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Saturday, August 23, 1986

CALL TO ORDER

At 9:37 a.m., the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, called the session to order.

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mrs. Ma. Teresa F. Nieva, to wit:

"The Lord is my Shepherd; I have everything I need. He lets me rest in fields of green grass and leads me to quiet pools of fresh water.

"He gives me new strength. He guides me in the right path, as He has promised. Even if I go through the deepest darkness, I will not be afraid, Lord, for You are with me.

"Your shepherd's rod and staff protect me. You prepare a banquet for me where all my enemies can see me. You welcome me as an honored guest and fill my cup to the brim.

"I know that Your Goodness and Love will be with me all my life and Your House will be my home as long as I live". Psalm 23

Almighty God, we Your children thank You for the privilege You have given us to be Your instruments in this Constitutional Commission; for the spirit of camaraderie even if sometimes strained by our different views and opinions; for the nationalism that inspires us in our work; and for the deep yearning in our hearts to be of service to You and our people.

Grant that we may continue to do our very best and that we may act in the light of our best judgment with charity in our hearts towards those who may not agree with us.

In Jesus' Name we pray.

Amen."

ROLL CALL

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

Alonto, A. D.

Muñoz Palma, C.

Azcuna, A. S.

Quesada, M. L. M.

Bennagen, P. L.

Rama, N. G.

Rosario Braid, F.

Regalado F. D.

Calderon, J. D.

De los Reyes, R. F.

De Castro, C. M.

Rigos, C. A.

Colayco, J. C.

Rodrigo, F. A.

Concepcion, R. R.

Romulo, R. J.

Davide, H. G.

Sarmiento, R. V.

Foz, V. B.

Suarez, J. E.

Gascon, J. L. M. C.

Sumulong, L. M.

Guingona, S. V. C.

Tadeo, J. S. L.

Jamir, A. M. K.

Tan, C.

Monsod, C. S.

Tingson, G. J.

Nieva, M. T. F.

Uka, L. L.

Padilla, A. B.

Villegas, B. M.

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

The following Members appeared after the Roll Call:

Abubakar, Y. R.

Lerum, E. R.

Aquino, F. S.

Maambong, R. E.

Bacani, T. C.

Natividad, T. C.

Bengzon, J. F. S.

Ople, B. F.

Bernas, J. G.

Villacorta, W. V.

Garcia, E. G.

Messrs. Rosales and Treñas were sick.

Messrs. Brocka, Laurel and Nollado were absent.

READING AND APPROVAL OF THE JOURNAL

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

REFERENCE OF BUSINESS

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

REFERRAL TO COMMITTEES OF COMMUNICATIONS

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

Communication No. 614 — Constitutional Commission of 1986

Letter from Mr. Jovencio G. Bernardo of DYVL Radio Station, Tacloban City, transmitting a petition, signed by three hundred eleven residents of Leyte, seeking the exclusion from the new Constitution of Proposed Resolution No. 402 which bans foreign military bases in the Philippines, and urging the Constitutional Commission to provide for the retention of the U.S. military facilities in Clark Air Base and Subic Naval Base

TO THE COMMITTEE ON PREAMBLE, NATIONAL TERRITORY AND DECLARATION OF PRINCIPLES

Communication No. 615 — Constitutional Commission of 1986

Communication from Dr. Philip S. Chua, President of the Association of Philippine Physicians in America, Inc., 8684 Connecticut Street, Merrillville, Indiana 46410, U.S.A., urging inclusion in the Constitution of a provision that would make a natural-born citizen of the Philippines who has lost his Philippine citizenship a transferee of private lands

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

Communication No. 616 — Constitutional Commission of 1986

Telegram from Mr. P. E. Torres, Sr., Vice President for Management Affairs, University of Mindanao, Davao City, saying that the students, faculty, and non-teaching personnel and administration of the University of Mindanao strongly endorse the amendments submitted by the Philippine Association of Colleges and Universities under Communication No. 572

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 617 — Constitutional Commission of 1986

Telegram from one Keiko Ezaki, Japan, urging the Constitutional Commission to include in the Constitution the bases-free and nuclear-free provisions in order to see a demilitarized and nuclear-free world

TO THE COMMITTEE ON PREAMBLE, NATIONAL TERRITORY AND DECLARATION OF PRINCIPLES

Communication No. 618 — Constitutional Commission of 1986

Communication from two thousand two hundred fifty-one (2,251) signatories with their respective addresses, seeking inclusion in the Constitution of a provision to protect the life of the unborn from the moment of conception

TO THE COMMITTEE ON PREAMBLE, NATIONAL TERRITORY AND DECLARATION OF PRINCIPLES

Communication No. 619 — Constitutional Commission of 1986

Communication from the Permanent International Conference for Judicial Review, Paris, France, signed by Dr. Morton F. Meads, submitting its observations and studies on the Constitution and judicial system of the Philippines, and its views and opinions in the writing of a constitution

TO THE STEERING COMMITTEE

Communication No. 620 — Constitutional Commission of 1986

Communication from the Albay First District Inter-Evangelical Christian Church Fellowship, Tabaco, Albay, urging the Constitutional Commission to incorporate in the Constitution the provision on the inviolability of the separation of the Church and State as embodied in the 1973 Constitution

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 621 — Constitutional Commission of 1986

Letter from Mr. Roman L. Kintanar, Chairman of the Philippine National Committee on Man and the Biosphere, expressing full support to Proposed Resolution No. 222 — "Adopting Provisions on Science and Technology for Inclusion in the Proposed New Constitution of the Republic of the Philippines"

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 622 — Constitutional Commission of 1986

Communication from Mr. Romeo C. Balandra, Population Programs Coordinator, Commission on Population, transmitting the resolutions of the Philippine Hospital Association, Misamis Occidental Council; Philippine Medical Association, Oroquieta City Chapter; Whiz Family, Oroquieta City; Bai Lawanen Jaycees, Cagayan de Oro City; and Rotary Club of Oroquieta City, Oroquieta City, which resolutions seek to amend Section 4, Article II and Section 10, Article XV of the 1973 Constitution

TO THE STEERING COMMITTEE

Communication No. 623 — Constitutional Commission of 1986

Letter from Mr. Martin R. Reyes of 11 Forestry Street, Vasa Village, Quezon City, containing his reaction to a reported inclusion in the new Constitution of an amendment providing for 10 to 20 years logging ban, saying that such amendment should be reconsidered to make logging one of the ways of conserving the forest

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

Communication No. 624 — Constitutional Commission of 1986

Communication signed by Mr. Fred M. Magbanua, Jr. and the other officers of the Christian Leaders Alliance of the Philippines, Valenzuela, Metro Manila, endorsing the position paper on "Religious Instruction in Public Schools", prepared by Dr. Isabelo F. Magalit, Chairman, Konsiyensiya ng Febrero Siete (KONFES) Con-Com Committee on Religious Instructions in Public Schools

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 625 — Constitutional Commission of 1986

Communication signed by former Congressman Miguel Cuenco containing a plea to the Committee on Human Resources and the Constitutional Commission of 1986 to consider favorably Proposed Resolution No. 451

TO THE COMMITTEE ON HUMAN RESOURCES

PARLIAMENTARY INQUIRY OF MR. REGALADO

Thereafter, Mr. Regalado manifested that he received a copy of Committee Report No. 39 which was a joint report of the Committees on Social Justice and Human Resources.

He pointed out that the Rules of the Commission does not cover such contingency because Section 9, Rule II thereof only provides that whenever a proposal covers subject matters falling within the jurisdiction of more than one Committee, said proposal shall be referred to the Committee within whose jurisdiction the principal subject matter falls; and that the Committee which acquires original jurisdiction over any proposal shall be mainly responsible for submitting a report to the Commission incorporating therein the appropriate recommendations of the other Committee which has jurisdiction over the same proposal.

He then inquired on the manner or procedure of reporting out to the Commission, Committee Reports which have been prepared by two Committees.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session to confer with the Chairmen of the Committees concerned.

It was 9:51 a.m.

RESUMPTION OF SESSION

At 10:08 a.m., the session was resumed.

Upon resumption of session, on motion of Mr. Regalado, there being no objection, the Body deferred consideration of the proposed Article on Family Rights until the next session to allow the Chairmen of the Committees concerned to settle the matter of proper jurisdiction.

UNFINISHED BUSINESS: COMMITTEE REPORT NO. 24 ON THE ARTICLE ON NATIONAL ECONOMY AND PATRIMONY

Upon motion of Mr. Rama, there being no objection, the Body resumed consideration of Proposed Resolution No. 496 (Committee Report No. 24), entitled:

Resolution to incorporate in the new Constitution an Article on National Economy and Patrimony.

The Chair recognized Mr. Villegas and the members of the Committee.

