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Wednesday, July 30, 1986

OPENING OF SESSION

At 9:43 a.m., the President, the Honorable Cecilia Muñoz Palma, opened the session.

THE PRESIDENT: The session is called to order.

NATIONAL ANTHEM

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

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Honorable Efrain B. Treñas.

Everybody remained standing for the Prayer.

PRAYER

MR. TREÑAS: Heavenly Father, we humbly ask Your divine guidance in our noble task to fulfill the sacred trust reposed in us to frame a fundamental law for our people.

Imbue us with Your Holy Spirit to enable us to enshrine in a Constitution the principles of brotherhood, liberty, justice and democracy which You have so kindly restored to us in Your miracle last February.

Inspire us with the same fervor of Your Holy Passion of the Cross so that we may be able to overcome the hatred and vindictiveness that are the natural fruits of more than a decade of ruthless suppression and persecution.

Lead us along the path of forgiveness and reconciliation towards the altar of wisdom and statesmanship so that in the end we may achieve our solemn goal of providing our people with a framework of government that guarantees to us our human rights and fundamental freedoms, secures to us and our posterity our God-given resources, and finds for us and the generations yet to come a respected place under the sun and among the family of nations.

This we ask You, Almighty Father, in the name of Jesus Christ, Your Son. Amen.

ROLL CALL

THE SECRETARY-GENERAL, reading.

Abubakar Present [*] Natividad Present [*]

Alonto Present [*] Nieva Present[*]

Aquino Present [*] Nollado Present

Azcuna Present [*] Ople Present [*]

Bacani Present [*] Padilla Present

Bengzon Present Quesada Present

Bennagen Present Rama Present

Bernas Present [*] Regalado Present

Rosario Braid Present Reyes de los Present [*]

Brocka Present [*] Rigos Present

Calderon Present Rodrigo Present

Castro de Present Romulo Present

Colayco Present Rosales Absent

Concepcion Present Sarmiento Present [*]

Davide Present Suarez Present

Foz Present [*] Sumulong Present

Garcia Present [*] Tadeo Present [*]

Gascon Present [*] Tan Present

Guingona Present Tingson Present

Jamir Present Treñas Present

Laurel Present Uka Present

Lerum Present [*] Villacorta Present [*]

Maambong Present [*] Villegas Present

Monsod Present

The President is present.

The roll call shows 29 Members responded to the call.

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

MR. CALDERON: Madam President.

THE PRESIDENT: The Assistant Floor Leader is recognized.

MR. CALDERON: I move that we dispense with the reading of the Journal of the previous session.

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

APPROVAL OF JOURNAL

MR. CALDERON: Madam President, I move that we approve the Journal of the previous session.

THE PRESIDENT: Is there any objection? (Silence)

THE PRESIDENT: The Secretary-General will call the Reference of Business.

REFERENCE OF BUSINESS

The Secretary-General read the following Communications, the President making the corresponding references:

COMMUNICATIONS

Letter from NCP Sgt. Tawasil A. Hataie, Bureau of Customs, Port of Zamboanga, proposing a constitutional provision requiring the government to extend humanitarian services to all departed government personnel/officials who died while still in the government service regardless of position/ designation.

(Communication No. 375 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Letter from Ms. Ester B. Sy-Quimsiam. Commission on Population, Welfareville Compound, Mandaluyong, Metro Manila, transmitting a position paper submitted by a group of private organizations regarding the population problem, saying that a people-oriented population welfare program has better and greater chances to bloom into full flowering if implemented along the lines of the new government's humane concern and sincere call for self-renewal.

(Communication No. 376 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Letter from Mr. Jeremias U. Montemayor and Mr. Democrito T. Mendoza for the Trade Union Congress of the Philippines (TUCP), submitting its position paper on the American military bases in the Philippines recommending that the present Philippine-U.S. Mutual Defense Treaty be respected until its expiration in 1991.

(Communication No. 377 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Resolution from the Olongapo Jaycees, Inc., No. 12 Aquarius St., Lower Kalaklan, Olongapo City. signed by its President. Mr. Johnny B. Choa, recommending the retention of the United States bases in the Philippines after 1991.

(Communication No. 378 — Constitutional Commission of 1986)

Letter from Stop Trafficking of Pilipinos Foundation Inc. signed by its President. Minerva G. Laudico, and the other officers and members of the Board of Directors calling attention to the alarming resurgence of indecency in mass media and entertainment and expressing alarm at the manner in which the courts have ruled in favor of those who have no apparent regard for the dignity of women and for decent family relationship.

(Communication No. 379 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Communication signed by Ms. Elsa M. Gavino and one hundred fifty others. urging that regulations on foreign investments and the determination of the areas of investment should be left to the legislature.

(Communication No. 380 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Letter from the Honorable Minister Candu I. Muarip of the Office of Muslim Affairs and Cultural Communities, transmitting proposals and resolutions drafted by a group of Muslim professionals, scholars, and academicians, embodying the general sentiments and common aspirations of the Muslim Filipinos and the tribal communities.

(Communication No. 381 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Communication from the Sangguniang Panlalawigan, La Trinidad, Benguet, and signed by its temporary Presiding Officer. Felix T. Cabading, transmitting Resolution No. 273, entitled: RESOLUTION THAT THE HONORABLE BODY ADOPT A STAND IN FAVOR OF ADMINISTRATIVE REGIONALIZATION AS AN ALTERNATIVE TO STATUS QUO. .

(Communication No. 382 — Constitutional Commission of 1986)

To the Committee on Local Governments.

Communication from the Stop Trafficking of Pilipinos Foundation, Inc. signed by its President, Minerva G. Laudico, urging inclusion in the Constitution provisions mandating the State to ensure an out-of-school environment conducive to the moral education of the youth and reinforcing the right of children and young people to a sound intellectual and moral formation.

(Communication No. 383 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Letter from Dr. Helen Agustin de Guzman of U.P. AND be elected with and in the same manner as the Medicine 1967, saying that it would be a wiser and President." more prudent move for the Constitutional Commission not to make a final pronouncement on the U.S. bases issue at this time and at such a hurried pace.

(Communication No. 384 — Constitutional Commission of 1986)

To the Committee on General Provisions.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

CONSIDERATION OF PROPOSED RESOLUTION NO. 517 (Article on the Executive) Continuation

PERIOD OF AMENDMENTS

MR. RAMA: I move that we continue the consideration of Proposed Resolution No. 517 on the Article on the Executive. We are still in the period of amendments.

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

The honorable Chairman and members of the Committee on the Executive are requested to please come forward to receive the proposed amendments of the Commissioners.

At this juncture, may we take advantage of informing our Commissioners of our guests this morning. To my left, we have students from St. Scholastica's Grade School, St. Scholastica's College, the UP Physiology class and the Philippine Normal College. To my right, we have students from St. Bridget's High School and the Polytechnic University of the Philippines. We thank these students very much for attending and showing their interest in the deliberations of the Commission.

MR. RAMA: Madam President, I ask that Commissioner Davide be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President.

I have amendments to Section 3, page 1 of the substitute resolution adjusted to the bicameral legislature. The first portion would be just a transposition and would affect lines 14 and 16. After the second word "shall" on line 14, I propose to transpose thereto the portion of line 16 which reads: "have the same qualifications and term of office" and then add the word AND, so that the first sentence now will read as follows: "There shall be a Vice-President who shall HAVE THE SAME QUALIFICATIONS AND TERM OF OFFICE AND be elected with and in the same manner as the President."

MR. SUMULONG: The Committee accepts the amendment.

THE PRESIDENT: Will Commissioner Davide restate his amendment?

MR. DAVIDE: The first line of Section 3, as amended, would read as follows: "There shall be a Vice-President who shall HAVE THE SAME QUALIFICATIONS AND TERM OF OFFICE AND be elected with and in the same manner as the President."

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

MR. DAVIDE: On line 18 of the same section, I move for the deletion of the phrase "as provided in this Constitution."

MR. SUMULONG: The Committee accepts, Madam President.

THE PRESIDENT: The Committee has accepted the amendment.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE: On line 20, I seek to introduce a new sentence after the period (.) following the word "cabinet." It reads: SUCH APPOINTMENT REQUIRES NO CONFIRMATION.

MR. REGALADO: For the record, will Commissioner Davide state the reason for his proposed amendment?

MR. DAVIDE: The reason for this is to appoint the Vice-President as a member of the Cabinet and to require a confirmation by the Commission on Appointments on this might rather be degrading to the Office of the Vice-President. As a matter of fact, for the judiciary and for the Ombudsman as well, we do not require confirmation by the Commission on Appointments. In line, therefore, with the prestige of the Office of the Vice-President, I propose that the appointment of the Vice-President to any Cabinet position should also not necessitate a confirmation by the Commission on Appointments.

MR. SUMULONG: With the explanation given by the proponent, we accept the amendment.

THE PRESIDENT: Will the Commissioner read once more his proposed amendment?

MR. DAVIDE: The amendment would be another sentence after the period (.) following "cabinet" on page 1, line 20: SUCH APPOINTMENT REQUIRES NO CONFIRMATION.

THE PRESIDENT: The Committee has accepted the amendment.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE: Madam President, on page 2, more particularly Section 4, line 5, the amendments are: (I) Delete the word "He" and substitute it with the words THE PRESIDENT; (2) delete also the following words found on lines 5 and 6: disqualified from immediate" and substitute the same with INELIGIBLE FOR ANY, so that the sentence will only read as follows: "THE PRESIDENT shall be INELIGIBLE FOR ANY reelection."

The purpose of this amendment is to be consistent with what the body had approved in the matter of the term of the President.

THE PRESIDENT: What does the Committee say?

MR. REGALADO: May we inquire from Commissioner Davide why he proposes that the President shall be completely ineligible for any future elective office lower than the presidency?

MR. DAVIDE: The reason is that last Friday when we voted on the term of office of different officials, our early resolution allowing the President no immediate reelection was reconsidered by the body and the body opted to allow no reelection for him at any time. To convey, therefore, that decision of the Commission, the rewording, as proposed, is necessary.

MR. REGALADO: During the deliberations on that issue, I think what was contemplated there was a complete ban for reelection for the same position as President.

MR. DAVIDE: Yes, Madam President.

MR. REGALADO: Would it not be possible that perhaps a former President may wish to share his talents and experience with the people by running for a lower position like that of a Senator?

MR. DAVIDE: He can. He is only banned from reelection, meaning to the same office, but not from running for any office. So the wording is very clear: "THE PRESIDENT shall be INELIGIBLE FOR ANY reelection. "

MR. REGALADO: Yes, with that understanding.

THE PRESIDENT: In other words, Commissioner Davide's position is that the word reelection" necessarily implies that it is for the same office. Is this accepted by the Committee?

