any impediment in accepting such resignation but compulsory or advanced resignation would spell the difference.

Mr. Ople stated that the judges tendered their respective resignations thinking that it was the policy under the revolutionary government, in reply to which, Mr. Suarez stated that the situation falls under Section 2, Article III of Proclamation No. 3 which Section 6 seeks to abrogate.

He gave the assurance that the judges' tenure would be protected should Section 6 be approved.

On Mr. Nollado's final query, Mr. Suarez affirmed that "incumbent members of the Judiciary" would refer to incumbent judges upon ratification of the Constitution.

INTERPELLATION OF MR. BENGZON

In reply to Mr. Bengzon's query whether Section 6 could apply to those who are physically or mentally incapacitated, Mr. Suarez explained that the phrase "incapacitated for cause" was originally included in the draft provision but was eventually deleted. He stated, however, that the Committee would like to reinstate it as a Committee amendment to provide for the third condition for removal.

Mr. Bengzon suggested that should "incapacitated" be reinstated, its scope should be read into the record since a person who is physically incapacitated but mentally healthy could still discharge his functions which require faculties, in reply to which, Mr. Suarez stated that the matter has been inserted in the Article on the Judiciary but that the Committee would be willing to accept amendments at the proper time.

Mr. Maambong manifested Mr. Suarez' suggestion that for purposes of orderly discussion, Section 6 should read:

THE INCUMBENT MEMBERS OF THE JUDICIARY SHALL CONTINUE IN OFFICE UNTIL THEY REACH THE AGE OF SEVENTY YEARS OR BECOME INCAPACITATED TO DISCHARGE THE DUTIES OF THEIR OFFICE, OR REMOVED FOR CAUSE.

INTERPELLATION OF MR. AZCUNA

In reply to Mr. Azcuna's query whether Section 4 would forbid the members of the Judiciary from resigning before reaching the age of seventy years, Mr. Suarez answered in the negative, stating that the provision does not preclude voluntary resignation.

Mr. Azcuna suggested the insertion of ARE between "or" and "removed", in reply to which, Mr. Suarez stated that the Committee would not object to its insertion, during the period of amendments.

MANIFESTATION OF MR. RAMA

At this juncture, Mr. Rama manifested that there are no other speakers on Section 6 and moved for the restatement of the Section.

SUSPENSION OF SESSION

Upon the request of Mr. Suarez, the Chair suspended the session for the reformulation of Section 6.

It was 11:30 a.m.

RESUMPTION OF SESSION

At 11:31 a.m., the session was resumed.

REFORMULATION OF SECTION 6

Mr. Suarez read Section 6 as follows:

THE INCUMBENT MEMBERS OF THE JUDICIARY SHALL CONTINUE IN OFFICE UNTIL THEY REACH THE AGE OF SEVENTY YEARS, OR BECOME INCAPACITATED TO DISCHARGE THE DUTIES OF THEIR OFFICE, OR ARE REMOVED FOR CAUSE.

INQUIRIES OF MR. TINGSON

In reply to Mr. Tingson's query whether a study has been made to show that an average Justice could work mentally with full capacity of judgment at the age of seventy years considering that the life expectancy of Filipinos is only 56 years, Mr. Suarez stated that the Judiciary needs more mature members whose productive capacity are not impaired between the ages of 65 and 70: He cited the case of Justice Gregorio Perfecto who, although he had to be carried in a wheelchair to participate in the adjudication of cases, was mentally sharp.

Mr. Tingson pointed out, however, that Justice Perfecto stayed in office for political reasons, and penned decisions which were all politically-oriented.

APPROVAL OF SECTION 6, AS AMENDED

Thereafter, Mr. Rama moved for a vote on Section 6, as amended.

Submitted to a vote, and with 33 Members voting in favor and none against, the Body approved Section 6, as amended.

MOTION OF MR. ROMULO

On motion of Mr. Romulo, duly seconded, and there being no objection, the Body deferred consideration of Sections 7 and 8 until the next session day.

INTERPELLATION OF MR. BENGZON

In reply to Mr. Bengzon's query whether the reservists in the Armed Forces, specifically the ROTC graduates, would not be included in the dismantling of the armed groups as provided for in Section 9, Mr. Suarez answered in the negative.

Additionally, Mr. de Castro stated that Messrs. Sarmiento, Nollado and Guingona, who coauthored the provision,

made it clear that "armed groups" would refer to the private armies of warlords, while "paramilitary forces" would refer to the Civilian Home Defense Forces (CHDF).

Mr. Sarmiento confirmed Mr. de Castro's clarification. He likewise stated that at the appropriate time, he would request for the deletion of the phrase "outside of the regular police and armed forces" because the Civilian Home Defense Forces under Presidential Decree No. 1016, as amended by Presidential Decree No. 1242 and Executive Order No. 1012, has been formally integrated into the military defense plan. He stated that the Ministry of National Defense has operational control over them including screening, appointment and training, and since "paramilitary forces" refer to the CHDF, the phrase should be deleted.

In reply to Mr. Bengzon's query whether deletion of the phrase would not complicate matters considering that there are paramilitary forces within the regular police and armed forces, Mr. Sarmiento stated that the only legally recognized paramilitary force is the CHDF which exists within the Armed Forces of the Philippines.

On whether Section 3 of the Transitory Provisions would be enough basis to abolish the CHDF considering that the Presidential Decrees and Executive Order which gave birth to it would run counter to the intent of the Constitution, Mr. Sarmiento answered in the affirmative, stating, however, that he would request for the inclusion of the CHDF within the contemplation of Section 9.

Mr. de Castro stated that during the Committee hearing, the representatives of the Armed Forces objected to the abolition of the CHDF because the military does not have sufficient strength to completely eradicate insurgency. He stated that they promised to conduct thorough screening and training of the members. He also stated that while he insisted during the discussion on the sections that the Armed Forces utilize the Civilian Home Defense Forces for internal security purposes, this was merely insinuated, in paragraph 17 thereof. He then indicated that he would leave it to the Body to decide whether or not to retain the CHDF under the conditions already stated.

PROPOSED AMENDMENT OF MR. OPLE

Mr. Ople adverted to his proposed amendment, to wit:

THE STATE SHALL NOT COUNTENANCE PRIVATE ARMIES IN ANY GUISE. ALL PARAMILITARY FORCES NOT CONSISTENT WITH THE CITIZEN ARMED FORCE, ESTABLISHED IN THIS CONSTITUTION, SHALL BE DISSOLVED FORTHWITH

Mr. Ople stated that the intention, is to make private armies completely unconscionable from a constitutional point of view. On the matter of the CHDF, Mr. Ople noted that the President, as Commander in Chief, has been given the flexibility to decide whether the CHDF is consistent with the citizen armed force established in the new Constitution and, if found inconsistent, it could be immediately abolished. He pointed out that the focus of the proposal is on the private armies which are the coercive-apparatus of regional and political warlords.

Mr. Ople stated that Minister Juan Ponce Enrile has informed him that the arms business is brisk because many politicians are preparing for the coming elections which the new Constitution shall authorize and that the provision is a response to this problem which has reached critical proportions.

CONTINUATION OF MR. BENGZON'S INTERPELLATION

Mr. Bengzon observed that the provision does not give a time frame within which the armed groups are going to be dismantled and inquired whether the Committee would be amenable to an amendment therefor.

In reply, Mr. de Castro informed that upon ratification of the new Constitution, the armed groups mentioned in Section 9 shall be dismantled.

Mr. Bengzon pointed out that even if such armed groups are automatically dismantled, they would still be in possession of their arms. He underscored the need to set a period within which the Armed Forces would be able to collect all the arms. He asked if there is any sanction in case the Armed Forces fails to implement the provision within the period specified.

Responding thereto, Mr. de Castro stated that with respect to the CHDF, the implementation would be easy. He conceded that it would be difficult to disarm the other groups even with a time frame provided.