PROPOSED AMENDMENT OF MRS. ROSARIO BRAID

Mrs. Rosario Braid proposed to insert between Sections 11 and 12, a new Section, to wit:

RECOGNIZING THAT DEMOCRATIC COOPERATIVES ARE INSTRUMENTS FOR SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT, THE CONGRESS SHALL CREATE AN OFFICE WHICH SHALL TAKE CHARGE OF THE GROWTH AND EXPANSION OF COOPERATIVES.

Coauthors of the amendment are Messrs. Nollado, Natividad, Ms. Tan, Mr. Villacorta, Mrs. Quesada, Messrs. Sarmiento, Foz, Suarez, Tingson, Gascon, Azcuna, Davide, Rigos, Bennagen, Alonto, Mrs. Nieva and Mr. Tadeo.

In arguing for the amendment, Mrs. Rosario Braid stated that in the past the cooperative scheme had been implemented with little success by the Bureau of Cooperatives under the Ministry of Agriculture although several types of cooperatives came into being in the various industrial sectors. She observed that there is a felt need, particularly in the private sectors, for cooperative schemes which shall combine the usual structure mandated by government and the features of cooperative principles evolved by the private sectors. She adverted to the observation made by the National Cooperative Congress, a private multi-sectoral organization, during its last Congress that cooperatives are potential and practical vehicles for harnessing people power into tangible and positive effort towards economic recovery and development.

Cooperatives, she observed, also constitute a long-range system for social and economic amelioration of the masses of people and economic democratization and serve as an important mechanism for promoting people's participation.

Mrs. Rosario Braid noted that past cooperatives had to contend with such constraints as a negative image due to the failure of past programs such as the FACOMAs and the Samahang Nayons; lack of public projection of successful cooperative ventures; lack of consistency in the promotion of cooperatives; lack of orientation, experience, resources and manpower; lack of legal mandate and coordinating entity which would unify cooperative efforts in public and private sectors — all of which hampered the growth of cooperatives and the bayanihan spirit.

She stated that Congress could mandate the creation of a multi-sectoral office which would encourage the growth of independent and voluntary cooperatives; assist in the registration and regulation of cooperatives; aid in the formulation, coordination and implementation of cooperative development programs; and provide incentives and assistance. She added that the office could provide a code on cooperatives which could take into consideration peculiarities in cooperative schemes and the office could work towards the integration of cooperatives into the present socio-cultural milieu.

Moreover, Mrs. Rosario Braid observed that the present cooperative infrastructure, consisting of about 23,000 cooperatives with 5 million members, 20,000 Samahang Nayons and 3,000 other types of cooperatives, is quite strong.

Mr. Villegas accepted the amendment on behalf of the Committee in the following modified form which was, in turn, accepted by the proponent: RECOGNIZING THAT DEMOCRATIC COOPERATIVES ARE INSTRUMENTS FOR SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT, THE CONGRESS SHALL CREATE AN AGENCY WHICH WILL PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES. He concurred with Mrs. Rosario Braid that the cooperative movement should be left to individuals and groups and the State should promote an atmosphere conducive to the growth of cooperatives. "Promote," he noted, would be clearer than "take charge" as problems enumerated by the proponent could very well be repeated.

MR. DE LOS REYES' AMENDMENT

TO THE AMENDMENT

Mr. de los Reyes proposed to delete the introductory phrase "Recognizing that democratic cooperatives are instruments for social justice and economic development" inasmuch as such prefatory statements are not placed in the Constitution. Both the proponent and the Committee accepted the simplification of the Section to:

CONGRESS SHALL CREATE AN AGENCY WHICH SHALL PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES.

INQUIRY OF MR. PADILLA

In reply to Mr. Padilla's suggestion that Congress "shall promote" instead of create an agency that might add to further bureaucracy, Mrs. Rosario Braid stated that the representatives of the cooperatives strongly feel the need for an agency that would coordinate all efforts of the many agencies involved in the cooperative movement.

Mr. Padilla opined that government should be as simplified as possible to avoid overlapping of functions among agencies, to which Mrs. Rosario Braid replied that without a Constitutional provision the cooperatives would continue to exist under the Bureau of Cooperatives of the Ministry of Agriculture which has a very limited structure but which imposes very rigid requirements for the registration of cooperatives.

INQUIRY OF MR. MAAMBONG

Upon inquiry of Mr. Maambong to the Committee, Mr. Villegas informed that the agency would be a line agency to be created under the Office of the President as stated in the explanatory note of the proponent and would function like NEDA. He also concurred with the observations of Mrs. Rosario Braid.

Mr. Maambong stated that cooperatives have been in existence since the early part of the 1900's and that there are several legislations on it, namely, Cooperative Marketing Act No. 3425, as amended by Act No. 3872, R.A. No. 702 and PD No. 175. He inquired whether the concept of cooperatives in the Cooperative Law, PD No. 175, would be the same as that envisioned by the Constitutional provision.

In reply, Mrs. Rosario Braid stated that should the Constitution provide the mandate, all existing laws on cooperatives would have to be reviewed to make them more responsive to present needs which point towards more participation from the private sector.

Thereafter, Mr. Maambong expressed his support for the cooperative movement.

MRS. QUESADA'S AMENDMENT TO THE AMENDMENT

Mrs. Quesada proposed a reformulation, to wit: CONGRESS SHALL CREATE AN AGENCY WHICH SHALL PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES WHICH SERVE AS INSTRUMENTS FOR SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT, which was accepted by Mrs. Rosario Braid, Mr. de los Reyes, as well as by the Committee.

INQUIRY OF MR. COLAYCO

Upon inquiry of Mr. Colayco as to what would be the principal purpose of the office, Mrs. Rosario Braid informed that it would, coordinate efforts, streamline existing procedures, provide professional training to cooperators and ensure participation of the private sector.

Also upon inquiry, Mrs. Rosario Braid explained that the 23,000 cooperatives and 20,000 Samahang Nayons are government cooperatives, and of the 3,000 to credit cooperative services roughly about 1,000 were privately-initiated. She affirmed that the progress and increase in the number of cooperatives took place under the existing laws.

INQUIRY OF MR. RODRIGO

In reply to Mr. Rodrigo's query on what would be the status of the Bureau of Cooperatives should Congress create a new agency, Mrs. Rosario Braid stated that it would probably be phased out and the newly created agency would take over its responsibilities. She added that it would be an expanded agency outside the Ministry of Agriculture. She also affirmed that personnel of the Bureau of Cooperatives would be absorbed by the new agency.

INQUIRY OF MR. GUINGONA

On the questions raised by Mr. Guingona as to whether the agency would likewise promote or encourage the establishment of cooperatives as well as assist them in obtaining financial assistance, Mrs. Rosario Braid noted that these are among the functions of the agency.

APPROVAL OF MRS. ROSARIO BRAID'S AMENDMENT,

AS AMENDED

Thereafter, Mr. Villegas restated the amendment, as amended, to wit:

CONGRESS SHALL CREATE AN AGENCY WHICH SHALL PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES WHICH SHALL SERVE AS INSTRUMENTS FOR SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT.

Submitted to a vote, and with 29 Members voting in favor and 1 against, the proposed amendment, as amended, was approved by the Body.

PROPOSED AMENDMENT OF MR. GARCIA

Mr. Garcia noted that he had proposals on foreign loans and foreign trade policy and after discussing these amendments with the Committee, the amendments had been reformulated. Thereafter, he invited the other Members to participate in the reformulation of the amendment. He stated that as originally worded, the proposal on foreign loans read:

FOREIGN LOANS SHALL BE CONTRACTED ONLY TO FINANCE VITAL UNDERTAKINGS IN LINE WITH THE NATIONAL DEVELOPMENT PROGRAM. A CEILING ON FOREIGN BORROWING SHALL BE FIXED BY CONGRESS, AND FOREIGN LOANS OF THE PRIVATE SECTOR SHALL BE SUBJECT TO STATE REGULATION. CEILING ON INTEREST AND PRINCIPAL PAYMENTS AS A PERCENTAGE OF EXPORT SHALL BE IMPLEMENTED AND INFORMATION AS TO THE TERMS AND CONDITIONS OF FOREIGN LOANS OBTAINED BY THE GOVERNMENT SHALL BE MADE AVAILABLE TO THE PUBLIC.

He then read the formulation of the Committee, to wit:

FOREIGN LOANS MAY ONLY BE INCURRED IN ACCORDANCE WITH LAW AND THE REGULATIONS OF THE MONETARY AUTHORITY. INFORMATION ON FOREIGN LOANS OBTAINED OR GUARANTEED BY THE GOVERNMENT SHALL BE AVAILABLE TO THE PUBLIC.