MR. SUMULONG: The Committee accepts.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Madam President, will the distinguished sponsor agree to say "shall NOT be ELIGIBLE," instead of "shall be INELIGIBLE". This is the same, thing.

MR. DAVIDE: "Shall NOT be ELIGIBLE" is accepted.

MR. REGALADO: It is a matter of style; the Committee accepts.

THE PRESIDENT: The Committee has accepted the amendment.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE: Madam President, to be consistent with the approved amendment and to allow the Vice-President only one reelection, I propose a new sentence which will be added after the amendment that has been approved, to read as follows: NO VICE-PRESIDENT SHALL SERVE FOR MORE THAN TWO SUCCESSIVE TERMS. VOLUNTARY RENUNCIATION OF THE OFFICE FOR ANY LENGTH OF TIME SHALL NOT BE CONSIDERED AS AN INTERRUPTION IN THE CONTINUITY OF THE SERVICE FOR THE FULL TERM FOR WHICH HE WAS ELECTED.

MR. REGALADO: May we have that again but slowly for the benefit of the other Commissioners because the Committee members are already aware of the amendments of Commissioner Davide although the others may wish to have these amendments duly noted in their own copies so that they can also participate.

THE PRESIDENT: May we request Commissioner Davide to read it slowly.

MR. DAVIDE: I will read it very slowly, Madam President.

On line 6, following the amendment that has just been approved, add the following: NO VICE-PRESIDENT SHALL SERVE FOR MORE THAN TWO SUCCESSIVE TERMS. VOLUNTARY RENUNCIATION OF THE OFFICE FOR ANY LENGTH OF TIME SHALL NOT BE CONSIDERED AS AN INTERRUPTION IN THE CONTINUITY OF THE SERVICE FOR THE FULL TERM FOR WHICH HE WAS ELECTED.

MR. SUMULONG: We accept the amendment because I think the Commission has already reached the same decision previously.

MR. DAVIDE: Yes, Madam President.

THE PRESIDENT: The Committee has accepted the amendment.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE: On the same page, the same Section 4, lines 9 and 10, delete the words "seat of the National Government" and substitute the same with the word CONGRESS.

THE PRESIDENT: Is this accepted by the Committee?

MR. SUMULONG: The Committee accepts.

THE PRESIDENT: The Committee has accepted the amendment.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE: On page 2, between lines 22 and 23, I propose to insert a new paragraph to read as follows: CONGRESS SHALL PROMULGATE ITS RULES FOR THE CANVASSING OF THE CERTIFICATES.

MR. SUMULONG: Will Commissioner Davide repeat the proposed amendment?

MR. DAVIDE: CONGRESS SHALL PROMULGATE ITS RULES FOR THE CANVASSING OF THE CERTIFICATES.

THE PRESIDENT: Is this accepted by the Committee?

MR. REGALADO: For the benefit of the other Commissioners, will Commissioner Davide explain his proposal?

MR. DAVIDE: This is necessary in order that Congress will have the authority now to promulgate the necessary rules for the canvassing of the certificates of canvass for the Offices of the President and the Vice-President. due execution thereof, whereas the other one would be the rules of procedure.

MR. SUMULONG: We have no objection to the proposed amendment, Madam President.

THE PRESIDENT: Will the Commissioner read again the proposed new paragraph?

MR. DAVIDE: CONGRESS SHALL PROMULGATE ITS RULES FOR THE CANVASSING OF THE CERTIFICATES.

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

MR. DAVIDE: On line 25, after the words "Vice-President," I propose to add AND MAY PROMULGATE ITS RULES FOR THE PURPOSE. This refers to the Supreme Court sitting en banc. This is also to confer on the Supreme Court exclusive authority to enact the necessary rules while acting as sole judge of all contests relating

to the election, returns and qualifications of the President or Vice-President.

MR. REGALADO: My personal position is that the rule-making power of the Supreme Court with respect to its internal procedure is already implicit under the Article on the judiciary; considering, however, that according to the Commissioner, the purpose of this is to indicate the sole power of the Supreme Court without intervention by the legislature in the promulgation of its rules on this particular point, I think I will personally recommend its acceptance to the Committee.

MR. SUMULONG: The Committee accepts the amendment.

THE PRESIDENT: The Committee has accepted the amendment.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE: If there are no other anterior amendments, I have some proposals for Section 5.

THE PRESIDENT: Let us inquire from the Floor Leader.

MR. RAMA: Madam President, there are anterior amendments.

May I ask that Commissioner Monsod be recognized.

THE PRESIDENT: We will call Commissioner Davide, later.

Commissioner Monsod is recognized.

MR. MONZOD: With the Chair's indulgence. I just want to take a few minutes of our time to lay the basis for some of the amendments that I would like to propose to the Committee this morning. The reason I am looking at the total report on the executive department is that I have gone through some of the amendments that we have already approved and considered in this Assembly, and I am a little bit concerned about the emasculation of the executive department. I remember very well, when we first started our deliberations, the explanation of Commissioner Bernas on what we will try to do. We have set objectives and now we are trying to build structures and systems in this Constitution so that we can have a government that will operate, that will work for the achievement of those objectives. In this Constitution, we have eliminated Amendment No. 6 which was the source of many problems. We have eliminated the lifetime immunity of the President and his representatives from every action they have done. In the Article on Accountability of Public Officers, we have done the reverse. We have turned 180 degrees by saying that the action to recover property unlawfully gained or acquired shall not prescribe; and, in fact, we have even said there that even prosecution for criminal offenses related thereto shall not be barred by prescription, laches and estoppel. I have my own reservations about the advisability of putting the criminal prosecution there and perhaps that can be the subject of future discussions.

Very importantly, we have eliminated the political question from the judiciary. We have established the Judicial and Bar Council and put the judicially department appointments out of the absolute reach of the presidency. We have given the judiciary fiscal autonomy.

Last week, we voted for a bicameral legislature. Perhaps it is symptomatic of what the thinking of this group is. that all of the provisions that were being drafted up to that time assumed a unicameral government.

Therefore, even the safeguards assumed that there would be a unicameral government which might again be under the undue influence of the executive. But we did decide that we would have a bicameral legislature. That means that not only the lawmaking function and the appropriation function would go through the two Houses of legislature, but also the special events and special actions that would require the approval of both Houses, among them the declaration of martial law.

So there are safeguards with a bicameral legislature. because the President will have to contend and get the 'approval not only of one House but of two. He may have the unanimous approval of one but may not get the approval of the other. With the system of check and balance, what we have instituted by a bicameral legislature is really two other bodies to check the President.

We have also made the constitutional commissions more independent. We have enacted prohibitions on double offices. double compensation and other sources of income. We have made full disclosure of net worth a requirement.

In the case of the COMELEC, we have given it power to initiate court proceedings and to initiate the deputation of the military. The President can no longer initiate that; it is only with the concurrence of the COMELEC. Also, all three constitutional commissions have been given fiscal autonomy.

In the Bill of Rights, we have eliminated the Word "insurrection" and the phrase "imminent danger there of." We have refined and put all the safeguards in seizures and searches, and warrants of arrest.

In the Article on Accountability of Public Officers; we have liberalized the procedures for impeachment and included betrayal of trust as a ground therefor. We have created a constitutional ombudsman. We have declared imprescriptible the right to recover property.

At the same time-and these will be forthcoming — there will be great demands for funds and resources and efficient management of the government. There will be proposals for socialized pricing, housing and education. There will be agrarian reform requirements which I estimate could be as much as P10 to P20 billion at the beginning. There is the proposal for a national health care. All of these are meant to institute safeguards against abuse of power.

But, first, may we ask that we caution ourselves because when we put individual safeguards, they may look all right by themselves and yet, if we look at the total system about which Commissioner Bernas spoke to us at the beginning, we may be instituting too many safeguards and imponderable possibilities that the Executive will be unable to act.

We are opening up the system of initiative in amending the Constitution. We have deconstitutionalized the two-party system. Hopefully, we will allow the opening up of party list representatives and sectors in order to allow minorities and the sectors to enter the legislature. We will be decentralizing authority of local governments and we are constitutionalizing the power of recall.

We have chosen a presidential system. It seems to be the real preference of our people. As the name implies, the presidential system places responsibility and reliance on a Chief Executive to lead and act unlike a President in a parliamentary system. For a President to be effective, he must have adequate powers and flexibility to deal with problems. Our present problems are enormous. We have the economic recovery and growth problem. We have some problems of political instability, insurgency, sporadic lawless violence, dissatisfaction with local appointments and the need for a new Constitution.

Today, that part of our Constitution that we are dealing with is the presidency which, for some reasons and by our decision, has lesser powers now and is subjected to more checks both institutionally and directly. We took away from the President one political leverage; that is, the possibility of returning to power. A good President needs some leverage in order to be effective. Much as we would like to think that we have attained complete maturity, we have not. We need time and even people power to be able to make sure that the presidency will work. Maybe in the future, we will be able to attain that kind of maturity.

But our long-term vision must also take account of continuing realities and the dynamics and imperfectibility of human institutions.

So, today, we are looking at the presidency. Given the premises I have cited, let us honestly ask ourselves: Have we created a self-destructing presidency? Will the safeguards, no matter how noble and uplifting they are, individually, cumulatively effect a paralysis of our presidency? Is it a presidency that can still operate effectively? Can it engage in effective management and problem solving which are essentially executive functions? I refer particularly to the following: Is it possible for us to rethink the immediate reelection of the President as a prohibition but opening it up to future canvass which could be a leverage of a good President?

Specifically, I would also like to suggest an amendment to Section 15 on the declaration of martial law, which says that even during the first 60 days, in case of invasion or rebellion; the concurrence of the legislature is needed for the President to declare martial law. Madam President, I believe that at least for the first 60 days, which is a time fuse for it automatically expires at the end of 60 days, we should at least give the President the flexibility to act in cases of invasion and rebellion.

I also would like to propose the following amendments in addition to that: In Section 21, where we talk about the budget of the government, I would like to add that the basis for the appropriations should be within an economic development framework. We want the legislature to honor or respect the authority of the Executive to formulate the economic development program and for the legislature to enact an appropriations law that is within that framework and supportive of the long-term thrust of the country.

With regard to foreign loans which is on Section 18, I would like to suggest to my colleagues who may be thinking of putting that power of concurrence in the Congress not to emasculate the Executive that way. We are trying to put an independent Monetary Board which should be a sufficient safeguard to the presidency.

On Section 16, I would like to suggest that the power of the Commission on Appointments be limited to the department heads, ambassadors, generals and so on but not to the levels of bureau heads and colonels.

I would like to request that if it is at all possible, maybe we should discuss again the question of immediate or future reelection.