Mr. Bengzon informed that in Region I, there are groups which maintain private armies and that he expected politicians to go on building up their arms hardware, hence, the need to dismantle the groups and collect their arms as soon as possible.

At this juncture, Mr. de Castro requested for suspension of the session to allow Mr. Sarmiento to confer with the Committee.

INQUIRY OF MR. NATIVIDAD

Mr. Natividad observed that the private security industry that was authorized by a Republic Act, which he authored, would fall within the provision of Section 9 as worded. He stressed the importance of the private security industry since the Armed Forces cannot serve as security guards for industrial firms and private individuals. Section 9, he stated, would outlaw the private security industry which has been authorized by law and being supervised by the Philippine Constabulary.

Mr. de Castro stated that he is aware of the situation and reiterated his request for suspension of session to enable the Committee to reformulate Section 3 to exclude private security guards.

POINT OF INFORMATION OF MR. MAAMBONG

Mr. Maambong then gave the background of Section 3 which, he stated, was inherited by his Committee from the Committee on General Provisions where it was originally worded as follows:

ALL ARMED GROUPS AND PARAMILITARY FORCES NOW EXISTING CONTRARY TO LAW SHALL BE DISMANTLED.

The provision, he stated, drew adverse reactions from the Committee Members who felt that if such groups are contrary to law, they should be dismantled immediately without the need of a constitutional provision, hence, the Committee opted to use the phrase "existing outside of the regular police and armed forces" instead of the phrase "existing contrary to law."

He observed that Mr. Sarmiento mentioned Executive Order No. 1012 and should the Administration want to dismantle the CHDF, the constitutional provision can be superseded by the President. He informed that he is not in favor of dismantling the CHDF but would like to place on record that in his hometown of Asturias, Cebu, the CHDF members who surrendered their arms are being picked up and killed one by one.

SUSPENSION OF SESSION

The Chair suspended the session.

It was 11:57 a. m.

RESUMPTION OF SESSION

At 12:08 p.m., the session was resumed.

Upon resumption of session, Mr. de Castro proposed the presentation of the reformulated Section and limit the interpellations thereon.

At this juncture, Mr. Alonto suggested that the Members be allowed to interpellate on the provision before the reformulation is presented.

Reacting thereto, the Chair stated that the reformulation should first be read and thereafter debated.

MANIFESTATION OF MR. RIGOS

Mr. Rigos manifested that since the reformulated statement was based on the suggestions of the Members during the suspension of session, the Committee should have finished with the interpellations before presenting the reformulation.

In reply, Mr. de Castro requested that the interpellations be limited to the new formulation instead of the old formulation which covers a wide area.

As amended by Messrs. Sarmiento, Ople, Bengzon, Mrs. Quesada and other Members, Section 9 would read:

THE STATE SHALL NOT COUNTENANCE PRIVATE ARMIES, PARAMILITARY FORCES AND OTHER ARMED GROUPS IN ANY GUISE. ALL SUCH FORCES SHALL BE DISSOLVED FORTHWITH.

Mr. de Castro then requested that Messrs. Sarmiento and Ople be recognized to explain the amended Section 9.

REMARKS OF MR. SARMIENTO

Mr. Sarmiento explained that private armies would refer to the armed forces of political warlords while armed groups would refer to fanatical groups.

He then adverted to certain armed groups such as the Tadtad group which was known for chopping the bodies of their victims into pieces and eating them; the "Lost Command" which was allegedly involved in the massacre of 45 men, women and children in the village of Las Navas, Northern Samar in 1982; the Philippine Liberation Organization which was responsible for the killing of a prominent newsman in Davao City in September, 1985 and reportedly composed of MNLF surrenderees and other fanatical groups in Zamboanga del Sur and Misamis Occidental.

The paramilitary forces, he informed, refer to the Civilian Home Defense Forces.

Additionally, Mr. Bengzon stated that there are other nameless groups which carry on similar activities.

REMARKS OF MR. OPLE

Mr. Ople stated that, in addition to the groups enumerated by Mr. Sarmiento, Mr. de Castro also cited other paramilitary forces like the New People's Army (NPA) and the Moro National Liberation Front (MNLF), although the Committee was confronted with the problem of whether the Constitution could dissolve such groups. He pointed out, however, that the reformulation focused on the private armies and other paramilitary forces which threaten the freedom and integrity of the elections under the Constitution.

He explained that the CHDF was included in accordance with the consensus in the meeting on "paramilitary

forces" although Mr. de Castro had conveyed the concern of the Armed Forces of the Philippines (AFP) on the lack of an equivalent armed forces in some areas to take the place of the CHDF once it is dissolved. He opined, however, that President Aquino, as the Commander in Chief, would have leeway in determining the fate of the CHDF. He stated that the CHDF represents an imminent threat to the life and liberty of the people in the countryside because it is not trained to perform military tasks since its members are recruited from among the ranks of the unemployed in the locality. He further stated that the Commander-in-Chief and the AFP are not denied the chance to formulate a new policy, but if the CHDF must be retained at all, they should not be just an appurtenant but should be absorbed by and become responsible members of the Armed Forces. He noted that once incorporated into the Armed Forces, they would rise to equality with the other members of the AFP, instead of being second-class military men who are usually looked down even by ordinary soldiers.

Reacting thereto, Mr. de Castro pointed out that private armies, paramilitary forces and other armed groups would not include the private security agencies established by law and supervised by the Philippine Constabulary.

REMARKS OF MRS. QUESADA

Mrs. Quesada stated that the provision on the dismantling of paramilitary and armed groups is one particular issue which the public who had attended the the public hearings had so popularly supported, in view of which, she expressed support for the provision.

REMARKS OF MR. ALONTO

Mr. Alonto stated that, as a citizen of this country, he is in full accord with the provisions of Section 9 because he knows by experience that the organization of the so called private armies and armed groups was the cause of the deteriorating peace and order condition and the disintegration of Filipino society.

He pointed out that private armies do not only de the private armies organized by politicians for election purposes but also armed groups controlled by the political, social, economic or religious groups in the country. He stated that the real and immediate cause of the armed struggle of the Muslim population was the organization of a special force by the government to invade Malaysia and specifically to sow disorder in Sabah. He also stated that the organization of this special force by the government led to the "Jabidah Massacre" which resulted in the death of young Muslims who refused to be used in invading Sabah.

In this connection, Mr. Alonto stated that, because of the Jabidah Massacre, the Muslims became so apprehensive that they started to organize themselves for self-protection, one of which organizations is the Moro National Liberation Front.

INQUIRY OF MR. RIGOS

In reply to Mr. Rigos' query on whether the New People's Army is included in the term "armed groups", Mr. de Castro admitted that the Committee would have liked to include the New People's Army and the Moro National Liberation Front, but it was felt that their inclusion would amount to constitutionalizing them, thus they were not included in the enumeration cited by Mr. Sarmiento. He pointed out that armed groups would refer to private armies of politicians.

On the rationale for not including the NPA in the Constitution, Mr. de Castro stated that the NPA and the MNLF are enemies of the State and, therefore, belong to another group. He reiterated that private armies would refer to those organized by politicians, while the paramilitary forces would refer to the CHDF. He stated that the names of fanatical groups were mentioned for purposes of record. He then gave the assurance that Section 9 would not

affect the negotiation between the government and the MNLF.

INQUIRY OF MS. AQUINO

Ms. Aquino raised serious doubts on the validity and wisdom of the provision because the CHDF problem, together with the fanatical groups, are very legitimate concerns, because of which, it is understandable for Members of the Commission to react by providing for a constitutional mandate prohibiting all forms of armed military groups outside of the regular armed forces. In view thereof, she inquired whether the Commission would give constitutional imprimatur to such a provision which addresses a very specific and time-bound problem that was inextricably linked to the huge conspiracy of militarizing the state under the Marcos regime.

On whether the American armed forces in the U. S. bases would be covered by the term "armed group" in any guise, Mr. de Castro replied in the negative. He also stated that the CHDF is not an illegal force because it was organized by presidential decrees and executive orders.