Mr. Garcia observed that the Committee's proposal took into account two things, namely, 1) the regulation of foreign loans; and 2) public information regarding foreign loans. He stated that he would accept the proposal on the understanding that the section would treat as serious matters the nation's ability to pay, and the fact that foreign borrowings are matters of interest to the majority who would shoulder actual payment. He pointed out that the ceilings on principal and interest payments were imposed so that priority could be placed on economic development rather than sacrificing the benefits, goods and productive growth of the economy for the sake of repayment and debt servicing.

Reacting thereto, Mr. Monsod expressed agreement with Mr. Garcia's observations and stated that, as a matter of fact, the present government has been implementing such kind of strategy and approach. He stated that Congress would enact a Foreign Borrowings Act that would specify which loans may be incurred and the conditions therefor. He pointed out that the Committee added regulations for the monetary authority to impose the economic criteria and the terms and conditions for the loans, which should be linked to capacity to pay. However, he stated that he would not just want to preempt Congress or the monetary authority on the alternatives they would pursue although he was in agreement with the principles.

Mr. Garcia stressed the importance of the constitutional provision in the Article on National Economy and Patrimony, pointing out that it would serve as the guideline of economic policy for all governments to come.

INQUIRY OF MR. MAAMBONG

In reply to Mr. Maambong's query on the role of the Philippine Foreign Loan Guarantee Corporation in the scheme of foreign loans, Mr. Monsod stated that it has wide-ranging functions, among which are 1) it guarantees performance of Philippine contractors abroad; and 2) it guarantees compliance with international agreements entered into by private enterprises. Mr. Monsod pointed out, however, that the functions of PHILGUARANTEE are under review because of past misuse when it guaranteed a lot of enterprises and contracts which were really crony contracts. He affirmed that this corporation would be affected by the provision which the Commission is presently formulating.

INQUIRY OF MR. REGALADO

In reply to Mr. Regalado's query as to what foreign loans are contemplated under loans which could be incurred in accordance with law and regulations of the monetary authority, considering that Section 20 of the Article on the Executive also authorizes the President to contract or guarantee foreign loans, Mr. Monsod explained that said Section 20 would refer to loans incurred or guaranteed by the President of the Philippines whether for public or private purposes, whereas the Section under discussion would refer to all loans whether incurred by the President

or by the private companies. Mr. Monsod pointed out, however, that private companies which do not need government guarantee would still have to comply with the provisions of the Foreign Borrowings Act and could not borrow once the ceiling is reached; and would still have to go to the Central Bank to align their contract terms and conditions with the guidelines of the Central Bank.

On whether a private corporation with no government intervention or exposure would still need the approval of the Monetary Board in obtaining a foreign loan on its own undertakings and collaterals, Mr. Monsod affirmed that the present regulation requires approval of the Monetary Board for foreign loans whether incurred by the government or by the private sector, because even private borrowings would impose some foreign exchange burden on the country.

On the contention that the intervention of the Monetary Board and the subsequent reportorial requirements to Congress only applies to foreign loans which are contracted by the President for governmental purposes or by private borrowers under governmental guaranty resulting in an increase in the foreign debt ceiling of the Philippine government, Mr. Regalado contended that the Body was made to understand that it applies even to purely private transactions where the government has no exposure or liability whatsoever, to which Mr. Monsod replied that one has to distinguish between the first and second sentence of the proposed Article. He stated that under the first sentence, all foreign loans could only be incurred in accordance with law and regulated by the monetary authority but which applies to both public and private loans, guaranteed or not guaranteed by the government; whereas the second sentence on information applies to loans obtained or guaranteed by the government in line with Section 20 of the Article on the Executive Department, the reason for the distinction being that it would be unfair for the general public to have full disclosure on what the Monetary Board requires for private loans because this would involve the competitiveness of some companies.

On whether the reportorial requirement to Congress would also apply with respect to purely private borrowings which, although approved by the Monetary Board, are not guaranteed by the government or government-owned or controlled corporations, Mr. Monsod stated that the Monetary Board goes through all the loans because the data and information to be made available should be consistent with the principle of confidentiality on private information. He pointed out, however, that the statistics on foreign debt are already being made public under the Foreign Borrowings Act and are being undertaken by the Central Bank and by the Philippine government, thus the need to constitutionalize access to information.

INQUIRY OF MR. TINGSON

In reply to Mr. Tingson's query on whether foreign loans are negotiated upon initiative of the President in consonance with the recommendation of NEDA and Congress as it takes into consideration the comprehensive and synchronized national economy and needs of the country, Mr. Monsod affirmed that this is how it should be with respect to loans obtained or guaranteed by the government; however, private companies have to negotiate and study among themselves the viability of private loans before bringing them to the Central Bank for approval.

On the meaning of the phrase "information on foreign loans obtained or guaranteed by the government shall be available to the public", Mr. Monsod stated that during the previous administration, information on loans were not made available to the public.

MANIFESTATION OF MRS. QUESADA

At this juncture, Mrs. Quesada manifested that during the discussion on the Article on the Executive, it was agreed that Congress would conduct public hearings whenever the Monetary Board would go into transactions involving foreign loan contracts to be entered into by the government.

APPROVAL OF MR. GARCIA'S AMENDMENT

Mr. Garcia restated his amendment, to wit:

FOREIGN LOANS MAY ONLY BE INCURRED IN ACCORDANCE WITH LAW AND THE REGULATIONS OF THE MONETARY AUTHORITY. INFORMATION ON FOREIGN LOANS OBTAINED OR GUARANTEED BY THE GOVERNMENT SHALL BE AVAILABLE TO THE PUBLIC.

Submitted to a vote, and with 33 Members voting in favor and none against, the amendment was approved by the Body.

PROPOSED AMENDMENT OF MR. GARCIA

Mr. Garcia then proposed to add another section on trade policy, to wit:

THE STATE SHALL ADOPT A TRADE POLICY BASED ON MUTUALLY BENEFICIAL EXCHANGE OF GOODS AND SERVICES. TOWARDS THIS END, THE STATE SHALL ENDEAVOR AT ALL TIMES TO REALIZE FAVORABLE TERMS OF TRADE BY MINIMIZING OVER-RELIANCE ON THE EXPORT OF RAW MATERIALS AND ON THE IMPORT OF UNWANTED SURPLUS PRODUCTION AND INAPPROPRIATE TECHNOLOGIES.

PROPOSED COMMITTEE AMENDMENT

Thereafter, Mr. Monsod stated that the Committee had submitted a proposal which would incorporate the ideas of Mr. Garcia but without going into the details of economic policy.

Mr. Monsod then read the Committee's proposal, to wit:

THE STATE SHALL PROMOTE A TRADE POLICY THAT SERVES THE GENERAL WELFARE, IS OPEN TO ALL COUNTRIES ON THE BASIS OF EQUALITY AND RECIPROCITY AND UTILIZES ALL FORMS AND ARRANGEMENTS OF EXCHANGE.

SUSPENSION OF SESSION

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

It was 10:55 a.m.

RESUMPTION OF SESSION

At 11:21 a.m., the session was resumed.

PROPOSED COMMITTEE AMENDMENT

Mr. Monsod, on behalf of the Committee, proposed the insertion of a new Section on trade policy to read:

THE STATE SHALL PROMOTE A TRADE POLICY THAT SERVES THE GENERAL WELFARE AND UTILIZES ALL FORMS AND ARRANGEMENTS OF EXCHANGE ON THE BASIS OF EQUALITY AND RECIPROCITY.

INQUIRIES OF MS. AQUINO

On Ms. Aquino's query on the meaning of the clause "all forms and arrangements of exchange", Mr. Monsod stated that other than normal trade, there are examples like counter-trade, common market arrangements, multicountry arrangements and in some cases, some countries producing the same product get together to improve their terms of trade. He stressed that these are alternative modalities of trade which are made available both to the Executive and the Legislative.

On the concept of general welfare, Mr. Monsod affirmed that this contemplates the possibility of a policy which would prohibit the use of the Philippine market as a dumping ground for unwanted surplus production or even obsolete, inappropriate and backward technology in the sense that these would already constitute unfair competition and unfair trade practice which are also covered in Section 1.

On the possible interpretation of "general welfare" as a policy of minimizing over-reliance on the export of raw materials, Mr. Monsod stressed that what should really be promoted is self-reliance adding that general welfare includes national health safety and security.

INQUIRIES OF MR. BENNAGEN

Mr. Bennagen sought clarification on the meaning of the words "equality and reciprocity" considering that reciprocity could mean nothing more than a change, be it fair or unfair, in reply to which Mr. Monsod stressed that "equality" and "reciprocity should be read together in order to know the real intent.

On the suggestion to change "equality and reciprocity" to "mutual benefits", Mr. Monsod stated that what is being contemplated is trade policy and not trade between nations. He opined that the proposal means the same thing and the Committee would prefer the use of the words "equality and reciprocity".