The last one is on the question of judicially charged persons in case of suspension of the writ of habeas corpus which I believe Commissioner Bengzon will also raise at the proper time. Madam President, these are the sections I would like to amend. I am sorry that I took some of my colleagues' time, but I wanted to set the bases of these amendments and inform the body why I would like to propose these amendments.

THE PRESIDENT: We request the Commissioner to please submit his amendments to the Committee so that the members can study them. But in the meantime, we will go ahead because we adopted already the procedure of calling the amendments section by section as requested.

MR. MONSOD: Yes, Madam President, and as the appropriate section comes, I will ask for recognition.

THE PRESIDENT: Thank you.

MR. RAMA: Madam President, I ask that Commissioner Rigos be recognized.

THE PRESIDENT: Commissioner Rigos is recognized. Is this for an anterior amendment, Mr. Floor Leader?

MR. RAMA: Yes; it is on Section 5.

THE PRESIDENT: The Commissioner may now proceed.

REV. RIGOS: Madam President, before I submit my proposed amendment which is co-authored by Commissioner Nollado, may I ask the Committee one question?

THE PRESIDENT: The Commissioner may proceed.

REV. RIGOS: In the Article the Commission approved the other day and reiterated by Commissioner Davide this morning, the President may serve only for one full term without reelection. It was made clear, however, by Commissioner Regalado that a President or a former President may run for another position, probably for Senator or for Vice-President.

MR. REGALADO: That was Commissioner Davide's amendment.

REV. RIGOS: Suppose this former President runs for Vice-President and he gets elected. During his term, after a year or two the President becomes incapacitated. Can the Vice-President, who was a former President, take the place of the President?

MR. REGALADO: As it stands now, he can because that is not reelection. That is succession to the Office of the President by the Vice-President as provided for in the Constitution.

REV. RIGOS: I thought we approved sometime last week that a President who has served the full term of six years could not serve as President again.

M.R. REGALADO: He cannot serve as President again by running for reelection. so he can run for Vice-President.

REV. RIGOS: But he can hope that something happens to the President so he becomes President again.

MR. REGALADO: Possibly with that hope which may either be an emptio spei or an emptio rei speratae.

REV. RIGOS: That answers my question.

Thank you very much.

Our proposed amendment now is on pages 2 and 3, starting from line 32 which states:

The Congress shall by law provide for the case where neither a President-elect nor a Vice-President-elect shall have been chosen or shall have qualified, or both shall have died at the time fixed for the beginning of their term, declaring who shall then act as President or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

Our proposed amendment is to delete the whole sentence which begins with "The Congress shall" and in lieu thereof substitute the following sentence: WHERE NEITHER A PRESIDENT-ELECT NOR A VICE-PRESIDENT-ELECT SHALL HAVE BEEN CHOSEN OR SHALL HAVE QUALIFIED OR BOTH SHALL HAVE DIED AT THE TIME FIXED FOR THE BEGINNING OF THEIR TERMS THE SENATE PRESIDENT OR IN HIS ABSENCE THEREOF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL THEN ACT AS PRESIDENT UNTIL A PRESIDENT OR VICE-PRESIDENT SHALL HAVE QUALIFIED.

MR. REGALADO: May I suggest that Commissioner Rigos get together with the two other proponents of the amendments on the very same section? Commissioners Maambong and Davide have their own versions. The three Commissioners can get together and marry their suggested amendments to each other so they can result in a "fertilized" section.

REV. RIGOS: We can also include Commissioner de los Reyes.

SUSPENSION OF SESSION

MR. REGALADO: May we ask for a suspension of the session to facilitate the resolving of the amendment.

THE PRESIDENT: The session is suspended.

It was 10:28 a.m.

RESUMPTION OF SESSION

At 10:35 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

The Floor Leader is recognized.

MR. RAMA: Madam President, the proponents of the amendment to Section 5 have come to some agreement I ask that Vice-President Padilla be recognized.

THE PRESIDENT: Vice-President Padilla is recognized.

MR. PADILLA: Madam President. I yield to my cosponsor, Commissioner de los Reyes.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: This is an amendment of Commissioners Padilla, Nollado, Rigos and this humble Member.

On page 2, Section 5, we propose to delete lines 26 to 32 and in lieu thereof substitute simpler words to read as follows: THE PRESIDENT-ELECT SHALL QUALIFY AT THE BEGINNING OF HIS TERM. IF HE FAILS TO QUALIFY, THE VICE- PRESIDENT-ELECT SHALL ACT AS PRESIDENT. IF THE PRESIDENT-ELECT DIES, THE VICE-PRESIDENT-ELECT SHALL BECOME PRESIDENT. That is the end of the sentence.

Then; the second portion of the amendment will be proposed by Commissioner Rigos.

MR. REGALADO: There was mention yesterday in the course of the interpellations of the possibility of the President having died or becoming permanently incapacitated.

MR. DE LOS REYES: We can add that so the line reads: IF THE PRESIDENT-ELECT DIES OR BECOMES PERMANENTLY INCAPACITATED THE VICE-PRESIDENT-ELECT SHALL BECOME PRESIDENT.

THE PRESIDENT: Will the Commissioner please read how this particular portion of Section 5 will read now?

MR. DE LOS REYES: THE PRESIDENT-ELECT SHALL QUALIFY AT THE BEGINNING OF HIS TERM. IF HE FAILS TO QUALIFY THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT. IF THE PRESIDENT-ELECT DIES OR BECOMES INCAPACITATED THE VICE-PRESIDENT-ELECT SHALL BECOME PRESIDENT.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Under that particular proposal, we will have a Vice-President who will become a permanent President because of failure to qualify. However, the President may later qualify. That is why the Vice President will only act until the President shall have qualified.

MR. DE LOS REYES: No, the sentence is clear: IF HE FAILS TO QUALIFY THE VICE-PRESIDENT ELECT

SHALL ACT AS PRESIDENT.

MR. DAVIDE: It says, "SHALL ACT AS PRESIDENT"?

MR. DE LOS REYES: Yes.

MR. DAVIDE: Until the President shall have qualified?

MR. DE LOS REYES: That is covered in the second amendment.

MR. DAVIDE: May we hear all the amendments to Section 5, so we will have the total picture of the new Section 5?

MR. DE LOS REYES: I yield to Commissioner Rigos who will have the honor to read the consolidated amendments.

MR. REGALADO: I think Commissioner Padilla has also some suggestions.

THE PRESIDENT: The Chair believes that we called a recess in order that the Commissioners involved could confer and just submit to the Committee a consolidated substitute for Section 5.

REV. RIGOS: Madam President, we had a division of labor. Commissioners Padilla and de los Reyes worked on the first portion of Section 5 and the rest of us worked on the latter portion of Section 5. I will now present the latter portion.

THE PRESIDENT: We will then request the Commissioners to consolidate their labor because, as stated by Commissioner Davide, what is to be presented in the first portion should be guided also by what is in the latter portion or vice versa.

MR. MAAMBONG: Madam President, we do not have to consolidate the amendments because there are two parts. Either amendment can stand on its own.

MR. REGALADO: Since there are two parts with several sentences, could we have them also reproduced in several copies to guide the other Commissioners on how to vote?

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended.

It was 10:41 a.m.

RESUMPTION OF SESSION

At 10:58 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. SARMIENTO: Madam President.

THE PRESIDENT: The Acting Floor Leader, Commissioner Sarmiento, is recognized.

MR. SARMIENTO: This Member is now the Acting Floor Leader. I ask that Commissioner Jamir be recognized.

THE PRESIDENT: Commissioner Jamir is recognized.

MR. JAMIR: Thank you, Madam President.

I propose to insert a new paragraph between the first and second paragraphs of Section 4, on page 2, which reads:
NO PERSON WHO HAS SERVED MORE THAN THREE YEARS AS PRESIDENT SHALL BE QUALIFIED

FOR ELECTION TO THE SAME OFFICE AT ANY TIME.

May I state my reasons very briefly. If the President dies, let us say, two years after assuming office, and the Vice-President takes over, the Vice-President will be serving for four years. In that case he cannot run for election as President, according to my proposed amendment. But if the President dies, let us say, three years after assuming office, then the Vice-President will serve for less than three years. In this case, he can run for election as President. That is why I propose: NO PERSON WHO HAS SERVED MORE THAN THREE YEARS AS PRESIDENT SHALL BE QUALIFIED FOR ELECTION TO THE SAME OFFICE AT ANY TIME.

May I know the response of the Committee?

MR. REGALADO: I notice that the amendment of Commissioner Jamir is almost tile same as the Twenty-Second Amendment to the United States Constitution, ratified on March 1, 1951, which says:

No person who has held the office of President or acted as President for more than three years of a term to which some other person was elected President shall be elected to the office of the President in the next succeeding election.

MR. JAMIR: Substantially.

MR. REGALADO: But the Gentleman's proposal is for permanent disqualification thereafter?

MR. JAMIR: Yes, because of the present proposals made by the Committee or approved on the floor, which disqualify the President from being reelected.

MR. REGALADO: That amendment is substantially the same as the Twenty-Second Amendment to the United States Constitution but prohibition therein is only with respect to the next succeeding election.

MR. JAMIR: The difference is that under the United States Constitution, the President has eight years to serve, whereas under our present proposal there is no reelection whatsoever for the President.

MR. SUMULONG: If I remember right, Commissioner Rodrigo made that proposal previously and that was acted upon by the Commission favorably.

MR. JAMIR: But there is none in the present proposal.

MR. SUMULONG: But I remember that there was a similar proposal made by Commissioner Rodrigo.

MR. RODRIGO: May I clarify the matter. When we were discussing the Article on the Legislative, I mentioned such a proposal and it seemed to be acceptable except that we decided to transfer it to the Article on the Executive, so it is timely now to discuss that proposal.

MR. REGALADO: May I also inform Commissioner Jamir that our Rules will be suspended; there is a proposal here to reopen that matter in Section 4 as to whether the President shall not be eligible for immediate reelection or whether it should be total prohibition from reelection. That has a sort of a bearing also because as I pointed out, in the Commissioner's proposal it will also be a complete bar whereas under the American version, it is just for the next succeeding election.

MR. JAMIR: In that case, I will wait until after the body has acted on that proposal mentioned by the Commissioner.

MR. REGALADO: I think that is the proposal of Commissioner Monsod.

MR. JAMIR: So, for the time being, I am withdrawing my motion to insert until the right time comes.

MR. SARMIENTO: Madam President, may I ask that Commissioner Rama be recognized for an anterior amendment.

THE PRESIDENT: Commissioner Rama is recognized.