INQUIRY OF MR. ALONTO

In reply to Mr. Alonto's query on the meaning of the term "private armies", Mr. Sarmiento stated that "private armies" would refer to the armies of politicians.

He also agreed to Mr. Alonto's suggestion that it include economic, social and political warlords.

On the effect of the provision, once approved, on the ongoing negotiation between the government and the MNLF and the National Democratic Front, Mr. de Castro assured that this would not affect the existing peace talks between the government and the NPA or the MNLF. He also reiterated that the NPA and the MNLF are not included in the term "paramilitary forces."

SUSPENSION OF SESSION

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

It was 12:43 p.m.

RESUMPTION OF SESSION

At 3:09 p.m., the session was resumed.

QUESTION OF PRIVILEGE OF MR. TINGSON

Speaking on a question of privilege, Mr. Tingson paid tribute to the late Don Claro Mayo Recto, a nationalist, patriot, true Filipino par excellence, who died 15 years ago at a time when he was not in his country. He described Don Claro as one of the greatest intellectuals the Philippines had ever produced; during his student days, he surpassed the scholastic record of Dr. Jose P. Rizal at the Ateneo de Manila when he was given a grade of maxima cum laude which is the ultimate grade that a student can receive. He stated that at the University of Santo Tomas, Recto passed all his courses with a grade of 100% but, ironically, he flunked the bar examination the first time he took it because he could not express himself well in English, the reason being that Spanish was his second language, the mastery of which had earned him a place in the Spanish Academy of Letters. Recto, he stated, was able to render his works in English with brilliance and literary touch that have not been equalled.

Mr. Tingson noted that Recto has enriched the country's cultural and political heritage and his relevance at this time is anchored more on the fact that he brought the full force of his genius to bear upon the subject of Filipino

nationalism.

He stated that since the Commission is in the process of writing a new Constitution, it is important to bear in mind the ultimate nature of a Constitution which Recto himself rendered in this wise: "We are the Constitution, in the sense, that it can live only in us, through us, for us and because of us." To paraphrase, Mr. Tingson said that ink and paper do not make a Constitution but if it must mean the world to the Filipinos, then its prayers and resolutions, its ideals and aspirations must be the ideals, the aspirations, resolutions and the fervent prayers of the Filipino nation.

Mr. Tingson stated that Recto recognized English democracy to be the oldest and the best, yet, while the English people do not have a written constitution the Filipinos are in the process of writing their sixth fundamental law. Unlike the Filipinos, the English people rely on some old laws, documents, traditional usages and jurisprudence for a pattern of government that has withstood the test of time. It is self-evident that what a Constitution can resolve, guarantee and ordain cannot be more than what the Filipino people are prepared to do for themselves. He stated this is what Recto had been pointing out; that if he were alive today, he would, have advised the Body to correct the tendency to search the Constitution for the roots of the defects and deficiencies in the national life in the mistaken belief that altering the fundamental law would cure them. He quoted Recto, who said:

"The best amendment to the constitution would be the amendment of our lives. Let us so live and act that our lives and deeds will be the safest stronghold against the abuses of tyrants, the schemes of the ambitious and the stupidity of the corrupt. Only thus can we have a Constitution worthy of our great libertarian patrimony and heroic ancestors who founded it, for us to preserve it and protect it, for us to enjoy in perpetuity its incomparable blessings."

Mr. Tingson stated that it was characteristic of Don Claro M. Recto, whenever he was confronted with problems besetting the nation, to redirect the nation itself, and without letup. He preached national self-reliance as the open sesame to a world not devoid of problems, but one, in which the Filipinos are free and independent and capable agents of their national interest. It was belief in the Filipino that was the cornerstone of Recto's nationalism.

Mr. Tingson spoke of Recto as a man who could speak with excellence not only because he was a writer but also an orator and debater who possessed a brilliantly logical mind with a store of knowledge that encompassed the entire Western and Eastern cultural heritage. He stated that to Recto, parliamentary debate was not an end in itself but a means to the truth. He pointed out that a study of the life of this man gives one a lesson in self-respect and respect for the opinion of others.

Mr. Tingson concluded his remarks by saying that the 1935 and 1971 Constitutional Conventions as well as the 1986 Constitutional Commission drew inspiration from Recto and everyone should be grateful that God sent this man to live among the Filipinos.

CONSIDERATION OF PROPOSED RESOLUTION NO. 540 ON THE ARTICLE ON TRANSITORY PROVISIONS

(Continuation)

On motion of Mr. Rama, the Body resumed consideration of Proposed Resolution No. 540 on the Article on Transitory Provisions.

Mr. Rama stated that the Body would discuss Section 9.

INTERPELLATION OF MR. VILLACORTA

On the initial query of Mr. Villacorta, Mr. Sarmiento affirmed that Section 9 is not only punitive but preventive as well.

On whether a politician may circumvent the provision by asking members of his immediate and expanded family, his tenants and other followers, to individually apply for gun licenses or mission orders at different time intervals, Mr. Sarmiento stated that the provision forbidding the existence of private armies, armed groups and paramilitary troops would cover the situation given. He affirmed that the Armed Forces can preempt this method of circumvention by individually denying applications for gun licenses once it becomes clear from a pattern of application that the guns are intended to arm private armies or armed groups. Mr. Sarmiento stated that even Congress could also pass laws that would give teeth to this provision, for instance, by authorizing the AFP to stop the issuance of mission orders or licenses to politicians suspected to have plans of putting up private armies or armed groups.

Additionally, Mr. de Castro explained that the licensing of firearms is covered by law and policies issued by the Constabulary. He stated that applicants for licenses to own or carry firearms have to meet certain legal requirements and comply with the policies issued by the Philippine Constabulary. With respect to mission orders, he stated that these are normally given to regular and enlisted men of the Armed Forces subject to restrictions prescribed by the Ministry of National Defense and the Office of the Chief of Staff. He explained that even if one is granted a firearm license, he cannot carry it outside his residence without authority from the Philippine Constabulary.

Mr. Villacorta pointed out that during the Marcos administrations even civilians had mission orders. He said that it should be guaranteed that this practice is banned in this and future administrations, in reply to which Mr. de Castro believed that this would never happen again.

Mr. Sarmiento informed Mr. Villacorta that even Politicians are supportive of this proposal, and that the League of Provincial Governors and City Mayors even submitted a position paper endorsing the proposal to dismantle paramilitary troops, including the CHDFs.

On the second sentence which reads: "All such forces shall be dissolved forthwith", in reply to Mr. Villacorta's query on the meaning of the word "forthwith", Mr. Sarmiento affirmed that upon ratification of the new Constitution, all such forces would have no place in this country, therefore, the provision contemplates immediate implementation.

Mr. de Castro agreed that "forthwith" means immediate implementation.

INQUIRY OF MR. MAAMBONG

On Mr. Maambong's suggestion to transfer this provision, if approved, to the Article on General Provisions, Mr. Sarmiento stated that he would have no objection.

On the query pertaining to the same word "forthwith", Mr. Sarmiento affirmed that it means the immediate dismantling of all existing paramilitary forces upon ratification of the Constitution.

REMARKS OF MR. TADEO

Mr. Tadeo stated that the farmers were the first victims of abuses committed by the private armies, paramilitary forces and fanatical groups and that he is a living witness to the abuses of the CHDF composed of ex-convicts, criminals and cattle-rustlers. He said that these groups have caused trouble in the countryside, forcing the farmers

to arm themselves for protection. He also said that the presence of these groups has contributed to the growth of the New People's Army. Mr. Tadeo then stressed the need to immediately dismantle said private armies, fanatical groups and paramilitary forces.

COMMENTS OF MR. DE CASTRO

By way of comment, Mr. de Castro stated that Mr. Tadeo's remarks were general and sweeping in picturing the CHDF as a band of robbers, crooks and criminals. He believed that the government, particularly the Armed Forces, would not tolerate them as part of the CHDF. He stated that if ever abuses were committed, proper investigation should be conducted and the appropriate laws made to take their course. He admitted that he had reservations about the paramilitary forces, but he would vote in favor of the provision as a means of fortifying the Armed Forces' campaign against insurgency.