INQUIRIES OF MRS. QUESADA

On Mrs. Quesada's query as to the reason why "self-reliance" as part of the transaction was omitted, Mr. Monsod stated that it is an inappropriate adjective when speaking about trade considering that there is no such thing as "self-reliant" trade. Mr. Monsod denied that the Committee interposed an objection to the proposal to use the term "mutually beneficial trade relationship", stating that this proposal and that of the Committee mean the same thing and the Committee would prefer the original phraseology.

Mr. Villegas added that the term "mutually beneficial" would be ungrammatical if it refers to all countries of the world.

On Mrs. Quesada's contention that it is an objective in trade policy that should benefit both countries, Mr. Villegas stressed that such objective is already expressed by the words "equality and reciprocity". He maintained that there is always equality when it comes to the country's defense of its terms of trade with other countries.

Mr. Monsod staked that the term "mutual benefit" carries the same idea. Mr. Villegas, in turn stressed that the benefits derived from this kind trade transaction could, likewise, be obtained from the term "general welfare".

INQUIRIES OF MR. SUAREZ

In reply to Mr. Suarez' inquiries, Mr. Monsod affirmed that consistent with the meaning of "general welfare" in trade policies, the Filipinos would stand to benefit, whether he is a producer, a consumer, an industrialist or a farmer. He stressed that the intent is to protect both domestic industries and domestic consumers.

INQUIRIES OF MR. SARMIENTO

On whether the phrase "that serves the general welfare" would cover protection of Filipino enterprises against fair and unfair foreign competition, Mr. Monsod clarified that what he said was the protection against unfair competition and unfair trade practices, a statement which is consistent with Section 1.

MOTION TO DEFER VOTING ON THE PROPOSED COMMITTEE AMENDMENT

Mr. Sarmiento moved to defer voting on the proposed Committee amendment in view of certain terms which need further clarification.

Mr. Monsod insisted that the Body vote on the proposed Committee amendment.

MR. GARCIA'S PROPOSED AMENDMENT

TO THE AMENDMENT

Mr. Garcia proposed to add the phrase PROTECTS DOMESTIC ENTERPRISES.

Mr. Monsod did not accept the proposed amendment on the ground that it is already covered by Section 1, to which Mr. Garcia maintained that the phrase he sought to include would explicitate that foreign trade must not in any way harm, hurt or diminish the country's efforts towards industrialization.

Mr. Monsod reiterated that the concept behind the proposal is already covered by Section 1, specifically the sentence which reads: "The State shall protect Filipino enterprises against unfair foreign competition and trade practices and promote industries that are competitive in both domestic and foreign markets".

Thereupon, Mr. Garcia supported Mr. Sarmiento's motion to defer voting on the proposed Committee amendment.

Mr. Villegas insisted that the Body vote on the matter.

Mrs. Quesada, likewise, expressed her support for Mr. Sarmiento's motion.

VOTING ON MR. SARMIENTO'S MOTION TO DEFER

Submitted to a vote, and with 13 Members voting in favor and 21 against, the Chair declared the motion to defer lost.

RESTATEMENT OF THE COMMITTEE AMENDMENT

Mr. Villegas restated the proposed Committee amendment, to wit:

THE STATE SHALL PROMOTE A TRADE POLICY THAT SERVES THE GENERAL WELFARE AND UTILIZES ALL FORMS AND ARRANGEMENTS OF EXCHANGE ON THE BASIS OF EQUALITY AND RECIPROCITY.

OBJECTION OF MR. SARMIENTO

Mr. Sarmiento vehemently objected to the proposed Committee amendment on the ground that it would strengthen Section 1(2), the paragraph which he had earlier objected to.

REMARKS OF MS. AQUINO

In order to assuage the apprehension of some Members, Ms. Aquino put on the features that would expound the concept of general welfare in foreign trade, namely, 1) the general concept of police power which would contemplate national health, ecology, balance and order; 2) minimization of over-reliance on export of raw materials; 3) prohibition from using the Philippine market as a dumping ground for unwanted surplus products and inappropriate and obsolete technology; and 4) protection of local enterprises.

Mr. Monsod expressed agreement, stating that such would be against unfair competition and trade practices.

APPROVAL OF THE PROPOSED COMMITTEE AMENDMENT

Submitted to a vote, and with 32 Members voting in favor, 2 against and 2 abstentions, the Body approved the Committee amendment.

AMENDMENT OF MS. AQUINO

On Section 12, page 5, lines 1 and 2, Ms. Aquino proposed to delete the phrase "the common good and the people's security against external aggression", and in lieu thereof, to insert the words WELFARE OR DEFENSE, which are found in the 1935 and 1973 Constitutions.

She explained that the right of eminent domain as to its purpose and objective would be distinct from the inherent right of the State to expropriate private property. She added that the clause "national welfare or defense" in the 1935 and 1973 Constitutions has acquired a settled usage in case law such that this clause is beyond the competence of judicial interpretation and it involves political questions which should be left to the wisdom of the Legislative and Executive departments. She opined that the formulation of the Committee would alter the settled usage of "national welfare or defense" in jurisprudence.

Mr. Bennagen pointed out that he was the one who proposed the term "people's security" because "national security" had been used to refer to the security of the few. But in view of Ms. Aquino's explanation, he accepted the proposed amendment on the understanding that it is the security of the people that is being protected by the Constitution.

In this connection, Mr. Concepcion underscored that Section 1 of the Article on the Judiciary provides that nothing that invokes the abuse of discretion is beyond judicial review, even political questions like national security and defense. He stressed that judicial power would be a check against all powers of the government without exception, provided that judicial power is exercised within its limits.

Mr. Suarez supported the statements of Mr. Concepcion, while disagreeing with the interpretation of Ms. Aquino.

Ms. Aquino clarified that her proposal would affirm the power of judicial review on the matter of arbitrariness but not on the wisdom of the act as in the case of *City of Baguio vs. NAWASA*.

Mr. Regalado supported the proposal of Ms. Aquino on the ground that these are the same terms used in Section 6, Article XIV of the 1973 Constitution, which, as interpreted by the Supreme Court in the case of *Republic vs. Philippine Long Distance Telephone Company*, is equivalent to "public use" in relation to just compensation that is also found in the proposed Section 12.

The Sponsor accepted the proposed amendment of Ms. Aquino.

Moreover, in reply to Mr. Suarez' query, Mr. Villegas affirmed that "national welfare or defense" should be interpreted in accordance with Ms. Aquino's interpretation.

Submitted to a vote, and with 35 Members voting in favor and none against, the proposed amendment of Ms. Aquino was approved by the Body.

Thereupon, Ms. Aquino manifested that Mr. Regalado is coauthor of the amendment.

APPROVAL OF SECTION 12, AS AMENDED

Thereafter, Mr. Villegas read Section 12, as amended, to wit:

SECTION 12. THE STATE MAY, IN THE INTEREST OF NATIONAL WELFARE OR DEFENSE, ESTABLISH AND OPERATE VITAL INDUSTRIES, AND UPON PAYMENT OF JUST COMPENSATION, TRANSFER TO PUBLIC OWNERSHIP UTILITIES AND OTHER PRIVATE ENTERPRISES TO BE OPERATED BY THE GOVERNMENT.

Submitted to a vote, and with 35 Members voting in favor and none against, Section 12, as amended, was approved by the Body.

PROPOSED AMENDMENT OF MR. JAMIR

On Section 13, page 5, line 7, between the words “may” and “temporary”, Mr. Jamir proposed to insert a comma (,) and the phrase UNDER REASONABLE TERMS PRESCRIBED BY IT and a comma (,) after it.

The Sponsor accepted the proposed amendment.

In reply to Mr. Rodrigo's query, Mr. Jamir explained that the State through the appropriate agency of government would determine the reasonable terms which would be temporary.

Furthermore, on Mr. Suarez', observation that Section 13 underscores the state of national emergency as a condition for the exercise of the power to take over operation of the business and that the proposal might limit the exercise of such power, Mr. Jamir pointed out that his proposal would only provide for temporary takeover under certain terms and conditions during the period of national emergency, and the owner would not be prevented from questioning it later. He affirmed, however, that his proposal would not stop the government from taking over the operation of any privately-owned public utility or business.

In reply to Mr. Bernas' query on the meaning of the phrase "business affected with public interest", Mr. Villegas pointed out that it generally refers to any entity with the characteristics of public utilities.

Mr. Bernas stated that in early American jurisprudence, businesses affected with public interest include public utilities, lotteries, billiard parlors, liquor stores, among others. He added, however, that in later decisions, said businesses were qualified with public use which would be subject to police power. He then inquired if the provisions of Section 13 would allow the takeover of any business when the State sees it necessary, in reply to which Mr. Villegas clarified that Section 13 would refer to business that affects the mass-based consumers, such that business operations which do not refer to public utilities may not fall under the public utility regulations.