MR. RAMA: Madam President, I have this anterior amendment after a conference with the Vice-Chairman of the Committee on the Executive and the former Chief Justice of the Supreme Court, Commissioner Concepcion.

My proposed amendment is on page 1, Section lines 19 and 20. The proposal is to provide a constitutional function for the Vice-President. So we delete the words "may be appointed as a member of the Cabinet" on lines 19 and 20 and in lieu thereof substitute the following: THE VICE-PRESIDENT SHALL BE THE EX OFFICIO PRESIDENT OF THE SENATE. The reason for this is that we have to address a problem that has existed for many years. All the Vice-Presidents of this country had complained that they did not have any job. Because of their joblessness a lot of anomalies and aberrations had arisen. For instance, there was one Vice-President who did nothing but campaign all over the country for four years against the President. Likewise, there was President Marcos who, because of this experience with the joblessness of the Vice-President, perceived the Vice-President as a vulture whose main and only job is to wait for the President to die. Mr. Marcos developed a phobia so that he did not want to create a position for Vice-President. I think this anomaly can be solved now by the Constitutional Commission by providing the Vice-President a constitutional function such as ex officio President of the Senate. We should eliminate this portion "may be appointed as a member of the Cabinet" because this is a little derogatory to the Vice-President, but the argument proposed and set forth by Commissioner Bern. and the rest of the Committee members that the President should not be compelled to appoint a Vice-President as a Cabinet member because a Cabinet member is an alter ego of the President and he should not be compelled to appoint somebody in whom he has no complete trust are powerful arguments. Therefore, we come up with the same problem that a Vice-President really does not have a function or a job to do. So I propose that we give him a constitutional function, the same function that is given to the Vice-President of the United States.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Will the Gentleman yield to a few questions?

MR. RAMA: Gladly, Madam President.

MR. RODRIGO: In the beginning I was of the same thinking that the Vice-President should be the President of the Senate. However, may I ask the proponent, the person concerned is constitutionally the President of the Senate may he be appointed to a Cabinet position?

MR. RAMA: Not anymore, because the position of Senate President is a very high position and the matter of appointing him as a minister or a member of the Cabinet is really just an appointment at the pleasure of the President and there is the principle that a minister is an alter ego of the President. Hence, the President should not be compelled to appoint him as Cabinet member.

MR. RODRIGO: I know that, Madam President. So my next question is this: Let us take the situation now of Vice-President Laurel. If we have a constitutional provision such as this, he would be the Presiding Officer or the President of the Senate which is another powerless position. Now, which will give Vice-President Laurel more power, his position as Minister of Foreign Affairs or as President of the Senate or Presiding Officer of the Senate with no right to vote except to break a tie?

MR. RAMA: Madam President, the most important thing is that he is the head of a powerful body. The Senate

is next to the presidency which is the highest office in the country. It determines the policies of the nation. Through its powers, it determines even the decision to enter into treaties to a certain extent. In the United States, the Vice-President is happy to have that position of Senate President. It is much better than being a jobless Vice-President or a minister of the Cabinet, where the position is subject to the pleasure of the President.

MR. RODRIGO: As I said, I was of the same thinking until I started analyzing the power of a President of the Senate. If a Vice-President is powerless, so is the Presiding Officer of the Senate, especially if he cannot vote except in case of a tie. He cannot even argue on the floor of the Senate. So, that is my misgiving.

Are we not giving him another useless, inutile position? Is it not better or will he not have more power being a member of the Cabinet?

I will give as an example, the case of Vice-President Laurel as Minister of Foreign Affairs. I think he has more power than if he were a Presiding Officer of the Senate .

MR. RAMA: Madam President I think former Senator Rodrigo has forgotten the battles that they fought to get somebody to be Senate President. As a matter of fact, one of the strategies of President Marcos was precisely to capture that very prestigious office of Senate President as a launching pad to become President. That was his strategy and he was correct.

The people in the Senate would die just to get the presidency of the Senate. It may not have tremendous power, but it has tremendous prestige.

MR. RODRIGO: A Senate President who is elected by the Senate from among the Senators is powerful because he can vote in the Senate. He can yield the Chair to somebody else and go to the floor and argue. But the Vice-President as honorary ex officio President of the Senate cannot do that. He can just preside. I do not know if he can vote in case of a tie. But he, certainly, cannot yield the Chair to somebody else and come down and argue. He certainly cannot file bills motions and resolutions of his own. His is a purely honorary ex officio function. That is why I changed my mind about such a constitutional provision. I think we will just be giving the Vice-President two useless positions.

MR. RAMA: Madam President.

THE PRESIDENT: What does the Committee say? May we have first the reaction of the Committee to this particular amendment of Commissioner Rama?

MR. SUMULONG: We would rather leave the decision to the Commission.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Madam President. I would like to raise a point of order.

THE PRESIDENT: Commissioner Davide may raise his point of order.

MR. DAVIDE: The Commission had adopted an earlier amendment reading as follows: "SUCH APPOINTMENT REQUIRES NO CONFIRMATION." The proposal would, in effect, call for a reconsideration of that approved amendment first before we could add the proposed amendment.

MR. RAMA: That is correct, Madam President; so, may I ask for a reconsideration of that decision.

THE PRESIDENT: Of lines 19 and 20?

MR. RAMA: I move to reconsider the approval of the amendment on lines 19 and 20 to the effect that the appointment of the Vice-President as a member of the Cabinet needs no confirmation by the Commission on Appointments.

MR. DAVIDE: I object to such a motion, Madam President, because that amendment had already been approved. Moreover, I agree with the contention of Commissioner Rodrigo, and in addition thereto, I would state for the record that if the Vice- President would be mandated to act as the ex officio President of the Senate in the event that he succeeds to the presidency, we will have a Senate without any help.

THE PRESIDENT: Let us vote first.

MR. RAMA: I think that is the least of the problem, Madam President. Under the Rules the Senate can always provide itself a head. That is not a big problem.

VOTING

THE PRESIDENT: Let us first vote whether or not we shall consider the approval of the amendments to lines 19 and 20.

Those in favor of reconsidering lines 19 and 20 so as to make them open to another proposed amendment, please raise their hand. (Several Members raised their hand.)

Those against reconsideration, please raise their hand. (Few Members raised their hand.)

The results show 25 votes in favor and 4 against; the motion to reconsider is approved.

MR. RAMA: Madam President.

THE PRESIDENT: May we just finish this particular item please?

MR. RAMA: On line 19, Section 3, after the words "The Vice-President," insert SHALL BE THE EX-OFFICIO PRESIDENT OF THE SENATE and delete the rest of the sentence: "may be appointed as a member of the cabinet."

THE PRESIDENT: There have been sufficient discussions on this particular point.

MR. GUINGONA: Madam President. I would like to propose an amendment to the amendment of Commissioner Rama.

THE PRESIDENT: The Commissioner may proceed.

MR. GUINGONA: I believe that the designation of the Vice-President as the ex officio President of the Senate would involve him in the legislature and might affect the principle of separation of powers to some extent. My amendment would be to retain lines 19 and 20, as amended, and add: IF BEFORE THE CONGRESS CONVENES FOR ITS REGULAR SESSION. THE VICE-PRESIDENT IS NOT NOMINATED OR, IF SO NOMINATED, HAS NOT ACCEPTED THE NOMINATION AS MEMBER OF THE CABINET. THEN HE WOULD BE EX OFFICIO SENATE PRESIDENT.

In other words we are giving the President the option to name the Vice-President as a member of his Cabinet. Then, we are giving the Vice-President the choice whether he would like to be a member of the Cabinet or Senate President.

MR. RAMA: I regret I cannot accept Commissioner Guingona's amendment because that will dilute the whole amendment.

MR. TINGSON: Madam President.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: In connection with the subject of the 5 vice-presidency, I made a manifestation yesterday which was suggested by Commissioner Bernas, that I will formulate an amendment towards dignifying more the office of the Vice- President and giving him something more definite to be included in our Constitution; that is, a responsibility which he would take upon election without necessarily putting it under the discretion of the President. So, I would like to tell the proponent of this amendment that I have a little amendment to be presented in due time along these lines.

THE PRESIDENT: If the Commissioner has any amendment, now is the appropriate time.

MR. REGALADO: Madam President, may we seek a clarification from Commissioner Tingson since this is the matter under consideration. If I recall correctly yesterday, he toyed with the idea of the Vice-President being appointed as the Ombudsman, am I correct?

MR. TINGSON: No, that was just made more in a spirit of a suggestion rather than a substantial proposal.

MR. REGALADO: If the Vice-President should be appointed as the Ombudsman will he still be eligible to be a member of the Cabinet?

MR. TINGSON: That would depend: as it is stated here in the committee report. the President is given the privilege to appoint him. He may be appointed as member of the Cabinet.

MR. REGALADO: So, he could be appointed as the Ombudsman.

MR. TINGSON: If that would not run counter towards the executive department's scheme, why not?

MR. REGALADO: We have a situation where three alternative positions for the Vice-President are being proposed: either as ex officio President of the Senate or as a member of the Cabinet as the Ombudsman.

REV. RIGOS: Madam President, in connection with the Ombudsman we have certain qualifications for that position. and the Vice-President may not possess the qualifications of the Ombudsman as defined in the Constitution. That is another problem to consider.

THE PRESIDENT: Let us go back to the Vice-President as President of the Senate.

MR. BROCKA: Madam President. may I be recognized .

THE PRESIDENT: Commissioner Brocka is recognized .

MR. BROCKA: Thank you, Madam President.

I just want to make an observation. We have been discussing particularly the issue of looking for a job for the Vice- President. A Commissioner said to appoint him as Ombudsman; another said to give him the position of the Senate President. But I think we are all agreed here that it is a useless position in terms of functions. So, we do not know what to do with that particular position. What happens is that the Vice-President is elected and he makes use of his term of six years or seven years to establish his credentials for the position of the presidency. This may sound very naive but if our problem is looking for a job for a position like the Vice-President, why do we not do away with that position? (Laughter) It may sound very naive but I cannot understand why we have been talking about what to do with the position. I get the feeling now that the reason we have the Vice-President is that of tradition. Could we not do something radical and revolutionary by doing away with it? If we are thinking of who will replace the President in case of incapacity, disability or death, then probably we can set up a mechanism

wherein the Senate President or the Speaker of the House of Representatives . . .

THE PRESIDENT: Commissioner Brocka, I had an inkling that was the idea behind the Gentleman's mind.

MR. RAMA: Madam President.

THE PRESIDENT: There was a motion to reconsider the approval of the amendment, which motion was approved by the body. May I ask Commissioner Rama to please state again his proposed amendment so as to make it clear in the minds of the Commissioners. May we have the amendment now, Commissioner Rama?