INQUIRY OF MS. AQUINO

Ms. Aquino inquired whether an executive order which the President may issue or law which Congress may enact, creating another paramilitary group to support the military campaign against insurgency or against any threat to internal security would be unconstitutional, in reply to which, Mr. de Castro adverted to the provision on citizen armed force which the Armed Forces, could use in lieu of the CHDF considering that some members of the CHDF are also reservists and reserved officers.

On whether the President or Congress may be denied the flexibility of responding to situations therein the creation of a paramilitary force might be necessary, Mr. de Castro stated that he would not preempt the Executive or the Legislature, but the proposed provision would prohibit the creation of private armies, paramilitary forces and other armed groups under any guise.

Responding to the same query, Mr. Sarmiento stated that this provision would bar the creation of paramilitary troops or forces in the future in the light of many complaints against their existence. He opined that the provision on the citizen armed force would be sufficient to counteract any threat to national security.

Ms. Aquino agreed with Mr. Sarmiento's observation. However, she pointed out the fact that the CHDF was designed on the basis of a study that it would require only one-tenth of the budget needed to support the members of the regular force. She then inquired whether the Body could afford to be too empiricist in its perceptions of the future as to render final judgment on the basis of a sordid experience of the CHDF and to close all possibilities that the people, in the future, might be imbued with the values of soldiery and nationalism.

Replying thereto, Mr. de Castro stated that with the provision disallowing the use of paramilitary forces and other armed groups in the campaign against insurgency, he would recommend that the AFP request for additional funds to expand the regular force to fund the citizen armed force which may be used in the insurgency campaign.

Mr. Sarmiento opined that the creation of paramilitary forces in the future would destroy Mr. de Castro's concept of professionalism in the Armed Forces of the Philippines because these forces are not regular forces of the AFP.

Ms. Aquino inquired whether the purpose of the provision could be better served by an explicit proviso in the Transitory Provisions that would dismantle the CHDF without providing an umbrella provision that would affect all further intentions approximating the points raised by Mr. de Castro. She observed that the provision, as drafted, rightfully belongs to the General Provisions because it is all encompassing and does not specifically address the CHDF problem, although in effect, it does.

The Chair replied that the defects of the provision could be corrected by proper amendments.

INQUIRY OF MR. BACANI

On Mr. Bacani's query whether the Armed Forces' representatives whom the Body consulted were in favor of the dismantling of the CHDF and other paramilitary forces, Mr. de Castro disclosed that they are against the dismantling of the CHDF because they do not have enough funds needed to increase the regular force required to combat insurgency.

REMARKS OF MR. OPLE

Mr. Ople believed that Mr. de Castro was right that under the provision, all paramilitary forces would be dissolved but at the same time, there is nothing to prevent the President, as Commander-in-Chief, from making use of the citizen armed force as a better alternative to the CHDF.

INTERPELLATION OF MR. DAVIDE

In reply to Mr. Davide's query, Mr. de Castro affirmed that upon ratification of the Constitution all paramilitary forces, private armies and other armed groups would be outlawed.

On the penalties for violation of such provision Mr. de Castro pointed out that illegal possession of firearms is a criminal offense punishable by 20 years imprisonment.

On Mr. Davide's observation that it is the group that would be outlawed rather the individual members thereof, Mr. de Castro stated that the members obviously compose the group.

On whether the President of the Philippines would be liable for culpable violation of the Constitution if he or she could not dissolve such paramilitary groups and private armies, Mr. de Castro stated that he could not imagine that the Armed Forces would not be able to dismantle said armed groups, other wise, the Armed Forces itself should be dissolved. He also opined that the President would not violate the Constitution, to which Mr. Davide maintained that the constitutional violation would consist not of the act but of the failure of the effort to dissolve such private armies and paramilitary groups.

Finally, Mr. de Castro affirmed that it would require a directive from the President to dissolve such armed groups.

INTERPELLATION OF MR. FOZ

On Mr. Foz' query whether the provision would prevent the townspeople from organizing themselves and securing arms under the existing laws so that they could defend themselves from imminent danger, Mr. de Castro affirmed that the people have the right to defend themselves with arms they secure from the Armed Forces under the existing laws.

REMARKS OF MR. SARMIENTO

Adverting to Mr. de Castro's reply that upon the ratification of the Constitution, all private armies and other armed groups would be outlawed, Mr. Sarmiento expressed the view that the Constitution should allow some time before they are dismantled because their immediate dismantling could lead to widespread violence and disorder in many areas, in reply to which, Mr. de Castro agreed that it would take some time for talks and arrangement before the private armies could be disarmed peacefully.

Mr. Sarmiento, however, agreed with Mr. Suarez that the phrase "shall not countenance" would mean that the State shall not tolerate the existence of private armies and other armed groups and that, in effect, there is a prohibition although it is not immediately executory.

Mr. Sarmiento also affirmed that he would be amenable to Mr. Davide's suggestion that constitutional mandate should be implemented by law or presidential decree.

On the size and number of members an armed group should have in order that it be prohibited, Mr. Sarmiento stated that the provision does not lay down specific size or number as long as the persons or groups of men are armed in violation of existing laws. He stated that such groups include the goons and bodyguards of politicians or warlords. He, however, opined that two armed bodyguards would not constitute an army.

Finally, he underscored that the proposal would not prevent the President from disbanding the CHDF even before the ratification of the Constitution if she believes that it is more of a liability than an asset to the government.

INTERPELLATION OF MR. RODRIGO

On Mr. Rodrigo's query whether the President has the power to disband private armies and armed groups in the absence of a constitutional provision, Mr. Sarmiento reiterated that the President may disband the CHDF, in particular, considering the public clamor and the denouncements against it by the League of Provincial Governors and City Mayors, the Catholic Bishops' Conference of the Philippines, the Kilusang Magbubukid ng Pilipinas, the Federation of Free Farmers and some Members of the defunct Batasang Pambansa.

On whether the Constitutional proposal would prohibit the Congress from enacting a law allowing the formation of armed groups under certain circumstances, Mr. Sarmiento affirmed that Congress may make such exception under certain extremely necessary conditions, but he noted that Congress should also take into account the past experiences that these armed groups and private armies had not been conducive to peace and order in the country and that the formation of paramilitary groups may be inconsistent with professionalism in the military.

He further explained that although the provision would also prohibit the President from forming armed groups in certain areas under certain circumstances, any danger in such areas could be handled by the citizen armed force and by the regular Armed Forces of the Philippines. He further affirmed that such prohibition would also apply to the Chief of Staff and the Armed Forces' Officers.

He underscored that such provision was based on the collective experience of people especially in the countryside where these armed groups had caused disturbances and disorder.

INTERPELLATION OF MS. AQUINO

In reply to Ms. Aquino's query whether the proposal would distinguish the armed component of political and ideological groups, like the New People's Army, from the private armies of political warlords Mr. Sarmiento clarified that the New People's Army and the Moro National Liberation Front would not be covered by the Constitutional provision but they are covered by the Revised Penal Code and the Presidential Decrees on subversion. He stated, however, that the CHDF and other fanatical groups would be covered by the proposal.

Ms. Aquino concluded that the major concern of the proposal would be the CHDF, considering that other armed groups are already covered by existing laws.

INQUIRY OF MR. MAAMBONG

On Mr. Maambong's query as to why the President has not yet disbanded the CHDF despite the recommendation of the League of Provincial Governors and City Mayors and the Catholic Bishops' Conference of the Philippines, Mr. Sarmiento stated that the President did not have sufficient time to act on the matter because of the multifarious problems besetting the nation. He assured, however, that efforts had been made by the President to

dismantle the CHDF. He stated that the Presidential Committee on Human Rights was created to investigate human rights violations and to study the possibility of abolishing the CHDF.