On Mr. Tingson's query, Mr. Villegas affirmed that national emergency may refer to military or economic dislocations.

AMENDMENT OF MR. DAVIDE

On the same Section 13, page 5, lines 6 and 7, Mr. Davide proposed to delete the phrase "the common good" and in lieu thereof to insert PUBLIC INTEREST, because "common good" is broader than "public interest".

FURTHER AMENDMENT OF MS. AQUINO

On page 5, line 7, after the comma (,) after "may", and before the amendment of Mr. Jamir, Ms. Aquino proposed to insert the phrase FOR THE DURATION OF THE EMERGENCY AND, and to delete the sentence starting with the word "Such" up to line 11, so that Section 13 would read:

IN TIMES OF NATIONAL EMERGENCY, WHEN THE PUBLIC INTEREST SO REQUIRES, THE STATE MAY, FOR THE DURATION OF THE EMERGENCY AND UNDER REASONABLE TERMS PRESCRIBED BY IT, TEMPORARILY TAKE OVER OR DIRECT THE OPERATION OF ANY PRIVATELY-OWNED PUBLIC UTILITY OR BUSINESS AFFECTED WITH PUBLIC INTEREST.

The Sponsor accepted the proposed amendment.

OBSERVATION OF MR. PADILLA

In connection with Mr. Davide's proposed amendment, Mr. Padilla observed that the term "public interest" is used twice in Section 7 of the 1973 Constitution, perhaps with different meanings, thus, the Committee may have made the distinction by using "common good".

In reply, Mr. Villegas suggested that "general welfare" could also substitute for "public interest", to which Mr. Davide replied that he would prefer the latter because it appeared twice in Section 7 of the 1973 Constitution.

On the query of Mr. Bernas, Mr. Villegas pointed out that Section 13 has nothing to do with the power of sequestration.

PROPOSED AMENDMENT OF MR. TINGSON

Mr. Tingson proposed to delete the phrase "when the public interest so requires" because national emergency would already mean that it is public interest that is at stake.

The Sponsor did not accept the proposed amendment.

Mr. Tingson withdrew his proposal.

APPROVAL OF SECTION 13, AS AMENDED

Thereafter, Mr. Villegas read Section 13, as amended by Messrs. Jamir, Davide and Ms. Aquino, to wit:

SECTION 13. IN TIMES OF NATIONAL EMERGENCY, WHEN PUBLIC INTEREST SO REQUIRES THE STATE MAY, FOR THE DURATION OF THE EMERGENCY AND UNDER REASONABLE TERMS PRESCRIBED BY IT, TEMPORARILY TAKE OVER OR DIRECT THE OPERATION OF ANY PRIVATELY-OWNED PUBLIC UTILITY OR BUSINESS AFFECTED WITH PUBLIC INTEREST.

Submitted to a vote, and with 38 Members voting in favor and none against, Section 13, as amended, was approved by the Body.

INQUIRY OF MR. REGALADO

On Section 14, Mr. Regalado inquired as to the reason for the deletion of the word "private", noting that with the deletion monopolies may be private or public, in reply to which Mr. Villegas explained that even government monopolies, like the National Power Corporation, would be regulated.

INQUIRY OF MR. MAAMBONG

In reply to Mr. Maambong's query, Mr. Villegas affirmed that "monopolies", "restraint of trade" or "unfair competition" should be interpreted as defined in the Revised Penal Code.

APPROVAL OF SECTION 14

Mr. Villegas read Section 14, to wit:

SECTION 14. THE STATE SHALL REGULATE OR PROHIBIT MONOPOLIES WHEN THE PUBLIC INTEREST SO REQUIRES. NO COMBINATIONS IN RESTRAINT OF TRADE OR UNFAIR COMPETITION SHALL BE ALLOWED.

Submitted to a vote, and with 39 Members voting in favor and none against, Section 14 was approved by the Body.

PROPOSED AMENDMENT OF MR. JAMIR

On Section 15, page 5, lines 20 and 21, Mr. Jamir proposed to delete the phrase "two-thirds of whose voting stock or controlling interest" and in lieu thereof, to insert the phrase SIXTY PER CENT OF WHOSE CAPITAL.

Mr. Jamir explained that on two previous sections in the Article the Body fixed the Filipino equity at 60% as against 40% for the foreigners. He pointed out that it is only in Section 15 that the Committee proposed to increase the Filipino equity to 2/3. He opined that it would be better to harmonize the provision with the other sections by providing that in the case of public utilities the minimum equity for Filipino citizens should also be 60%.

He informed that there are utility companies in the country which are not in favor of the 2/3 equity because they would be compelled to pay off the foreign equity holders about t1.2 billion upon the ratification of the Constitution, and that some investors suggested that instead of paying off the foreign equity holders, their money should be kept in the country and reinvested in some other profitable undertaking for the country's welfare.

REMARKS OF MR. ROMULO

At this juncture, Mr. Romulo explained that he accepted the proposed amendment because of the memoranda submitted to him by the representatives of Filipino majority owners of international record carriers who made the following points: 1) they reject the argument that the international telecommunications industry is controlled by foreigners because such a proposition is based on the assumption that they are dummies and, if they are indeed dummies, giving them an additional 6 2/3% would not remedy the situation; 2) management and control of a corporation is vested in the board of directors and not in the officers thereof, and with 60% equity the Filipino stockholders would undeniably control the board, besides, the foreigners, representing the 40% equity, should also be given a minimum say to protect their investments through the exercise of veto in such cases as increase or decrease of capital stock, sale of substantially all of the assets and voluntary dissolution of the corporation; 3) the Filipino-foreigner partnership has worked well and they prefer that foreign partners own a substantial minority position commensurate to their investment stake; 4) they do not believe that it is prudent policy at this time to divert their funds or those of another group to an industry that does not need it since capital is scarce and should be used in creating new investments instead of merely augmenting old ones; 5) there is no danger to national security, because these carriers deal only with commercial messages and not government messages involving matters of State security; 6) the government could take over these utilities in times of emergency, and that these carriers are supervised and regulated by the National Telecommunications Commission; and 7) that under Section

9 of the Article, Congress, in the national interest, could in the future increase, if necessary, the 60:40 ratio in favor of Filipinos.

Mr. Romulo manifested that what he stated reflected the sentiments of the 60% Filipino owners of Philippine Global Communications, Globe Mackay, and Eastern Telecommunications Company who feel that their 60:40 partnership with their foreign investors has been mutually beneficial.

At this juncture, Mr. Padilla informed that Section 15 is substantially the same as Section 5 of the 1973 Constitution and that Mr. Jamir's proposal would be a reversion to the provision of such Constitution.

REMARKS OF MRS. ROSARIO BRAID

Thereupon, Mrs. Rosario Braid read the memoranda of the spokesman of the Philippine Chamber of Communications who expressed the members' preference for the 75:25 ratio in favor of Filipino equity or for the 2/3:1/3 ratio; and who suggested that the provision be amended so as to include the following proviso: THE MANAGEMENT BODY OF EVERY CORPORATION OR ASSOCIATION SHALL IN ALL CASES BE CONTROLLED BY CITIZENS OF THE PHILIPPINES.

Mrs. Rosario' Braid stated that according to the position paper submitted to her, the Philippine Global Communications (PHILCOM), Eastern Telecommunications of the Philippines Inc. (ETPI) and Globe Mackay have management contracts with other foreign companies for which reason the general managers of these companies are foreigners. She pointed out that while the foreigners in these common carriers are only minority owners, they are the ones managing and controlling the operations of these companies by virtue of management contracts and their strength in the governing bodies of these carriers.

She stressed that this unfortunate situation of the country being led to allowing foreign multinational companies to own, manage and control international record communications has resulted in the following: 1) the Philippines has lost its role as the center of international communications in the region, resulting in unquantifiable losses of potential foreign currency earnings; (2) all the international cable systems terminating in Currimaao, Ilocos Norte are presently operated by a common carrier, acting as carriers' carrier, which is owned and managed by a multinational company and even the domestic common carrier which is responsible for all internal communication facilities is owned by a multinational company, thereby posing a serious threat to the country's security and sovereignty; 3) these international record common carriers are losing foreign currency revenues due to their control by giant multinational corporations because of which communications traffic from the Philippines have to be transited through foreign carriers even if there are other transit centers offering better rates or even if direct circuits are available; 4) the country is represented in international conferences by foreign executives of these foreign-managed companies; and 5) this situation would open the possibility that PLDT, PAL, MERALCO, the Post Office, PNR, LRT, the shipping lines and other public utilities would eventually fall into the hands of foreigners especially with the sale of some public utilities under the government's privatization program.

She stressed that with modern technology it is possible for foreign nationals, who control the country's communication facilities, to monitor communications in order to protect their interests.

Mrs. Rosario Braid then moved that the whole text of the position paper be included in the Records of the Commission.