MR. RAMA: I would like to restate the amendment, Madam President. The amendment concerns line 19, Section 3. After the words "The Vice-President," insert the following words: SHALL BE THE EX OFFICIO PRESIDENT OF THE SENATE. The rest of the words — "may be appointed as a member of the cabinet" — are deleted.

MR. JAMIR: I have a simple amendment, Madam President.

THE PRESIDENT: Yes, Commissioner Jamir is recognized to propose an amendment to the amendment.

MR. JAMIR: After the word "SENATE," insert WITH RIGHT TO VOTE ONLY IN CASE OF A TIE because I do not believe the internal rules of the Senate will qualify the Vice-President to vote in affairs . . .

THE PRESIDENT: Is the amendment accepted?

MR. RAMA: I regret I cannot accept that amendment. I think the Senate would be able to provide its own rules on what to do with the Senate President because they are the most affected.

THE PRESIDENT: The amendment has not been accepted.

MR. ABUBAKAR: Madam President, I think they have finished the discussion. May I have the floor?

THE PRESIDENT: Is the Gentleman going to object to the proposed amendment?

MR. ABUBAKAR: Will the proposed amendment be clearly restated so that I can see where I can fit? (Laughter)

MR. RAMA: For the third time, I will restate the amendment. On line 19, under Section 3, after the words "The Vice- President," insert the words SHALL BE EX OFFICIO PRESIDENT OF THE SENATE. So, the whole sentence on line 19 would read: "The Vice-President SHALL BE THE EX OFFICIO PRESIDENT OF THE SENATE."

THE PRESIDENT: Is Commissioner Abubakar objecting or does he want to support the proposed amendment?

MR. ABUBAKAR: I would like to object to the amendment.

THE PRESIDENT: The Gentleman may proceed.

MR. ABUBAKAR: I would say that the proponent of the amendment would really like to give an appropriate office to the Vice-President because he has nothing else to do. But let us not elevate the Vice-President to a position only because it is open for him such as sitting in a body, presiding over Senators when he is not a Member of the Senate. Whatever his influence may be, he could not adapt himself to the thinking, to the maneuver, to the other contingencies that might happen in the Senate.

In other words, he would not be an effective leader of the body. The President of the Senate is elected by his peers in the Senate; so is the Speaker of the House elected by his peers in the House. Then why would the Gentleman insist on putting a stranger to the Senate just because he is Vice-president?

MR. RAMA: Madam President, the most democratic country, America, has adopted the same system and the people are happy with the results of the system of the Vice-President being the Senate President.

MR. ABUBAKAR: Madam President, may I answer the Gentleman? .

VOTING

THE PRESIDENT: Excuse me. The matter has been sufficiently discussed and I think the body is now ready to vote.

As many as are in favor of the amendment to make the Vice-President President of the Senate, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

The results show 10 votes in favor and 94 against; the amendment is lost.

MR. SARMIENTO: Madam President.

THE PRESIDENT: Yes, the Acting Floor Leader is recognized.

MR. SARMIENTO: May I ask that Commissioner Rodrigo be recognized.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Madam President, my amendment is on Section 8, page 3. My amendment is to delete the words "and House of Representatives" on line 31 so that the whole section will read: "Whenever there is a vacancy in the office of the Vice-President during the term for which he was elected, the President shall nominate a Vice-President from among the members of the Senate who shall take office upon confirmation by a majority vote of all the members of both Houses of Congress."

May I explain my amendment?

THE PRESIDENT: The Gentleman may proceed; he is given five minutes.

MR. RODRIGO: This Section 8 has reference to a situation where the Vice-President dies. In such a case, according to this section, the President shall nominate somebody to be the Vice-President, if confirmed by both Houses of Congress.

The section as it is now gives the President the power to choose either from the Senate or the House of Representatives. My amendment would limit the choice of the President to the Members of the Senate.

The reasons are: First, a Vice-President is a national official; he is elected nationwide by the people. I believe that the one who should be nominated to succeed him should also be an official elected nationwide by the people, and those are Senators. For example, if a Member of the House from Bulacan with four districts would be elected only by six municipalities, it would be incongruous for such an elected official to be the Vice-President who has the nationwide mandate of the people. Another reason is that the term of Office of the Vice-President is six years; the term of office of the Senators is also six years but the term of office of the Members of the House is only three years. So, I believe it is logical and practical that the choice by the President of who should succeed a Vice-president who dies should be limited to Senators.

THE PRESIDENT: What does the Committee say?

MR. SUMULONG: The Committee would leave the matter to the Commission.

MR. DE LOS REYES: Madam President, I object to the amendment. I think the choice should not be limited to

the Senate which is only composed of 24 Senators. In the House of Representatives, we have as many as 250 Members and the President will have a wider choice. It really does not depend on whether one is a Member of the Senate or whether one is a Member of the House of Representatives. A Member of the House of Representatives can have a national outlook like that of a Member of the Senate. Just because he was elected by Representatives does not mean that he has a parochial outlook. An example is our Commission. If Members of this Commission, for example, are elected only by districts, we have here Senate timbers or vice-presidential timbers who could also be good Vice-Presidents even if they are elected by districts. Therefore, by limiting the choice to the Senate, we are actually limiting the choice of good men. For these reasons, I respectfully object to the amendment.

FR. BERNAS: Madam President.

THE PRESIDENT: Yes. Commissioner Bernas is recognized.

FR. BERNAS: Although I am speaking for myself, I think I will be speaking for the sentiments of some members of the Committee. In the first place, I agree with the position taken by Commissioner de los Reyes that we should not limit the choice of Vice-President to a small group like the Senate of 94 people and that there could be very good and experienced people in the House of Representatives. Secondly, I am consistent with the original position I took for unicameralism in the desire that we give importance to a body which is closer to the masses because of the fact that the Members of this body have to campaign more closely among the people.

MR. RODRIGO: We ask for a vote.

FR. BERNAS: We ask the body to vote on this.

THE PRESIDENT: Does Commissioner Rodrigo want to say something?

MR. RODRIGO: I have said enough, Madam President. So, the amendment is to delete the words "and the House of Representatives" on line 31 of page 3 so that the section would read: "Whenever there is a vacancy in the office of the Vice-President during the term for which he was elected, the President shall nominate a Vice-President from among the members of the Senate who shall take office upon confirmation by a majority vote of all the members of both Houses of Congress." So, even the Members of the House will vote.

VOTING

THE PRESIDENT: As many as are in favor of the proposed amendment of Senator Rodrigo, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

The results show 13 votes in favor and 18 against; the amendment is lost.

MR. SARMIENTO: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. SARMIENTO: May I ask that Commissioner Tingson be recognized for an anterior amendment.

THE PRESIDENT: Commissioner Tingson is recognized for an anterior amendment.

MR. TINGSON: Again on the subject of the vice-presidency, I would like to add a sentence on line 20, page 1, of the amended committee report. The amendment would be: THE VICE-PRESIDENT SHALL HEAD THE NATIONAL SECURITY COUNCIL.

May I reason out my amendment?

THE PRESIDENT: The Gentleman may proceed.

MR. TINGSON: Madam President, members of the Committee, as I have stated earlier, the office of the Vice-President should be vested with a responsibility as the next in rank in the pyramid of government. As such, he should hold an office with a definite function and task that do not necessarily encroach on the functions of the President. I agree with Commissioner Bernas' explanation that the Vice-President's appointment to the Cabinet is not mandatory due to the principle of qualified political agency. And human nature will tell us that the President sometimes finds the presence of the Vice- President in his office awkward since, as two contending stars, the Vice-President may steal the glory from the President.

My concept, therefore, of the functional role of the Vice-President is that of an entity that is independent, constitutionally mandated, relevant and of national importance.

Let me, therefore, expound my idea based on the concept of the National Security Council of the United States. As everyone knows, historically, United States Presidents have relied on their Secretaries of State to handle the questions of policy in international relations or had personally stepped in, as Wilson and F.D. Roosevelt did, and did the job themselves. But the change in the nature of foreign policy-making, the significance of trade and economic aid programs, particularly the impossibility of treating diplomatic and military decisions as if they had no bearing on each other was reflected in the National Security Act passed by Congress in 1947. Under this statute was established, the National Security Council headed by the President, and including the Vice-President, the Secretaries of State and Defense, the Director of the Office of Civil and Defense Mobilization, and such agency heads as the President may appoint to it or invite to attend the meetings.

Not that I am an expert in the United States' or other foreign countries' policy-making, but based on my readings, among those invited in regular attendance were the Chairman of the Joint Chiefs of Staff, the Atomic Energy Commission, the Secretary of the Treasury, the Director of the Budget, and the Director of the Central Intelligence Agency, among many other vital agencies of the government.

The National Security Council has a full-time staff with a planning board whose function is to clarify issues and present possible alternative courses of action to the Council for consideration. Actually, the National Security Council is more of an advisory body than a decision-making or operating one. In our case, we can institutionalize perhaps the entity having a National Advisory Council which can be headed by the Vice-President, not by the President himself, if only to give the Vice- President one definite and very important position mandated in our Constitution uniquely for him.

Sectoral representations will also be fully enshrined in this body, if ever they shall not be able to ventilate their ideas in interest in the legislature.

While the National Security Council of the United States was created by statute, we can adopt a novel idea or view perhaps in our new Constitution by making it a creation of the Constitution like the Monetary Board or the NEDA.

My proposal then is to make the Vice-President much more effective because he is next in line to the presidency of the Philippines and in case, indeed, he takes over the national leadership, his will be a knowledgeable and effective leadership.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: I object to the proposed amendment by Commissioner Tingson on the ground that the

President, our President, is the presiding officer of the National Security Council in his capacity as Commander-in-Chief of the Armed Forces. There are many, many important items concerning the military and the security of our nation that are to be decided by the National security Council. As Commander-in-Chief, the President is the presiding officer of that council.

Thank you, Madam President.

THE PRESIDENT: Yes.

MR. TINGSON: I am referring, of course, to a body known as the National Advisory Council. It is just an advisory council but it is a council that will have a full-time staff and a planning board. In a sense, the Vice-President, by being the head of that National Advisory Council, will go through a period of actual leadership training. Having been selected by the President himself to run with him, we take it for granted that he has the confidence of the President himself. And being the head of an advisory-council of national importance, the office will be upgraded that much. In case the President dies in office — God forbid — the Vice-President will truly be a knowledgeable leader, Madam President.

THE PRESIDENT: What does the Committee say?

MR DE CASTRO: Madam President, I objected to the amendment because the Gentleman was talking of the National Security Council. I understand it is the National Advisory Council.

MR. TINGSON: I am sorry; I was referring not to the National Security Council but to the National Advisory Council.