REMARKS OF MR. OPLE

Mr. Ople pointed out that the private armies of political warlords have been able to acquire legal status because they were able to get appointments as members of the CHDF who were used to guard fishponds and plantations; therefore, it is necessary to relate the activities of the CHDF with the activities of private armies and other armed groups.

PERIOD OF AMENDMENTS

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

POINT OF INFORMATION OF MR. BACANI

At this juncture, Mr. Bacani informed that the position of the National Secretariat of Social Action, which is an arm of the Episcopal Commission on Social Action of the CBCP, was for the dismantling of the CHDF and such position may not necessarily contradict the position of the CBCP.

PROPOSED AMENDMENT OF MR. RODRIGO

Mr. Rodrigo proposed to delete the entire Section on the ground that the President has the power to dismantle the private armies and other armed groups even without such constitutional provision. He also stated that it is within the powers of Congress to declare such armed groups illegal, and the Constitutional provision would tie the hands of Congress regarding said armed groups. He opined that the President and the Members of Congress, who are elected representatives of the people, will act wisely on this matter.

REMARKS OF MR. OPLE

Mr. Ople stated that although the President and Congress have such power, it would do no harm to provide for a constitutional mandate for both the President and Congress to take necessary steps to implement the Constitutional provisions.

Mr. Ople pointed out that one possible consequence of the proposal is that the people would rely for the bulk of national security and defense on the citizen army which has been made the centerpiece of the new configuration of the Armed Forces of the Philippines (AFP). He opined that should the provision not be included in the Transitory Provisions, the President and Congress would have to take stronger and swifter measures to operationalize the citizens armed force. He opined that the creation of the citizens armed force to replace the paramilitary forces would have positive effects and perhaps eliminate half the causes of the tragedies happening in the countryside.

INQUIRY OF MRS. QUESADA

In reply to Mrs. Quesada's query whether the deletion of the reformulated provision would preempt the introduction of any other amendment, the Chair ruled that should the amendment to delete be approved, any other amendment would, in effect, restore the substance of the deleted provision and, therefore, would be out of order because it could partake of a motion for reconsideration.

Thereupon, Mrs. Quesada manifested her objection to the deletion.

INQUIRY OF MR. DAVIDE

In reply to Mr. Davide's query, Mr. Maambong stated that it is the original Section 9 that would be deleted.

Mr. Davide pointed out that the provision had already undergone a reformulation which amounts to an amendment. Mr. Maambong, however, maintained that the Committee had not accepted the reformulated version because of a prior motion to delete the original configuration of the provision.

However, Mr. Davide contended that what is sought to be deleted is the reformulated version of Section 9 which reads as follows: ALL ARMED GROUPS AND PARAMILITARY FORCES NOW EXISTING OUTSIDE OF THE REGULAR POLICE AND ARMED FORCES SHALL BE DISMANTLED.

At this juncture, Mr. Ople suggested that for the sake of clarity, the Body should vote on the reformulated proposal which, after all, was the one subjected to extensive debates.

Mr. Davide agreed that the matter to be voted upon is not the motion to delete but the reformulated amendment which was already accepted by the Committee.

Thereupon, Mr. Maambong explained that the Committee did accept the reformulated version of Section 9 but it would leave the matter to the Body, at which point? Mr. Rodrigo presented his motion to delete.

REMARKS OF MRS. QUESADA

Thereafter, Mrs. Quesada appealed to the Members to seriously ponder upon the matter considering that the members of the CHDF have already victimized many people in the countryside. She stressed that if the President has not given thought to the victims of CHDF atrocities, the Commissioners should speak on their behalf by mandating the dismantling of all paramilitary forces.

INQUIRY OF MR. OPLE

In reply to Mr. Ople's proposal whether the deletion, if approved, would foreclose the submission of other proposals, the Chair replied in the affirmative.

INQUIRY OF MR. RIGOS

On Mr. Rigos' query as to what would be deleted, the Chair replied that the original version is the subject of the motion to delete since the reformulated version has not been accepted by the Committee.

REMARKS OF MR. NOLLEDO

At this juncture, Mr. Nollado stated that the President, as Commander-in-Chief, has the power to dismantle the paramilitary forces which she had in fact promised during her campaign. He added that Congress, as the repository of the people's authority, also has the power to dismantle these forces. However, he opined that the authorities have adopted a timid attitude towards the social maladies caused by these paramilitary forces and therefore the Body must seize the opportunity to mandate the President or Congress to dismantle these forces.

REMARKS OF MS. AQUINO

Thereupon, MS. Aquino appealed from the ruling of the Chair, in response to Mr. Rigos' query, that the Body should vote on the deletion of the original proposal, because what had been debated was the reformulated version of Section 9.

INQUIRY OF MR. RIGOS

In reply to Mr. Rigos' query whether the reformulated version could still be considered if the Chair insists on its ruling that deletion of the original Section 9 would foreclose any other proposals, the latter replied in the affirmative.

Mr. Maambong explained that the Committee's position is based on the Rules and the Body could dispense with the Rules if it decides to do so.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 4:26 p.m.

RESUMPTION OF SESSION

At 4:38 p.m., the session was resumed.

Upon resumption of session, Mr. Suarez presented the reformulated version of Section 9 made by the Committee, to wit: THE STATE SHALL NOT COUNTENANCE PRIVATE ARMIES, PARAMILITARY FORCES AND OTHER ARMED GROUPS IN ANY GUISE. ALL SUCH FORCES SHALL BE DISSOLVED FORTHWITH.

MOTION OF MR. DAVIDE

At this juncture, Mr. Davide moved that a favorable vote on the motion to delete shall not preclude further discussion with a view to possible modification or amendment of the Section.

Mr. Nollado seconded the motion.

REMARKS OF MR. RODRIGO

Commenting on Mr. Nollado's remark that the President has not acted in dismantling the CHDF despite the nationwide clamor of the people, Mr. Rodrigo stated that President Aquino may not have devoted full attention to this problem yet, considering that she has been in office for less than seven months saddled with so many serious problems such as the threats by the NPA, MNLF, the Marcos loyalists and the economic crisis.

He appealed to the Members to maintain flexibility in making decisions on the needs of the country on certain occasions, and not to tie the hands of Congress and the Executive, for the sake of the safety of the people.

RESULT OF THE VOTING

Thereupon, submitted to a vote, with 15 Members voting in favor, 14 against and 1 abstention, the Body approved the deletion of Section 9, as reformulated.

PROPOSED REFORMULATION OF MR. GARCIA

Mr. Garcia proposed to reformulate Section 9 as follows:

THE CHDF NOW EXISTING OUTSIDE OF THE REGULAR POLICE AND ARMED FORCES SHALL BE DISMANTLED,

stating that the problem should be dealt with directly by explicitly providing for their dismantling. He suggested

the creation of said unit to be incorporated into the regular Armed Forces or police force and to be properly trained and equipped should some areas require such service.

In reply to Mr. de Castro's query whether the CHDF is outside the Armed Forces, Mr. Garcia replied in the affirmative.

Mr. de Castro corrected the misimpression by stating that the CHDF is actually part of the Armed Forces based on the Presidential Decrees cited by Mr. Sarmiento, in reply to which, Mr. Garcia stated that it is a paramilitary unit with a very different mechanism, adverting to the remarks stated earlier.

Mr. de Castro suggested that the proposal be reformulated as it would be wrong to state that the CHDF is outside of the Armed Forces.

Thereupon, Mr. Garcia proposed the provision to read:

THE CHDF SHALL BE DISMANTLED

Mr. Suarez requested that "CHDF" be translated into CIVILIAN HOME DEFENSE FORCES, to which Mr. Garcia agreed.

In reply to Mr. de Castro's query whether the provision expresses a definitive stand on the unit, Mr. Garcia replied in the affirmative.