Mr. Villegas' stated that the Committee would consider her proposed amendment at the proper time.

Thereupon, Mr. Davide proposed to amend Mr. Jamir's proposal by changing the ratio to 75:25.

At this juncture, Mr. Colayco called attention to Section 26 of the Rules which states that "after the close of

debate the Constitutional Commission shall proceed to the consideration of committee amendments subject to the five-minute rule. A Member who desires to speak against an amendment shall also have five minutes. The five-minute rule shall apply, likewise, in the consideration of an amendment to an amendment, or an amendment by substitution".

Mr. Colayco stressed that the Members should strictly observe this rule so that the debates could be finished on time.

REMARKS OF MS. AQUINO

Speaking against Mr. Jamir's proposal, Ms. Aquino stated that Section 15 contemplates the grant of franchise, certificate or other forms of authorization for the operation of public utilities which are vital in the delivery of services to the public.

She stressed that when dealing with public utilities the primordial concern should be the benefit to Filipinos, hence such utilities must be effectively controlled by Filipinos.

She then manifested her support of Mr. Davide's proposal to change the ratio to 75:25 in favor of Filipinos.

On her query whether the change to 75:25 ratio would destabilize the operation of public utilities and services, Mr. Romulo stated that according to the memoranda he received the majority Filipino owners of communications facilities opted to maintain the status quo because their partnership with foreigners had enabled them to achieve technical, management and investment growth.

On Ms. Aquino's contention that the delivery of public services must adhere to the Filipino first policy rather than favor the manner of delivery of the service itself, Mr. Romulo maintained that these multinational companies have delivered very good, if not superior, services, compared to others which may be 100, 80 or 70 percent Filipino-controlled precisely because of the harmony between capital and technology.

REMARKS OF MR. GARCIA

Mr. Garcia spoke against Mr. Jamir's proposed amendment, arguing that 1) public utilities must be viewed as one for public service and not as a profit-oriented enterprise; 2) it is a strategic industry where the concept of mixed economy could be applied; 3) the matter of national security should be of utmost concern considering that communications facilities could be used to destabilize third world governments; 4) a 40% ownership, acting as a solid bloc, could be a dominant factor in the enterprise; and 5) the desired objective is that all public utilities must in due time be 100% Filipino owned.

On Mr. de los Reyes' query whether the 66-2/3:33-1/3 ratio would apply to future public utility companies, Mr. Villegas stated that it would even affect existing ones; however, this would be taken care of in the Transitory Provisions by providing therein that foreigners who own excess equity would have to divest.

Ms. Aquino manifested that the existing jurisprudence on public utilities is that the prohibition against the grant of a franchise applies not only to the creation of corporations in violation of the required proportion but also to existing corporations guilty of such violation.

On Mr. Bacani's query whether there were any demonstrable ill effects of the 60:40 ratio, Mr. Garcia replied that the position paper cited by Mrs. Rosario Braid enumerated some of the ill effects and that there is much room for improvement in the delivery of public services.

On Mr. Bacani's contention that the position paper only cited the potential dangers and not actual detrimental

effects, Mr. Garcia pointed out that the statement therein revealed that the country lost, perhaps forever, its role as the center of international communications in the region and the subsequent loss of unquantifiable potential revenues.

On Mr. Bacani's query regarding the use of "may" and "perhaps", Mr. Garcia pointed out the actual losses in foreign exchange earnings which should have accrued to the Philippines because of the fact that these earnings were not in the possession of Filipinos.

PROPOSED AMENDMENT OF MR. MAAMBONG

On Section 15, page 5, line 21, after the word "citizens", Mr. Maambong proposed to add the phrase OR SUCH HIGHER PERCENTAGE AS CONGRESS MAY PRESCRIBE" so as not to foreclose the percent- age proposed by Mr. Jamir.

Mr. Villegas pointed out that this has been subsumed under Section 9 because Congress may, at any time, reserve to Filipinos areas of investment which would be owned 100%.

Upon inquiry of the Chair, Mr. Jamir stated that he was not accepting the proposal of Mr. Maambong. Mr. Villegas affirmed that "areas of investment" in Section 9 includes public utilities.

INQUIRY OF MR. DAVIDE

At this juncture, Mr. Davide inquired whether an amendment to Mr. Jamir's amendment would be allowed.

He then proposed a 75:25 ratio which the proponent did not accept.

VOTING ON MR. JAMIR'S AMENDMENT

Thereafter, the amendment of Mr. Jamir to change the ratio to 60:40 was submitted to a vote, with 20 Members voting in favor and 19 against.

NOMINAL VOTING ON MR. JAMIR'S AMENDMENT

On motion of Mr. Gascon, duly seconded by Mr. Sarmiento, the Chair declared nominal voting in order.

Upon direction of the Chair, the Secretary-General called the Roll for nominal voting. Thereafter, a second call was made.

EXPLANATION OF VOTES

The following Members explained their votes:

By Mr. Sarmiento

Mr. Sarmiento voted against the amendment on the ground of public interest and the common good.

By Mr. Villacorta

Mr. Villacorta voted against the amendment on the ground that most of the testimonies presented by Mr. Romulo have reference to the immediate present. He stated that it would be unfair for the Constitution to perpetually bind Filipino participation to only 60% especially in the light of Section 1 which provides that "the State shall develop a self-reliant and independent national economy effectively controlled by Filipinos."

By Mr. Villegas

Mr. Villegas, in voting for the amendment, stated that under Section 9, if in the future Congress considers it necessary for the general welfare, it can increase Filipino ownership to 100%.

RESULT OF THE VOTING

The result of the voting was as follows:

In Favor:

Abubakar

Padilla

Alonto

Rama

Bengzon

Regalado

Calderon

Rigos

Colayco

Rodrigo

Jamir

Romulo

Lerum

Sumulong

Maambong

Tingson

Monsod

Uka

Natividad

Villegas

Ople

Against:

Aquino Gascon

Azcuna Guingona

Bacani Nieva

Bennagen De los Reyes

Bernas Sarmiento

Rosario Braid Suarez

Concepcion Tadeo

Davide Tan

Foz Villacorta

Garcia

With 21 Members voting in favor and 19 against, the amendment of Mr. Jamir was carried.

PROPOSED AMENDMENT OF MR. DAVIDE

Thereupon, Mr. Davide proposed to change the ratio to 75:25, meaning that no franchise, certificate or any other form of authorization for the operation of the public utility shall be granted except to citizens of the Philippines or to corporations or associations 75% of the capital stock of which shall be owned by such citizens.

He observed that the original Committee Report increased the present ratio of 60:40 to 66-2/3:33-1/3 which is already a step forward for the Filipinos. Nevertheless, he observed that a move was made to retain the provision of the 1973 Constitution, the possible reason being the position paper which Mr. Romulo read into the records.

Mr. Davide observed that the 1935 Constitution allowed a 60:40 ratio which was adopted by the 1973 Constitution and that consequently Filipinos have become victims of multinational corporations. He stated that this has also affected the economy as well as the integrity and interest of the Filipinos. He observed that too much time was spent on telecommunications although public utilities would fall under Section 15. He observed that Mr. Romulo's arguments concerned telecommunications and the Body has in effect surrendered Filipino interest with respect to other public utilities. He noted that Section 1 has somewhat improved the situation but the 60:40 ratio in

telecommunications has downgraded all the other public utilities. He stressed that it is high time the Body makes a step forward to protect Filipino interest and the best compromise is 75:25 ratio.

INQUIRY OF MR. SUAREZ

Mr. Suarez inquired whether Mr. Davide is proposing a 75:25 ratio or even a higher Filipino interest in public utilities which would allow effective control by Filipinos of public utilities, to which Mr. Davide replied in the affirmative.

On whether the proposal would make it more difficult to use dummies rather than the 20% control against dummies, Mr. Davide also replied in the affirmative.

Mr. Davide further affirmed that it would ensure the strategic position of public utilities in the country's economy and security. He stated that under such arrangement, present and future control of public utilities may prove inimical to public interest. He noted that the danger to national security is present in the light of the disclosures made by Mrs. Rosario Braid and Mr. Garcia.

In reply to the query of Mr. Davide on the Committee's reaction, the Sponsor stated that it would leave the matter to the Body.

INQUIRY OF MR. FOZ

On Mr. Foz' query on the scope of the term "public utilities," Mr. Davide stated that it includes commercial telecommunications, corporations supplying electric power and transportation facilities. He observed that even under the 40% arrangement, aliens would be able to control such public utilities.

On the inquiry as to whether these public utilities are required by law to be Filipino-owned, Mr. Davide stated that he is not familiar with special laws but Section 15 of the Constitution, as worded, includes all public utilities. Additionally, Mr. Davide cited shipping and air transportation as public utilities which could be 40% controlled by foreigners.