MR. DE CASTRO: We do not have a National Advisory Council at this time but we have a National Security Council.

MR. TINGSON: Yes, Madam President.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: In our effort to elevate the position of the vice-presidency, we said that we should not make him Vice- President because that would not really elevate his position. Now we want to make him constitutional head of a nonexistent advisory body. It seems to me that is even worse.

MR. TINGSON: Some of us naturally have to give our ideas here knowing or half-knowing whether that body has already been incorporated in one of our committee reports. If, indeed, it is a sensible suggestion, then probably the answer would also sound sensible. Probably, the Committee would consider the suggestion on the National Advisory Council as another sensible idea now being propounded . . . But let us not make the office of the Vice-President a very solitary one, an almost half-hearted kind of office, considering that we are all agreed that it is important — in case the President dies, almost overnight, he automatically becomes our President.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: In order to intelligently vote on the subject matter, the Committee would like to inform the body of the following facts. Under Executive Order No. 708 promulgated in 1981, the following bodies and entities, among 18 agencies, were under the chairmanship of the President of the Philippines: — The Council of Leaders, the Foreign Policy Council, the General Military Council, the National Security Council, the National

Economic and Development Authority and the Special Presidential Reorganization Committee. The National Advisory Council mentioned by Commissioner Tingson is not here. Assuming that it was under the Office of the President — which actually it was not — we also do not know whether Executive Order No. 708 has already been affected by the proposed reorganization being worked on presently by Minister Luis Villafuerte. So, we really do not know as of this moment if a National Advisory Council exists. But definitely, under Executive Order No. 708 in 1981, there is no such thing as a National Advisory Council.

MR. TINGSON: It seems to me that the idea of a National Advisory Council would fit in in any kind of national revision of our government's scheme. I am personally wondering why we are almost half-forgetting the Vice-President. The idea is to propose, by way of an amendment, that a National Advisory Council be headed by the Vice-President.

THE PRESIDENT: I think the body is ready for a vote.

MR. SARMIENTO: Yes, Madam President.

VOTING

THE PRESIDENT: As many as are in favor of the proposed amendment of Commissioner Tingson which has been sufficiently explained, please raise their hand.

(One Member raised his hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

The results show one vote in favor and 26 against; the amendment is lost.

MR. SARMIENTO: Madam President, the joint proposed amendment of Vice-President Padilla and Commissioners Nollado, Rigos, de los Reyes, Maambong and Davide has been formulated. May I ask that Commissioner de los Reyes be recognized?

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: Madam President, the proposed amendment on Section 5 has been distributed to the Members of this Commission and it reads as follows: THE PRESIDENT-ELECT SHALL QUALIFY AT THE BEGINNING OF HIS TERM. IF HE HAS NOT BEEN CHOSEN OR IF HE FAILS TO QUALIFY, THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT UNTIL A PRESIDENT SHALL HAVE BEEN CHOSEN AND QUALIFIED. IF THE PRESIDENT-ELECT DIES OR BECOMES PERMANENTLY DISABLED, THE VICE-PRESIDENT-ELECT SHALL BECOME PRESIDENT. WHERE NEITHER A PRESIDENT-ELECT NOR VICE-PRESIDENT-ELECT SHALL HAVE BEEN CHOSEN OR SHALL HAVE QUALIFIED OR BOTH SHALL HAVE DIED OR BECOME PERMANENTLY DISABLED AT THE TIME FIXED FOR THE BEGINNING OF THEIR TERMS, THE SENATE PRESIDENT OR, IN HIS ABSENCE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL THEN ACT AS PRESIDENT UNTIL A PRESIDENT OR VICE-PRESIDENT SHALL HAVE BEEN ELECTED AND QUALIFIED.

Although there is a footnote stating that "assume office" is more specific, actually it is farfetched for a President-elect and a Vice-President-elect to qualify and not assume office. I think it very rarely happens — if it happens at all — and, therefore, we prefer to use the word "qualified" which has been the word used in the 1935 Constitution, the 1973 Constitution and the Election Code.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

FR. BERNAS: Madam President.

THE PRESIDENT: Yes, Commissioner Bernas is recognized.

FR. BERNAS: The word "qualify" in political law and administrative law has two meanings. One means to have the qualifications; the other is to assume office to take the necessary action needed in order to actually assume the office. It could mean taking the oath or posting a bond, depending upon the nature of the office. "To assume office" makes it clear but I think the jurisprudence on the meaning of the word "qualify" is quite clear also. So, I would not be inclined to change the word "qualify" because, I think, in jurisprudence that has a clear meaning. What is meant here is to assume office.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: To compromise on this choice of words and for the record, I assume that it could be agreed that the word "qualify" as used in this Section 5 means assumption of office.

I would like to ask a few questions of Commissioner de los Reyes on some words. The amendment states: "THE PRESIDENT-ELECT SHALL QUALIFY AT THE BEGINNING OF HIS TERM. IF HE HAS NOT BEEN CHOSEN OR IF HE FAILS TO QUALIFY, THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT UNTIL A PRESIDENT SHALL HAVE BEEN CHOSEN OR QUALIFIED."

I suggest that the word "OR" here should be changed to AND: "UNTIL A PRESIDENT SHALL HAVE BEEN CHOSEN AND QUALIFIED."

MR. DE LOS REYES: I agree.

MR. REGALADO: The next line says: "IF THE PRESIDENT-ELECT DIES OR BECOMES PERMANENTLY DISABLED, THE VICE-PRESIDENT-ELECT SHALL BECOME PRESIDENT. WHERE NEITHER A PRESIDENT-ELECT NOR VICE-PRESIDENT-ELECT SHALL HAVE BEEN CHOSEN OR SHALL HAVE QUALIFIED . . ." Again, change the word "OR" to AND.

MR. DE LOS REYES: "AND QUALIFIED."

MR. REGALADO: "AND SHALL HAVE QUALIFIED, OR BOTH SHALL HAVE DIED OR BECOME PERMANENTLY DISABLED AT THE TIME FIXED FOR THE BEGINNING OF THEIR TERMS, THE SENATE PRESIDENT, OR, IF HE IS UNABLE," instead of "IN HIS ABSENCE" because he might just be temporarily out of the country.

MR. FOZ: Madam President.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. DE LOS REYES: I would like first to reply to Commissioner Regalado.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: May I suggest that instead of the word "QUALIFY" on the first line, we substitute TAKE HIS OATH OF OFFICE so that the sentence will read: "THE PRESIDENT-ELECT SHALL TAKE HIS OATH OF OFFICE AT THE BEGINNING OF HIS TERM."

MR. DE LOS REYES: I think "QUALIFY" is the more embracing term and has an established meaning in jurisprudence.

THE PRESIDENT: Is the amendment accepted by the Committee?

MR. DE LOS REYES: I am sorry, I think "QUALIFY" is better.

MR. REGALADO: Besides, Section 6 is already clear on that. It reads:

Before he enters on the execution of his office, the President or Acting President shall take the following oath or affirmation.

MR. FOZ: The second sentence reads: "IF HE HAS NOT BEEN CHOSEN OR IF HE FAILS TO QUALIFY, THE VICE- PRESIDENT SHALL ACT AS PRESIDENT UNTIL A PRESIDENT SHALL HAVE BEEN CHOSEN AND QUALIFIED" as suggested by Commissioner Regalado. I think there are some words missing before the word "QUALIFIED." Maybe, the missing words are "OR HAVE"; otherwise, there is an ungrammatical construction. Anyway, it is a matter of style, I suppose.

Thank you.

THE PRESIDENT: Commissioner Davide was seeking to be recognized.

The Gentleman may proceed.

MR. DAVIDE: My comment is on the proposed Committee amendment to change the word "OR" to "AND" because "CHOSEN" and "QUALIFIED" would refer to two different situations: one, where the President-elect fails to qualify, or the President-elect has not been chosen. So, if we put "AND" in lieu of "OR," we destroy the two concepts.

FR. BERNAS: But the thing is, the office is not filled until he is both chosen and qualified.

MR. DAVIDE: That is correct.

FR. BERNAS: So, if either one is missing, the office is vacant, and we have a situation where the office has to be filled.

THE PRESIDENT: Is Commissioner Davide satisfied?

MR. DAVIDE: I am satisfied with the explanation, but that is really the meaning there. It would have reference to the two instances where there was failure to qualify and there was failure to choose.

FR. BERNAS: Yes.

MR. SUAREZ: Madam President, may I be recognized?

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

In the proposed draft for Section 5 of the Honorable de los Reyes, he employed the phrase "BECOMES PERMANENTLY DISABLED." I suppose this would refer to a physical disability, or does it also include mental disability?

MR. DE LOS REYES: It includes all kinds of disabilities which will disable or incapacitate the President or Vice-President from the performance of his duties.

MR. SUAREZ: Thank you.

And who would determine the permanent disability of the President-elect?

MR. DE LOS REYES: I think that is covered in subsequent articles. I think the same principles will apply.

MR. SUAREZ: Meaning, is it himself or the Cabinet?

MR. DE LOS REYES: As provided in the subsequent articles.

MR. SUAREZ: And is there any period whereby the permanent disability should be determined in the case of the President-elect because, according to the first sentence, he is under obligation to qualify or assume office at the beginning of his term?

MR. DE LOS REYES: Yes. So, if he is permanently disabled . . . permanent is permanent. It has no definite period.

MR. SUAREZ: That is correct.

MR. DE LOS REYES: It is forever.

MR. SUAREZ: No. What I am referring to is the period when the Vice-President should assume office, referring only to the so-called "permanent disability." Let us say that the President-elect, under sentence one of the proposed Section 5, would have to assume office on January 1, 1987. But because of some disability, he is unable to assume office from the beginning of his term. That disability turns out to be permanent in character after a while. So, is there no duration for the determination as to whether or not the President-elect from the time he should have assumed office at the beginning of his term up to the time he is declared permanently disabled in order that the Vice-President-elect can immediately assume the presidency?

MR. DE LOS REYES: There are two situations: If the President-elect has not been chosen or has failed to qualify, the Vice-President-elect simply acts as President. So, there will be an election for President. But if the President-elect dies or becomes permanently disabled, that is no longer simply failing to qualify or not having been chosen; he actually dies or becomes permanently disabled. The Vice-President then shall become permanent President up to the expiration of the term of the regular President. That is how I understand it.

MR. SUAREZ: So, under the example I have given, if the President-elect for one reason or another would not assume office or would not qualify on January 3, for example, then the Vice-President-elect should automatically assume office as President?

MR. DE LOS REYES: He shall act as President in case he fails to qualify or he has not been chosen at the beginning of the term. That is covered by the first sentence.