On the situation wherein the President merely changes its name, making the Constitution inapplicable, Mr. Garcia stated that what is sought to be cured is a particular historical problem and the formation of a new force with a different entity, manpower, orientation and direction would be acceptable. He stressed that a mere change of the nomenclature violates the Constitution.

PROPOSED AMENDMENT OF MR. PADILLA

Mr. Padilla proposed an amendment to read as follows:

PRIVATE ARMIES OF POLITICAL WARLORDS AND OTHER ARMED FORCES NOT RECOGNIZED BY CONSTITUTED AUTHORITY SHALL BE DISMANTLED AND DISSOLVED.

Reacting thereto, Mr. Garcia stated that private armies or any armed group are, per se, illegal while the anomaly in the CHDF is that it is cloaked with legality or legitimacy which is being objected to.

In reply to Mr. Suarez' query, Mr. Padilla affirmed that he was proposing an amendment to Mr. Garcia's proposal.

Mr. Garcia did not accept Mr. Padilla's amendment.

Ms. Aquino suggested that Mr. Padilla's proposed amendment be treated independently from that of Mr. Garcia stating that, should Mr. Garcia's proposal be voted down, that of Mr. Padilla should then be considered. On the other hand, she stated that should Mr. Garcia's proposal be approved, Mr. Padilla's proposal could be inserted therein.

The Chair ruled that the Body should first vote on Mr. Padilla's proposal, being an amendment by substitution which was rejected by Mr. Garcia.

In reply to Mr. Ople's query whether the proposal, once approved, would foreclose the introduction of another amendment by substitution, the Chair, answering in the negative, adverted to the approved motion of Mr. Davide which would allow subsequent proposals for amendments.

In reply to Mr. Gascon's query whether voting on Mr. Padilla's proposal would not preclude voting on Mr. Garcia's proposed amendment, the Chair stated that should Mr. Padilla's proposal be voted upon favorably, there would be no need for Mr. Garcia's reformulation.

Mr. Gascon pointed out, however, that the two proposals are substantially different because while Mr. Padilla's proposal deals with private armies, that of Mr. Garcia deals with the CHDF, therefore, they can be considered separately.

In reply to Mr. Rigos' query whether an amendment by substitution is subject to acceptance or rejection by the Committee, the Chair noted that the Committee had already expressed its rejection.

In reply to Mrs. Quesada's query whether the CHDF is excluded from his amendment, Mr. Padilla clarified that his proposal would cover private armies of political warlords and armed forces not recognized by constituted authority. He stated that if the CHDF is authorized by constituted authority, it would not be dismantled.

MODIFICATION BY MR. RIGOS

Mr. Rigos proposed to modify Mr. Padilla's proposed amendment by inserting OR ECONOMIC between "political" and "warlords" which Mr. Padilla accepted.

Commenting for the Committee, Mr. Suarez stated that the proposals of Messrs. Padilla and Garcia are entirely different from each other, in view of which, he suggested that they be voted on separately.

Mr. Guingona concurred with the suggestion.

PROPOSED MODIFICATION OF MR. MONSOD

Mr. Monsod proposed to include RELIGIOUS GROUPS, stating that religious fanatic groups in Mindanao pose a big problem to the island.

Mr. Padilla accepted the modification. He likewise agreed to Mr. Concepcion's suggestion to insert DULY between "by" and "constituted".

In reply to Mr. de Castro's query whether he would accept the substitution of "forces" with GROUPS AND OTHER ARMED GROUPS. Mr. Padilla stated that Mr. Monsod's modification already speaks of religious groups.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 5:03 p.m.

RESUMPTION OF SESSION

At 5:36 p.m., the session was resumed with the Honorable Cirilo A. Rigos presiding.

STATEMENT OF THE, PARLIAMENTARY SITUATION

Mr. Suarez, on the parliamentary situation, clarified that there were two proposed amendments before the Body, namely:

1) by Mr. Garcia, reading:

THE CIVILIAN HOME DEFENSE FORCES SHALL BE DISMANTLED; and

2) by Mr. Padilla, coauthored by Messrs. Ople, Monsod and Sarmiento, to wit:

PRIVATE ARMIES OF POLITICAL OR ECONOMIC WARLORDS OR OF FANATICAL SECTS, AND OTHER ARMED GROUPS NOT RECOGNIZED BY DULY CONSTITUTED AUTHORITY SHALL BE DISMANTLED; or

PARAMILITARY UNITS, INCLUDING CIVILIAN HOME DEFENSE FORCES, NOT CONSISTENT WITH THE CITIZENS ARMED FORCES ESTABLISHED IN THIS CONSTITUTION SHALL BE DISSOLVED, OR WHERE APPROPRIATE, CONVERTED TO REGULAR FORCES.

He informed that Mr. Garcia had requested that his amendment be first presented for the Body's consideration without prejudice to Mr. Padilla's amendment.

Upon request of Mr. Suarez, Mr. Garcia restated his proposed amendment.

INQUIRY OF MR. RODRIGO

At this juncture, Mr. Rodrigo inquired whether the Body could still vote on the Padilla amendment after the Body shall have approved the Garcia amendment, to which Mr. Suarez replied in the affirmative.

Mr. Rodrigo then asked what amendment would prevail in case both amendments are approved. He observed that the Garcia amendment is unconditional

Reacting thereto, Mr. Suarez observed that the two amendments can coexist although the phrase "including the Civilian Home Defense Forces in the Padilla amendment would have to be deleted if the Garcia amendment is approved.

MR. DAVIDE'S AMENDMENT TO THE AMENDMENT

Mr. Davide proposed an amendment to the amendment by inserting the words OR OTHER SIMILAR GROUPS.

Mr. Garcia accepted the amendment.

VOTING ON THE AMENDMENT

Mr. Padilla suggested that his proposal be first voted upon because it is an amendment to the amendment.

Mr. Suarez, however, suggested that Mr. Garcia's proposal be first voted upon without prejudice to Mr. Padilla's amendment.

Messrs. de Castro and Rodrigo opined that Mr. Padilla's amendment should first be voted upon because it is an amendment to the amendment.

Mr. Rodrigo stated that if the Body were to vote against Mr. Garcia's amendment, it would seem that the Body is against the dismantling of the CHDF, whereas in Mr. Padilla's amendment, although it is spelled out that the CHDF may remain, the Body is not in favor of reported abuses.

Mr. Rodrigo also stated that the Body agreed that the CHDF should be dismantled if it is not consistent with the citizen armed force and, if appropriate, it could be converted into a regular force, thereby freeing the Commission from a very difficult situation of being misunderstood as voting against Mr. Garcia's amendment.

Mr. Maambong stated that the Body could easily resolve the issue without doing violence to procedures by

incorporating the second sentence of the amendment of Mr. Padilla in the amendment of Mr. Garcia before submitting the proposal to a vote.

REMARKS OF MR. GARCIA

Mr. Garcia noted that the choice is between conditional and unconditional dismantling of the CHDF, He suggested that the Body opt for one or the other.

REMARKS OF MR. DAVIDE

Mr. Davide inquired as to what extent is the CHDF consistent with the citizen armed force established under the Constitution, and to what extent is it not. He explained that to the extent it is not consistent, it would be embodied in Mr. Padilla's amendment and, to the extent that it is not consistent in any way, it pertains to Mr. Garcia's amendment. He elaborated by saying that to the extent the CHDF is consistent or inconsistent with the citizen armed force, the Body could take Mr. Padilla's proposal as an exception to the general rule in Mr. Garcia's proposal.

REMARKS OF MR. OPLE

Mr. Ople expressed agreement with Mr. Rodrigo's point that the Commission should be able to concede to the President of the Philippines and to Congress the same capability for upholding the national interest that animates the Members of this Commission. He pointed out that what is important is that the citizen armed force has been approved as the foundation of the new Armed Forces of the Philippines, which means that the distinction between citizen and soldier disappears at that point. He opined that if the Body were to approve Mr. Padilla's amendment, it would in effect endorse the view that the citizen armed force is an eminently worthy constitutional provision which ought to be implemented in place of paramilitary forces inconsistent with it which should then be abolished.