Mr. Foz stated that in the case of shipping a special law provides that at least 75% of the capital should be owned by Filipinos, to which Mr. Davide remarked that it would fall under his 75:25 proposal.

INQUIRY OF MR. MAAMBONG

Mr. Maambong adverted to the Committee's answer to his earlier question that Congress could always change the ratio to a higher percentage in favor of Filipinos. As to whether Mr. Davide would be comfortable with this answer, the proponent stated that he would not, inasmuch as Congress, which can always change the percentage depending on its perception, may not act at all.

On whether the proponent would yield if the change is for a higher percentage, Mr. Davide replied that if the Body approves a 75:25 ratio, Congress may increase this and he would agree to any increase inasmuch as his original intention was to make it a 100% requirement which was also proposed by Mr. Garcia. He maintained, however, that in order to allow Congress flexibility to attain a higher level of Filipinization, there should be an irreducible minimum which must be higher than the one proposed by Mr. Jamir.

On whether Mr. Davide's answer reflects his distrust of the sense of patriotism of the future Congress, Mr. Davide stated that he did not have this in mind but only that the Body should fix a higher irreducible minimum. He noted that the 60-40 ratio is the irreducible minimum under Mr. Jamir's proposal while his own proposal would be 25% only for foreign interest. He added that under Section 9 Congress may increase this requirement by reducing the

foreign participation and increasing the Filipino capital.

REACTION OF MR. MONSOD

Mr. Monsod stated that there is a suggestion that those who want to increase the minimum to 75% are pro-Filipino and those who want to retain it at 60% are anti-Filipino. He also noted that there is the suggestion that a stockholder who would agree with the letter of the stockholders would not be pro-Filipino but would be pro-Ayala or pro-Siguion Reyna or pro-Santiago and that he is not too knowing about the business of the proponents of the 70% or 100% Filipino ownership. He observed that the ultimate judge in this case would be the users of the public utilities and that they are the Filipinos, not the investors, who should be protected.

On the Chair's query as to how the users would be affected, Mr. Monsod explained that the ultimate judge of whether the company should be patronized and whether it is efficient, should be the users. He observed that the matter has nothing to do with ownership inasmuch as there is already a guarantee of 60% Filipino ownership. He stressed that many have engaged in business and that even with 50% or 60% ownership, if that ownership is competent, there would be no fear of a foreign takeover. He stated that increasing Filipino ownership would not solve the problem of dummies for foreign interest as long as there are people who would be willing to be dummies.

Mr. Davide, in reply, maintained that he did not telegraph a message that those in favor of 60:40 ratio are less Filipino than those who favor a 75:25 ratio inasmuch as all the Members are Filipinos. He stressed that his only point in making reference to the position paper read by Mr. Romulo is that the Body is not framing a Constitution for the group which is batting for the retention of the 60:40 ratio. He maintained that Mr. Villacorta was correct in pointing out that the position paper refers to the present and a discussion thereof should have served as a guide to the Body. He stated that if the quality of service is to be considered, the proponents of the position paper are not the consumers.

Mr. Monsod, while agreeing with Mr. Davide that it is the quality that counts, maintained that the users should be the ones to decide whom to patronize. He noted that the issue is whether in increasing the ratio of Filipino ownership from 60% to 75%, the quality of service will be improved.

In reply, Mr. Davide opined that Filipinos should be given the chance through 75% equity. He observed that an all-Filipino corporation has been mentioned and that there has not been any complaint against the services it has delivered.

At this juncture, Mr. Monsod stated that the Committee is against the proposed amendment of Mr. Davide. Additionally, Mr. Bengzon stated that the paragraph, as it stands, would no longer provide for a 2/3 ratio but 60%.

INQUIRY OF MR. VILLACORTA

Mr. Villacorta inquired whether on the basis of Mr. Monsod's statement the Committee is against the amendment of Mr. Davide. He noted that there were five Committee Members who were not consulted.

In reply, Mr. Monsod stated that the Members of the Committee who have occupied the front table had appealed to the other Members to join them.

Mr. Villacorta observed that Mr. Monsod did not make the appeal in the morning session and there was no attempt to consult the other Members of the Committee whether they were in favor or against the Davide amendment.

The Chair, at this point, stated that the Committee was against the Davide amendment inasmuch as the Body had

already approved the 60% proposal. She informed that the proposed amendment of Mr. Davide would be submitted to the Body inasmuch as the point had been raised that "public utilities" mentioned in the Section does not refer only to communications but to all types of public utilities.

REMARKS OF MR. BERNAS

Mr. Bernas stated that he was made to understand that the Committee would be open to treating telecommunications separately. He expressed the hope that this would foreclose the question of public utilities in general without prejudice to reopening the matter with respect to telecommunications, to which Mr. Villegas replied that telecommunications is part of public utilities.

Mr. Romulo pointed out, however, that the telecommunications issue had been settled by the Body, in reply to which Mr. Bernas manifested that he would raise again the issue after the voting.

The Chair stated that it would amount to a motion for reconsideration. Mr. Villegas also maintained that the ratio on telecommunications had been decided by the vote on the Jamir amendment.

SUSPENSION OF SESSION

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

It was 1:08 p.m.

RESUMPTION OF SESSION

At 1:18 p.m., the session was resumed.

Upon resumption of session, Mr. Bernas stated that the Body could proceed to vote on the understanding that the vote on Mr. Davide's amendment would not close the issue of management.

MR. GUINGONA'S PROPOSED AMENDMENT

TO THE AMENDMENT

Mr. Guingona proposed an amendment to the amendment by substituting the 75:25 ratio with 70:30.

Mr. Davide did not accept the amendment to his amendment on the ground that the 75:25 ratio is very reasonable.

MOTION FOR NOMINAL VOTING

At this juncture, on motion of Mr. Gascon, the Chair declared nominal voting on Mr. Davide's amendment in order.

Mr. Rodrigo suggested that no explanation of votes be allowed since the matter had already been sufficiently discussed.

Mr. Villacorta, however, asked that explanation of votes be allowed on the ground that the matter involved a crucial and pivotal issue.

The Chair ruled that the members would be free to do so in accordance with the Rules.

NOMINAL VOTING ON MR. DAVIDE'S AMENDMENT

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

EXPLANATION OF VOTES

Thereafter, several Members explained their votes, namely:

By Mr. Abubakar

In explaining his negative vote, Mr. Abubakar stated that a 60% equity in the hands of Filipinos would be more than enough to define the objectives as well as reach the goal for which business stands for. He stressed that with the ratio of 60:40, the Filipinos would have a clear advantage and, expressing great faith in the Filipino, he stated that even with a 5% advantage, he would be able to reach the goal for which his enterprise has been marked for.

By Mr. Bacani

Explaining his negative vote, Mr. Bacani stated that it would seem ridiculous that after voting for a 60:40 ratio, the Body would again vote on 75:25. He also stated that adopting the 75:25 ratio would not help the Filipinos because this would discourage foreign capital.

By Mr. Bennagen

Mr. Bennagen manifested his affirmative vote, stating that a greater share in the equity would enhance Filipino control.

By Mr. Concepcion

Explaining his negative vote, Mr. Concepcion stated that while he was in favor of gradually increasing the participation of Filipinos, he did not want a change that would further dislocate the country's economy.

By Mr. Maambong

Mr. Maambong stated that he would have voted affirmatively for the amendment if it were not sufficiently explained by the Chairman of the Committee that under Section 9 Congress would have the power to increase the percentage if it feels there is need for such increase. He stated that since he has trust in the legislators, he would vote against the amendment.

By Mr. Natividad

In explaining his negative vote, Mr. Natividad stated that the Filipinos already have the advantages, to wit: control of 60% of the company; they are in their own country; the government is in favor of the Filipino interest; they have the implementing agencies; there is a Supreme Court to decide on their cases; and everybody and all its agencies are in favor of Filipino interest. He noted that should the Commission allow foreign investors only 25% equity, it would be better not to give them anything at all because it is a sign that they are not welcome.

By Mrs. Nieva

Explaining her negative vote, Mrs. Nieva stated that she had voted against the 60:40 ratio because she was originally in favor of the 66 2/3:33 1/3 proportion as a gradual but real step towards improving the Filipino equity in public utility corporations.

Mrs. Nieva, however, stated that she was voting No to Mr. Davide's 75:25 proposal on the ground 1) that the

proposal would send signals that would completely discourage foreign investments which the present prostrate state of the national economy could ill afford to lose and 2) that she was informed that an amendment would later on be proposed providing for the effective Filipinization of management in said corporations.