MR. SUAREZ: Again, just to be clear, I will get a little closer to the date. Let us say, the President-elect is supposed to begin his term on January 1 and he fails to take his oath or assume office on January 1. So, on the midnight of January 1 or January 2, the Vice-President-elect should already assume office as acting President. Is my understanding correct in interpreting this Section 5?

MR. DE LOS REYES: Yes, Madam President.

MR. SUAREZ: Thank you.

FR. BERNAS: Madam President, one question for Commissioner de los Reyes. The first sentence of the consolidated amendment provides that the President-elect shall qualify at the beginning of his term. We want to be clarified on the word "shall"; we take it to be mandatory. If he does not, can that be interpreted as abandonment

of office?

MR. DE LOS REYES: If he does not qualify . . .

FR. BERNAS: Yes, or refusal to assume office in which permanent vacancy is created.

MR. DE LOS REYES: If he fails to qualify . . .

FR. BERNAS: Maybe the President shall qualify. Suppose he does not assume office, is that abandonment of office or refusal to assume office which makes the office vacant?

MR. DE LOS REYES: If he does not want to assume office, that can be construed as abandonment of office. There is no other interpretation.

FR. BERNAS: We could have a problem there. In other words, perhaps we should specify what "beginning of the term" means. If on the very first day he does not assume, he does not qualify. Is that already abandonment of office or refusal to assume office?

MR. DE LOS REYES: The question is that if he is qualified but does not assume office.

FR. BERNAS: He does not assume office. He was chosen; he has all the qualifications but he does not follow this command in the first sentence which tells him that he shall qualify at the beginning of his term.

MR. DE LOS REYES: Insofar as Section 5 is concerned. I would say that the Vice-President can start acting as President. But whether that will be abandonment of office. I think there are several variables which can be decided only on a case-to-case basis. When we say abandonment, we should take into consideration the intent of the public official — whether he would really abandon the office or whether he could not assume office for one reason or another but may have the intention to assume it later on. That is only my personal opinion.

MR. RODRIGO: Madam President. I would like to ask a few questions.

THE PRESIDENT: Is Commissioner Bernas satisfied with the explanation?

FR. BERNAS: In other words, so long as the intention is clear that the mere failure to qualify, let us say, on the first day should not be interpreted as abandonment of office or refusal to assume office, the language now is subject to that interpretation. In the original language. I think it was not.

MR. MAAMBONG: Madam President.

MR. RODRIGO: Madam President.

THE PRESIDENT: We will just finish with the Committee.

Commissioner Maambong is recognized.

MR. MAAMBONG: Perhaps I could help a little if we will resolve the problem in relation to the second sentence because the second sentence cites a situation where a President-elect has not been chosen or he fails to qualify. In other words, a President-elect who is well and hearty and in total possession of his faculties should qualify at the beginning of his term, but if for one reason or another he fails to qualify, then I assume the second sentence would apply and in that case the Vice-President shall only act as President.

The reason why the President-elect failed to qualify is another thing; it may be that he does not really want to take the office or it may be that he is prevented by some insuperable cause. But just the same, what I am saying is that we just have to apply the second sentence in that regard, which means that whatever the reason he did not qualify, we will apply the fact that he failed to qualify and the Vice-President will have to act as President.

FR. BERNAS: But then the sentence goes on to say, "UNTIL A PRESIDENT SHALL HAVE BEEN CHOSEN," in which case we are opening the possibility that in fact a permanent vacancy was created.

MR. MAAMBONG: "UNTIL THE PRESIDENT SHALL HAVE BEEN CHOSEN AND QUALIFIED" means that there is a President who has been chosen but has not qualified. That means the first part of the second sentence will apply that he has been chosen but failed to qualify.

That is just my interpretation, Madam President.

FR. BERNAS: But the first sentence already assumes that he was chosen; the only thing is he did not qualify.

MR. MAAMBONG: Yes.

FR. BERNAS: That is why I think the original language avoids this one.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Madam President, just a few questions for the record for clarification.

If the Senate President takes over because of the death or disability of both the President and the Vice-President, does he lose his position as Senate President?

MR. REGALADO: While he is acting as President.

MR. RODRIGO: And he does not lose his position as Senator either?

MR. REGALADO: I think he does not because he is only acting as President.

MR. RODRIGO: So, after a President or a Vice-President shall have been elected and qualified, the Senate President goes back to the Senate as, first of all, a member of the Senate and secondly, as Senate President, unless the Senate had elected somebody else. Am I correct?

MR. REGALADO: That is my interpretation, Madam President.

MR. RODRIGO: And the same is true of the Speaker of the House of Representatives?

MR. REGALADO: The same interpretation.

MR. RODRIGO: Thank you.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: In response to the previous question as to whether in case the President-elect fails to qualify at the beginning of his term will mean abandonment of his office, I think there is a rule in the law of public officers that the date that a public officer should qualify is expressly stated as in this case; if he fails to qualify, then he is deemed to have abandoned the office. But in this case, after the first sentence, it is clear that the subsequent provisions expressly provide that in case of failure to qualify, the Vice-President shall act as President until a President shall have been chosen or have qualified. Therefore, there is no abandonment of office.

FR. BERNAS: If I may propose a change to the language presented, the first two sentences shall read: "THE PRESIDENT-ELECT SHALL QUALIFY AT THE BEGINNING OF HIS TERM. IF HE HAS NOT BEEN CHOSEN OR IF HE FAILS TO QUALIFY, THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT UNTIL THE PRESIDENT-ELECT SHALL HAVE QUALIFIED." We just drop the word "CHOSEN" to suggest that it is not a question of choosing another President but just waiting for the one already chosen to qualify.

MR. DE LOS REYES: So under that concept, there will be no more need for an election of a new President but the same President.

FR. BERNAS: Yes.

MR. DE LOS REYES: Because if it involves the election of another President, it will fall under the subsequent sentences. ..

FR. BERNAS: That is correct.

MR. DE LOS REYES: I will accept the suggestion of Commissioner Bernas.

MR. MAAMBONG: Madam President.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Just one more point which I would like to clarify. When the proponent used the word "CHOSEN," I would assume that that is the point in the electoral process where the President-elect is proclaimed. Is that the correct interpretation Madam President? The electoral process goes like this: First, we have the election at large done by the people; then there is the canvass and proclamation of the votes during which time we say that the President has been chosen. We are referring to the point in time when the votes have been canvassed and the President-elect has been proclaimed by the proper canvassing authority. That is the meaning of the word "CHOSEN." Is that the meaning, Madam President?

MR. DE LOS REYES: I was distracted.

MR. MAAMBONG: I will repeat the question because I feel this is important.

MR. DE LOS REYES: Yes, please.

MR. MAAMBONG: The meaning of the word "CHOSEN" has harassed several law students before in the past. In the electoral process, we start with the election. The election is being participated in by people at large. After the election, there is the canvass of votes and proclamation. When the Gentleman used the term "CHOSEN" in this section, is he actually referring to the proclamation?

MR. DE LOS REYES: To that point in time.

MR. MAAMBONG: Yes, that point in time.

MR. DE LOS REYES: Yes, Madam President.

MR. MAAMBONG: I thank the Commissioner.

MR. REGALADO: And I think that is solved by the word "President-elect" because he could not be referred to as President-elect unless he has been proclaimed.

MS. ROSARIO BRAID: Madam President.

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: This is just a matter of style. In the phrase "OR BOTH SHALL HAVE DIED," I think there is a missing word. It should be "OR WHERE BOTH SHALL HAVE DIED." After "SHALL HAVE

QUALIFIED OR WHERE BOTH SHALL HAVE DIED OR BECOME PERMANENTLY DISABLED," the phrase "AT THE TIME FIXED FOR THE BEGINNING OF THEIR TERMS" is a little ambiguous. I wonder if we could rephrase it with the phrase ON OR BEFORE THE BEGINNING OF THEIR TERMS.

MR. DE LOS REYES: That is a matter of style. We already understand the meaning of "AT THE TIME FIXED FOR THE BEGINNING OF THEIR TERMS" and these have always been the words used in the previous constitutions.

MR. REGALADO: It is on the beginning of their terms.

MR. DE LOS REYES: It is clear at the time fixed from the beginning of their terms because the law fixes the terms of elected public officials.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Madam President, on lines 2 and 3 of the amendment by substitution, we can eliminate the phrase "HAS NOT BEEN CHOSEN OR IF HE." In other words, if he fails to qualify, then the Vice-President-elect shall act as President until the President-elect shall have qualified. The phrase "HAS NOT BEEN CHOSEN OR IF HE" should be eliminated because it is understood that Section 5 follows Section 4. There has already been a proclamation and he has been chosen.

In my original suggestion, I did not have that phrase. I merely suggested: THE PRESIDENT-ELECT SHALL QUALIFY AT THE BEGINNING OF HIS TERM. IF HE FAILS TO QUALIFY, THE VICE-PRESIDENT SHALL ACT AS PRESIDENT UNTIL THE PRESIDENT SHALL HAVE QUALIFIED. That was our original amendment, but we conferred with Commissioners Maambong and Davide who made some distinctions about "CHOSEN" and "QUALIFIED." So, I think they should answer the question.

MR. MAAMBONG: Madam President, it was actually Commissioner Davide who caused all these confusions, so he should untangle it.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: May I be allowed to explain why the word "CHOSEN" must appear there?

THE PRESIDENT: The Gentleman may proceed.

MR. DAVIDE: It might happen that in a presidential election, a President may not have been chosen at all. There may be a failure of election for the President, but not for the Vice-President.

Qualification there presupposes a candidate who had actually been elected but failed to qualify. So, that is another area. The other is, failure of the election of a President but a Vice-President is elected. So, in that particular respect, we allow the Vice- President to act as President until a President shall have been chosen accordingly. That is the wording of the 1973 Constitution. So, there are two separate instances: first, mere failure to qualify; and second, the failure to really choose a President.

MR. PADILLA: Madam President, this Section 5 follows Section 4. And under Section 4, the President and the Vice- President have already been elected. The electoral returns have already been verified. There has been proclamation of those elected.

So, this Section 5 refers to the President-elect and the Vice-President elect. It should really be simple. If the President-elect fails to qualify, then the Vice- President-elect shall act as President until the President shall have

qualified. The sections all refer to the President and Vice-President who have already been elected, proclaimed and, therefore, chosen.

THE PRESIDENT: How about the comment of Commissioner Davide in case there is a failure of election and no one has been chosen?

MR. PADILLA: That might come under the second sentence which states: WHERE NEITHER A PRESIDENT-ELECT NOR A VICE-PRESIDENT-ELECT SHALL HAVE BEEN CHOSEN OR SHALL HAVE QUALIFIED." Then the Senate President or, if he is unable, the Speaker of the House shall then act as President until a President or Vice-President shall have been elected and qualified. So, that situation is covered by the second sentence. The first sentence refers to a President-elect who, for some reason, fails to qualify. The provision merely says that the Vice-President-elect shall act as President.