Reacting thereto, Mr. Garcia stated that his proposal is an unequivocal statement of the negative historical role of the CHDF and, therefore, consigns it to something essentially irredeemable.

REMARKS OF MR. MONSOD

Mr. Monsod took exception to the statement by adverting to some reliable surveys which said that there are some units of the CHDF that are doing their job well. He stated that, in fairness to them, where there were many abuses committed, this Commission could not just make an unconditional and absolute sweeping statement consigning them to dissolution.

REMARKS OF MR. SARMIENTO

Mr. Sarmiento manifested that he has some reservations with respect to this amendment. On the sentence "other armed groups not recognized by duly constituted authority shall be dismantled", Mr. Sarmiento cited the "Lost Command" as an example of a paramilitary unit which made it to the headlines following its alleged involvement in the massacre of 45 men in Northern Samar way back in 1982. He stated that the "Lost Command" is headed by Col. Carlos Lademora, an extendee Philippine Constabulary officer who was given a new assignment as regional commander of the CHDF. He then inquired whether the "Lost Command, " a private group, would not be dismantled, though guilty of human rights violations, simply because it is recognized by the duly constituted authorities.

On the second sentence "Civilian Home Defense Forces not consistent with the Citizen Armed Force established

in this Constitution ..." Mr. Sarmiento pointed out that the CHDF is consistent with the citizen armed force in view of the fact that Executive Order No. 1012, amending PD No. 1016 and further amended by PD No. 1242, clearly provides that the Ministry of National Defense shall control, screen appointments and train the CHDF considering its integration into the military establishment which utilizes them for the integrated security defense plan and, therefore, it would not be dismantled. He pointed out, however, that there are proofs showing that the CHDF is responsible for 64% of human rights violations in the country.

He reminded his colleagues not to forget the Escalante Massacre, the case of Fr. Tulio Favali who was murdered by the Manero brothers who were members of the CHDF. the resolution passed by the officers-in-charge asking for the dismantling of the CHDF as well as similar resolutions passed by several provinces. In view thereof, Mr. Sarmiento reiterated that the Body seek for the dismantling of the CHDF, and expressed his reservations on Mr. Padilla's amendment.

REMARKS OF MR. DE CASTRO

Reacting thereto, Mr. de Castro stated that he was not defending human rights violations by the CHDF or even by the regular officers and men of the AFP; however, he opined that they should be accorded due process which is enshrined in the Constitution. He stated that the courts of justice must determine guilt for alleged violations of human rights, since due process is the very essence of the Bill of Rights in the Constitution. He admitted that there are scalawags in the CHDF as there are scalawags in the regular AFP, but the new Armed Forces is bent on screening its members, just as it had sentenced to death by musketry four of its regular members.

MANIFESTATION OF MR. GASCON

Mr. Gascon manifested his objection to Mr. de Castro's motion to vote on Mr. Padilla's amendment first, because Mr. Garcia's proposal is more important.

MANIFESTATION OF MR. TINGSON

Mr. Tingson manifested his support for Mr. Padilla's amendment.

VOTING ON MR. DE CASTRO'S MOTION

The Chair submitted Mr. de Castro's motion that the Body act first on Mr. Padilla's amendment to a vote.

With 14 Members voting in favor and 13 against, the motion was approved and, therefore, the Body would first act on Mr. Padilla's proposal.

REMARKS OF MR. TINGSON

Speaking in favor of Mr. Padilla's amendment Mr. Tingson stated that he was also in accord with Mr. Garcia's proposal for the dissolution of the CHDF.

He pointed out that he comes from a province where private armies are run by political and economic warlords who constantly rape democracy by suppressing the people's will during election time.

He stressed that said political and economic warlords monopolize economic developments and opportunities thereby stretching the gap between the rich and the poor, where the rich become filthy richer and the poor become despicably poorer.

Mr. Tingson stated that he was happy in the change of the phrase from "religious private armies" to OF

FANATICAL SECTS because there are people 'who carry the name of religion to advance their fanatical ideas and, therefore, if they have private armies, he was for their dissolution, in view of which, he would vote for Mr. Padilla's, amendment.

INQUIRY OF MR. JAMIR

In reply to Mr. Jamir's query on what fanatical sects mentioned would he favor dismantling, Mr. Tingson expressed doubt whether it would be proper to mention their names

Mr. Jamir stressed that it would be proper to mention them because the Commission is considering a constitutional provision and the Members are covered by parliamentary immunity and may not be questioned for speeches inside the hall.

Whereupon, Mr. Tingson yielded the floor to Mr. Monsod for reply to Mr. Jamir's query.

Responding thereto, Mr. Monsod stated that the problem could be solved by deleting the phrase "of political or economic warlords or of fanatical sects" which does not sound constitutional.

Mr. Jamir manifested that if the phrase were deleted, he would withdraw his question to Mr. Tingson.

Mr. Padilla accepted Mr. Monsod's suggestion to delete the phrase so that the sentence would read: PRIVATE ARMIES AND OTHER ARMED GUARDS NOT RECOGNIZED BY DULY CONSTITUTED AUTHORITY SHALL BE DISMANTLED.

At this juncture, Mr. Jamir sought recognition to interpellate Mr. Tingson.

Mr. Maambong pointed out that Mr. Tingson was not the proponent of the amendment. He suggested that Mr. Jamir direct his queries to Mr. Padilla, but Mr. Jamir pointed out that it was Mr. Tingson who delivered a speech with oratorical flavor.

Mr. Jamir inquired under what circumstances would paramilitary forces or units be inconsistent with the citizen armed force, to which Mr. Tingson replied that said matter was not part of his speech.

Thereupon, Mr. Jamir did not insist on his queries.

REMARKS OF MR. MONSOD

Mr. Monsod stated that there is one instance where paramilitary forces may be inconsistent with the citizen armed force.

REMARKS OF MRS. QUESADA

Mrs. Quesada underscored the importance of having the members of the Civilian Home Defense Force undergo a thorough psychiatric test before they are allowed to carry guns. She stressed that this is especially necessary if they are to be integrated into the regular force.

MR. DAVIDE'S PROPOSED AMENDMENT TO THE AMENDMENT

Thereupon, Mr. Davide proposed to substitute the phrase "not recognized by duly constituted authority" with the phrase WHICH SEEK TO ATTAIN THEIR GOALS THROUGH VIOLENCE OR UNLAWFUL MEANS; and to change the comma (,) after "dissolved" to a period (.) and to delete the words following it, so that the entire Section would read:

PRIVATE ARMIES AND OTHER ARMED GROUPS WHICH SEEK TO ATTAIN THEIR GOALS THROUGH VIOLENCE OR OTHER UNLAWFUL MEANS SHALL BE DISMANTLED. ALL PARAMILITARY FORCES, INCLUDING CIVILIAN HOME DEFENSE FORCES, NOT CONSISTENT WITH THE CITIZEN . . . ARMED FORCE ESTABLISHED IN THIS CONSTITUTION SHALL BE DISSOLVED.

Mr. Padilla did not accept the proposed amendment to his amendment.

Mr. Davide explained that the phrase "not recognized by duly constituted authorities" would mean that such armed groups could continue to exist if they are recognized by authorities. He added that the absence of the article "the" before "duly constituted authority" would not even clarify which authority would recognize such armed groups, although he maintained that such armed groups should not continue to exist if they seek to attain their goals through violence and other unlawful means.

He also stated that the phrase "where appropriate converted to regular force" should be deleted because the Civilian Home Defense Force may be established under the guise of a regular armed force even if it would not be consistent with the citizen armed force.

Mr. Davide suggested that the Body vote separately on his two amendments.

Mr. Padilla, however, explained that the word "duly", as suggested by Mr. Concepcion, could refer to the Armed Forces of the Philippines under the Chief-of-Staff, or under the President as Commander Chief, as the duly recognized authority. He opined that the phrase proposed by Mr. Davide to be substituted to his proposal was more vague. Moreover, it may require evidence as to "violence or other unlawful means". That is a clear distinction between private armies and other armed groups to be dismantled.