By Mr. Ople

In explaining his negative vote, Mr. Ople stated that there is need for real flexibility for the policy on Filipino shares of equity in public utilities at this time. He stated that the immediate implication of a 75:25 ratio would be a divestment of foreign equity in some of the existing companies upon the adoption of the Constitution in the magnitude of P1.5 billion which, in the face of their protestations, those directly concerned could not raise to make up for capital that would be lost. He pointed out that instead of paying for foreign equity that would be converted into foreign exchange and lost to the country, there should be flexibility on the matter, by giving the responsibility to Congress to increase the ratio to 100% if necessary. He stressed that it would be a matter of time before Filipino ownership in telecommunications would rise to 100% in the same way that it happened to other public utilities like MERALCO, PLDT and PAL.

By Mr. Padilla

In explaining his negative vote, Mr. Padilla stated that after the majority had voted to reduce the ratio from 66 2/3:33 1/3 to 60:40, another voting for a higher percentage of 75:25 would be illogical and absurd.

By Mr. Regalado

In voting No to the amendment, Mr. Regalado stated that aside from the reasons already given, any emotional, intellectual or economic xenophobia at this stage of national life could not but have a pejorative effect upon the economy.

By Mr. de los Reyes

In explaining his negative vote, Mr. de los Reyes stated that during the voting on Mr. Jamir's amendment, he voted for two-thirds because it was the original proposal of the Committee and that he saw no compelling reason for changing his stand. He opined that it would be sheer stubbornness to insist on diminishing further the percentage of foreign interest. He pointed out that the situation could still be remedied by giving the executive, managing and governing positions of public utility corporations exclusively to Filipino citizens.

By Mr. Suarez

Mr. Suarez voted Yes on the ground that the proposal protects Filipino interests in public utilities which occupy strategic position in the country's economy and security. He further stated that the proposal would make it more difficult for foreign companies to gain control of public utilities through a subtle violation of Anti-Dummy Law.

By Ms. Tan

Ms. Tan, in explaining her affirmative vote, stated that while she does not have pragmatism in life and perhaps does not have logic, she was voting in favor of the proposal for the victims of foreign investors.

By Mr. Tingson

Mr. Tingson voted No, stating that no country at present could be an island unto itself and that at this stage of the national economy, posture and predicament, the proposal is too materially different from what had already been approved. He pointed out that the country is asking for educational and scientific aids from friendly countries and it is just proper to welcome them in the economic realm.

By Mr. Uka

Mr. Uka voted against the proposed amendment because of his love for the millions of Filipino consumers who would be affected by the proposal.

By Mr. Villacorta

Mr. Villacorta endorsed Mr. Davide's proposed amendment because he believes that the Filipinos own the Philippines and the Philippines is for the Filipinos. He wondered why a Filipino would have to bend his knees before the Commission for every percentage of participation and control of the economy. On the other hand, he wondered why everyone seemed to be thankful for the sixty per cent participation of the Filipinos in public utilities which are important to the life and security of the nation.

Finally, Mr. Villacorta lamented that the nation is again in mourning and the dreams and aspirations of its citizens which were brought to life after the revolution have again been shattered. He hailed the multinationals and their defenders.

Messrs. Ople and Bacani protested the remarks of Mr. Villacorta.

RESULT OF THE VOTING

The result of the voting was as follows:

In Favor:

Aquino

Gascon

Azcuna Guingona

Bennagen Sarmiento

Bernas Suarez

Rosario Braid Tadeo

Davide Tan

Foz Villacorta

Garcia

Against:

Abubakar Ople

Alonto Padilla
Bacani Rama
Bengzon Regalado
Calderon De los Reyes
Colayco Rigos
Concepcion Rodrigo
Jamir Romulo
Lerum Sumulong
Maambong Tingson
Monsod Uka
Natividad Villegas
Nieva

With 15 Members voting in favor and 25 against, the Chair declared Mr. Davide's proposed amendment lost.

REFERRAL TO THE COMMITTEE ON PRIVILEGES

At this juncture, the Chair referred Mr. Villacorta's remarks to the Committee on Privileges.

Mr. Abubakar, on behalf of the Committee on Privileges, announced that the Members would meet at lunch time.

MANIFESTATION OF MR. OPLE

Mr. Ople stated that Mrs. Rosario Braid would present an amendment on Section 15 coauthored by him, Mr. Bernas, Mrs. Nieva and Messrs. Rodrigo and Guingona.

At this juncture, Mr. Bengzon requested order on the floor.

The Chair asked those who are not Members to clear the Session Hall and directed the Sergeant-at-Arms to enforce decorum.

PROPOSED AMENDMENT OF MRS. ROSARIO BRAID

Mrs. Rosario Braid proposed a new Section to read:

THE MANAGEMENT BODY OF EVERY CORPORATION OR ASSOCIATION SHALL IN ALL CASES BE CONTROLLED BY CITIZENS OF THE PHILIPPINES.

She explained that the amendment would prevent management contracts and it would assure the Commission that with the amendment, management contracts would no longer be possible.

MR. DE LOS REYES' PROPOSED AMENDMENT

TO THE AMENDMENT

Mr. de los Reyes proposed a reformulated amendment which, he opined, is more comprehensive and all-embracing, to wit:

MAJORITY OF THE DIRECTORS OR TRUSTEES AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATION OR ASSOCIATION MUST BE CITIZENS OF THE PHILIPPINES.

Mr. Bengzon, on behalf of the Committee, accepted the proposed amendment of Mr. de los Reyes which incorporated the amendment of Mrs. Rosario Braid.

Mr. Regalado manifested that his intended amendment was likewise subsumed by the proposed amendment of Mrs. Rosario Braid which he suggested should be the last sentence of the new Section, to which Mrs. Rosario Braid agreed.

MR. BERNAS' PROPOSED AMENDMENT

TO THE AMENDMENT

Mr. Bernas proposed a reformulation of the first part of Section 15 which would be essentially the formula of the 1973 Constitution, to wit:

THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ANY PUBLIC UTILITY ENTERPRISE SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATIONS AND ASSOCIATIONS MUST BE CITIZENS OF THE PHILIPPINES,

which Mrs. Rosario Braid accepted.

Mr. de los Reyes clarified that the governing body would refer to the board of directors or board of trustees, which Mr. Bengzon confirmed.

APPROVAL OF THE AMENDMENT,

AS AMENDED

Submitted to a vote, and with 29 Members voting in favor and none against, the Body approved the amendment, as amended.

AMENDMENT OF MR. DAVIDE

On Section 15, as proposed by Mr. Davide and accepted by the Sponsor, the Body approved the amendment to add after the word "citizens" on line 21, a comma (,) and the following: NOR SHALL SUCH FRANCHISE, CERTIFICATE OR AUTHORIZATION BE EXCLUSIVE IN CHARACTER OR FOR A PERIOD LONGER THAN TWENTY-FIVE YEARS, RENEWABLE FOR NOT MORE THAN TWENTY-FIVE YEARS.

MANIFESTATION OF MR. OPLE

Mr. Ople manifested a reservation to present the amendment he had earlier submitted to the Committee on Monday, August 25, 1986.

RESTATEMENT AND APPROVAL OF SECTION 15,**AS AMENDED**

Mr. Villegas restated Section 15, as amended, to wit:

SECTION 15. NO FRANCHISE, CERTIFICATE, OR ANY OTHER FORM OF AUTHORIZATION FOR THE OPERATION OF A PUBLIC UTILITY SHALL BE GRANTED EXCEPT TO CITIZENS OF THE PHILIPPINES OR TO CORPORATIONS OR ASSOCIATIONS ORGANIZED UNDER THE LAWS OF THE PHILIPPINES AT LEAST SIXTY PERCENT OF WHOSE CAPITAL IS OWNED BY SUCH CITIZENS. PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ANY PUBLIC UTILITY ENTERPRISE SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF AND ALL EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATIONS OR ASSOCIATIONS MUST BE CITIZENS OF THE PHILIPPINES, NOR SHALL SUCH FRANCHISE, CERTIFICATE OR AUTHORIZATION BE EXCLUSIVE IN CHARACTER OR FOR A PERIOD LONGER THAN TWENTY-FIVE YEARS RENEWABLE FOR NOT MORE THAN TWENTY-FIVE YEARS. NEITHER SHALL ANY SUCH FRANCHISE OR RIGHT BE GRANTED EXCEPT UNDER THE CONDITION THAT IT SHALL BE SUBJECT TO AMENDMENT, ALTERATION, OR REPEAL BY CONGRESS WHEN THE COMMON GOOD SO REQUIRES. THE STATE SHALL ENCOURAGE EQUITY PARTICIPATION IN PUBLIC UTILITIES BY THE GENERAL PUBLIC.

Submitted to a vote, and with 29 Members voting in favor, 4 against and no abstention, the Body approved Section 15, as amended.

ADJOURNMENT OF SESSION

On motion of Mr. Rama, there being no objection, the Chair declared the session adjourned until nine-thirty in the morning of Monday, August 25, 1986.

It was 1:52 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 August 25, 1986

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