Finally, he opined that the word "the" to be added before "duly constituted authority" would be a matter of semantics.

INQUIRY OF MR. NOLLEDO

On Mr. Nollado's query on the meaning of "recognized", Mr. Padilla stated that it means authorized, approved, or licensed, which recognition must always be in writing or documented, and it would not be a duly constituted authority if it is an oral recognition.

On whether it would be a due recognition if the Armed Forces does not dismantle but allows an armed group to exist for a long period of time, Mr. Padilla reiterated that recognition cannot be oral or implied.

Mr. Nollado underscored that he was just clarifying the meaning of recognition, which Mr. Padilla noted as express recognition and in writing.

Mr. Rama moved that the Body vote on the first amendment of Mr. Davide to Mr. Padilla's proposal, to substitute the phrase "not recognized by duly constituted authority" with the phrase WHICH SEEK TO ATTAIN THEIR GOALS THROUGH VIOLENCE OR OTHER UNLAWFUL MEANS.

INQUIRY OF MR. RODRIGO

On Mr. Rodrigo's query whether it would be unlawful for a person to arm some men for purposes of self-defense, Mr. Davide stated that if their arms are duly licensed, such armed group would not be dismantled. He explained, however, that all the circumstances have to be considered.

Mr. Rodrigo, however, stated that it would be difficult to determine the purpose for which armed groups are

formed even if they intend to attain them through violence which have to be proven by overt acts. He clarified that the situation he had cited did not involve any unlawful overt act.

Mr. Davide suggested that the purpose of forming armed groups should be investigated, which investigation should consider whether the person organizing such armed group has enemies.

VOTING ON MR. DAVIDE'S PROPOSED AMENDMENT

Thereafter, Mr. Rama reiterated his motion for a vote on Mr. Davide's proposed amendment to substitute the phrase "not recognized by duly constituted authority" with the phrase WHICH SEEK TO ATTAIN THEIR GOALS THROUGH VIOLENCE OR OTHER UNLAWFUL MEANS.

Submitted to a vote, and with 11 Members voting in favor and 16 against, the proposed amendment to the amendment was lost.

APPROVAL OF THE FIRST SENTENCE OF MR. PADILLA'S PROPOSED AMENDMENT

Thereupon, Mr. Rama moved that the Body vote on the first sentence of Mr. Padilla's proposed amendment which reads: PRIVATE ARMIES AND OTHER ARMED GROUPS NOT RECOGNIZED BY DULY CONSTITUTED AUTHORITY SHALL BE DISMANTLED.

Submitted to a vote, and with 18 Members voting in favor, 5 against and 9 abstentions, the proposed amendment was approved by the Body.

Mr. Rama then moved for a vote on the second sentence of Mr. Padilla, since Mr. Davide was not insisting on his proposed amendment thereto.

MR. GARCIA'S PROPOSED AMENDMENT TO THE AMENDMENT

Mr. Garcia proposed to substitute the second sentence of Mr. Padilla's amendment which reads: "All paramilitary forces including Civilian Home Defense Forces not consistent with the citizen armed force established in this Constitution shall be dissolved or where appropriate converted to regular forces" with the sentence which reads: CIVILIAN HOME DEFENSE FORCES AND OTHER CIVILIAN GROUPS SHALL BE DISSOLVED.

Mr. de Castro observed that the proposed substitute amendment is fraught with dangers. He disclosed that the Armed Forces of the Philippines does not have enough strength to fight insurgency because of lack of funds, for which reason, it uses the CHDF which numbers 66,000. He opined that the immediate dissolution of the CHDF would place the Armed Forces in a tight situation as far as the campaign against the insurgents is concerned.

He stated that the formulation of Mr. Padilla's amendment would give more leeway to the President to act on the viability or nonviability of the CHDF.

POINT OF ORDER OF MR. MONSOD

At this juncture, Mr. Monsod pointed out that Mr. Garcia's proposed amendment by substitution was out of order considering that the Body had decided to vote first on Mr. Padilla's amendment.

The Chair sustained the point of order.

Thereupon, Mr. Sarmiento requested that his name be deleted as coauthor of Mr. Padilla's amendment.

APPROVAL OF THE SECOND SENTENCE OF MR. PADILLA'S AMENDMENT

Submitted to a vote, and with 15 Members voting in favor, 12 against and one abstention, the second sentence of Mr. Padilla's amendment, which reads: ALL PARAMILITARY FORCES INCLUDING CIVILIAN HOME DEFENSE FORCES NOT CONSISTENT WITH THE CITIZEN ARMED FORCE ESTABLISHED IN THIS CONSTITUTION SHALL BE DISSOLVED OR WHERE APPROPRIATE, CONVERTED TO REGULAR FORCES was approved by the Body.

NOMINAL VOTING ON THE ENTIRE SECTION 9, AS AMENDED

On motion of Mr. Sarmiento, the Body proceeded to nominal voting on the entire Section 9, as amended.

Upon direction of the Chair, the Secretary-General called the Roll for nominal voting, and thereafter, a second Call was made.

EXPLANATION OF VOTES

The following Members explained their votes:

By Mr. Concepcion:

Mr. Concepcion stated that he was abstaining because he was in favor of the first sentence and against the second.

By Mr. Davide:

Mr. Davide abstained for the reasons advanced when he proposed amendments to Mr. Padilla's amendment.

By Mr. Gascon:

Mr. Gascon voted in the negative on the ground that the second sentence would constitutionalize the Civilian Home Defense Forces.

By Mr. Jamir:

Mr. Jamir stated that he was voting in the affirmative even if he was against the second sentence.

By Mr. Nollado:

Mr. Nollado abstained on the ground that the first sentence is ambiguous and would connote the possibility of recognition of private armies by duly constituted authorities, while the second sentence had been watered down.

By Mr. Ople:

Mr. Ople voted in the affirmative and explained that Section 9 had merged several proposals not inherently contradictory to the constitutional mandate because it would also dissolve private armies that are not recognized by duly constituted authorities.

He noted that the CHDF had been explicitated in the second sentence, while the citizen armed force becomes the major innovation of the proposed Constitution as a new foundation of the Armed Forces of the Philippines, which citizen armed force would replace the CHDF and other paramilitary units that had been responsible for many abuses in the countryside.

He opined that the approval of Section 9 would not be a heavy act but a prudent act of the Commission having in mind the supreme importance of national security.

By Mrs. Quesada:

In explaining her negative vote, Mrs. Quesada opined that perhaps many Filipinos in the countryside are grieving because the Body has failed to heed their call to dismantle the paramilitary forces which have caused them tremendous hardships.

By Mr. Sarmiento:

Mr. Sarmiento, likewise, voted in the negative because of his recollection of the victims of the Escalante Massacre, Fr. Favali and the victims of Tadtad group members.

By Mr. Tadeo:

Mr. Tadeo voted in the negative on the ground that he was one of the victims of the CHDF. He observed that most of the Members who live in the cities do not know the hardships encountered by the people in the countryside. He pointed out that the problem of insurrection is not caused by the increase in the number of military men but by the lack of land for the landless. He added that God gave land for everybody but most of it are owned by a few individuals.

RESULT OF THE VOTING

The result of the voting was as follows:

In favor:

Bacani

Jamir

Nieva

De Castro

Maambong

Ople

Foz Monsod Padilla

Muñoz Palma Rigos Sumulong

Rama Rodrigo Tingson

De los Reyes Romulo Uka

Against:

Bennagen Guingona Suarez

Garcia Quesada Tadeo

Gascon Sarmiento Villacorta

Abstention:

Aquino Concepcion Nollado

Rosario Braid Davide

With 18 Members voting in favor, 9 against and 5 abstentions, the Body approved the entire Section 9, as amended.

ADJOURNMENT OF SESSION

Thereafter, 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 6:44 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 3, 1986

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