THE PRESIDENT: What does the main sponsor, Commissioner de los Reyes, say?

MR. DE LOS REYES: In the light of all the views given, the proposed amendment will read as follows, Madam President: "THE PRESIDENT-ELECT SHALL QUALIFY AT THE BEGINNING OF HIS TERM. IF HE HAS NOT BEEN CHOSEN, OR IF HE FAILS TO QUALIFY, THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT UNTIL THE PRESIDENT-ELECT SHALL HAVE QUALIFIED. IF THE PRESIDENT-ELECT DIES OR BECOMES PERMANENTLY DISABLED, THE VICE-PRESIDENT SHALL BECOME PRESIDENT. WHERE NEITHER A PRESIDENT ELECT NOR A VICE-PRESIDENT-ELECT SHALL HAVE BEEN CHOSEN AND HAVE QUALIFIED, OR WHERE BOTH SHALL HAVE DIED OR BECOME PERMANENTLY DISABLED AT THE TIME FIXED FOR THE BEGINNING OF THEIR TERMS, THE SENATE PRESIDENT, OR IF HE IS UNABLE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, SHALL THEN ACT AS PRESIDENT UNTIL A PRESIDENT OR VICE-PRESIDENT SHALL HAVE BEEN ELECTED AND QUALIFIED."

THE PRESIDENT: So, the proposal of Commissioner Padilla is not being considered?

MR. PADILLA: Will Commissioner de los Reyes yield to a suggestion to eliminate the phrase "HAS NOT BEEN CHOSEN OR IF HE" on lines 2 and 3, and simply say: "IF HE FAILS TO QUALIFY"?

MR. MAAMBONG: Madam President.

THE PRESIDENT: Yes, Commissioner Maambong is recognized.

MR. MAAMBONG: I am now speaking as one of the proponents. After the explanation of Commissioner Davide, I am more inclined to agree with the statement of Commissioner Davide that it is indeed necessary that the words "IF HE HAS NOT BEEN CHOSEN" remain in the Article.

Thank you, Madam President.

MR. DE LOS REYES: What shall we vote on, the suggestion of Commissioner Padilla . . . ?

THE PRESIDENT: Does Commissioner de los Reyes accept the amendment of Commissioner Padilla?

MR. DE LOS REYES: It is not that I am not accepting the amendment because I share the same view as Commissioner Padilla's, but when we consolidated the amendments with the assistance of Commissioners Davide and Maambong, the word "CHOSEN" was inserted. That is why I leave this to the body for decision.

MR. MAAMBONG: I think we should ask the opinion of the Committee on this.

THE PRESIDENT: Yes, what is the opinion of the Chairman?

MR. REGALADO: The opinion of the Committee, Madam President, is that if we leave that phrase "IF HE HAS NOT BEEN CHOSEN OR IF HE FAILS TO QUALIFY" there, it does not change the meaning anyway. In fact, it may provide for a future contingency envisioned by Commissioner Davide. Even if it stays there, it does not affect the fact that he should be chosen and qualified.

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: This Section 5 follows Section 4, that the President-elect and the Vice-President have already been chosen. The first sentence only contemplates the unusual situation where the President-elect fails to qualify. The fact that there may be some occasion about being chosen is covered by the second sentence. So, I suggest we vote on my amendment.

MR. RODRIGO: Madam President, before we vote, may I ask a question?

THE PRESIDENT: Commissioner Rodrigo may proceed.

MR. RODRIGO: The fourth sentence states: "WHERE NEITHER A PRESIDENT-ELECT NOR A VICE PRESIDENT-ELECT SHALL HAVE BEEN CHOSEN OR HAVE QUALIFIED . . ." Is it not a fact that a President-elect and a Vice-President-elect are already chosen that is why they are called "elect"?

THE PRESIDENT: As the Chair sees it, the second sentence refers to a situation where the President-elect has not been chosen. So, it is not really covered by this other sentence "WHERE NEITHER A PRESIDENT ELECT . . ."

MR. RODRIGO: But it will have something to do with my voting because I am looking at the section as a whole.

THE PRESIDENT: In view of the difference of opinion on this particular Section 5, we will ask again the Commissioners concerned to confer about this so maybe we can suspend the session at this particular time.

Before we do so, we wish to acknowledge the presence of our guests who compose a fact-finding good will mission to the Philippines and whose names have been circulated to all of you. So, we welcome you and we hope you will have a fruitful visit. (Applause) We invite you to lunch so that you will have time to meet with our Commissioners, as you desire.

MR. SARMIENTO: Madam President, I move for a suspension of the session until two-thirty this afternoon.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended until two-thirty in the afternoon.

It was 12:27 p.m.

RESUMPTION OF SESSION

At 2:38 p.m., the session was resumed

THE PRESIDENT: The session is resumed.

MR. SARMIENTO: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. SARMIENTO: May I ask that Commissioner Davide be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Madam President, the proposed amendment is supposed to be on Section 8. On Section 8, page 4,

the following amendments are sought to be introduced: Instead of "take" on line 1, use the word ASSUME, and after "Congress" on line 2, add the following words: VOTING SEPARATELY.

MR. SUMULONG: We accept the amendment.

THE PRESIDENT: Just a minute. Is there any objection to these proposed amendments on lines 1 and 2 of page 4 which have been accepted by the Committee?

MR. DE LOS REYES: Madam President, may I just ask Commissioner Davide a clarificatory question?

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: Madam President, if it is to be voted separately, what happens if the House of Representatives confirmed the nomination while the Senate votes otherwise?

MR. DAVIDE: What will happen is he cannot assume the office.

MR. DE LOS REYES: So, we will have a case where the Senate, having its own candidate from the Senate, rejects a nominee of the President who is a Member of the House of Representatives. If the President nominates a Member of the Senate who is not acceptable to the House of Representatives, the House of Representatives can likewise reject the nominee.

MR. DAVIDE: In other words, the proposal of the Gentleman is for the Congress to be in joint session?

MR. DE LOS REYES: I think that is preferable.

MR. DAVIDE: Then, let me finish. The voting will be by all, and it is necessary to get the majority vote of all.

MR. DE LOS REYES: Yes, I think that is the better procedure.

MR. RODRIGO: Madam President.

THE PRESIDENT: What is the pleasure of Commissioner Rodrigo?

MR. RODRIGO: That has never been done during my 12 years in the Senate. Whenever we have a joint session, the House and the Senate vote separately because otherwise the Senators are outnumbered by the Members of the House.

THE PRESIDENT: What does the Gentleman say to that?

MR. DAVIDE: Madam President, that is exactly the reason I have not yet accepted the proposal. I was only asking the intention of Commissioner de los Reyes. Under my proposal, if one House cannot give a concurrence by a majority vote for a confirmation, then the President will have to choose another and submit the name of that other fellow, the contemplation being that each House shall really vote separately.

THE PRESIDENT: Does Commissioner de los Reyes insist?

MR. DE LOS REYES: No, I am not even objecting to the amendment of Commissioner Davide. I am just pointing out that it could happen that none will be acceptable to both Houses, if both Houses become more or less partisan in their election. But if the purpose is to find an acceptable Member of either House until both Houses are forced to agree, then I have no objection to the amendment of Commissioner Davide.

THE PRESIDENT: The proposed amendment has been accepted by the Committee.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE: On line 9, page 4, between the words "President" and "or," I seek the insertion of the following: AND SUCH OFFICER SHALL ACT ACCORDINGLY, UNTIL THE DISABILITY OF THE PRESIDENT OR VICE-PRESIDENT BE REMOVED, OR UNTIL THE ELECTION OF THE PRESIDENT OR THE VICE-PRESIDENT. So, the entire line will read: "which officer shall then become Acting President AND SUCH OFFICER SHALL ACT ACCORDINGLY, UNTIL THE DISABILITY OF THE PRESIDENT OR VICE-PRESIDENT BE REMOVED, OR UNTIL THE ELECTION OF THE PRESIDENT OR THE VICE-PRESIDENT, or the manner in which one shall be selected."

MR. SUAREZ: Madam President.

MR. REGALADO: Will the Commissioner state the page and the line again for the benefit of the other Commissioners?

MR. DAVIDE: On page 4, line 9 with the proposed amendment will now read as follows: "which officer shall then become Acting President AND SUCH OFFICER SHALL ACT ACCORDINGLY, UNTIL THE DISABILITY OF THE PRESIDENT OR VICE-PRESIDENT BE REMOVED, OR UNTIL THE ELECTION OF THE PRESIDENT OR VICE-PRESIDENT, or the manner in which one shall be selected."

MR. SUAREZ: Madam President, may we be recognized?

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

Does Commissioner Davide not think that his proposal is no longer necessary because this particular sentence assumes a permanent disability, death, removal from office or resignation? In other words, the vacancy is permanent.

MR. DAVIDE: No, Madam President.

MR. SUAREZ: It does not contemplate a return of the permanently disabled, Madam President.

REV. RIGOS: Madam President, I believe my amendment on this section can be considered as an anterior amendment.

THE PRESIDENT: Does the Commissioner's amendment have reference to this one? So as not to break the line of thought of Section 9, may we consider the amendment later?

MR. SUAREZ: So may we respectfully suggest that Commissioner Davide withdraw the amendment.

MR. DAVIDE: I am willing to drop the clause "UNTIL THE DISABILITY OF THE PRESIDENT OR VICE-PRESIDENT BE REMOVED." So I will read again as amended.

THE PRESIDENT: Will Commissioner Davide kindly read from line 6?

MR. DAVIDE: "The Congress shall by law provide for the case of permanent disability, death, removal from office or resignation of both the President and Vice-President, declaring which officer shall then become Acting President AND SUCH OFFICER SHALL ACT ACCORDINGLY, UNTIL THE ELECTION OF THE PRESIDENT OR VICE-PRESIDENT, or the manner in which one shall be selected."

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: The Committee, in fact, has received the proposed amendment of Commissioner Rigos, and I wonder if Commissioner Davide would allow Commissioner Rigos to proceed with his amendment with the

concurrence of the Chair.

THE PRESIDENT: Let us hear Commissioner Rigos if he wants to delete the whole section.

REV. RIGOS: I am proposing to substitute it with a new provision which I will read, Madam President.

THE PRESIDENT: Please proceed.

REV. RIGOS: The suggested substitute provision will read as follows: IN CASE OF PERMANENT DISABILITY, DEATH, REMOVAL FROM OFFICE OR RESIGNATION OF BOTH THE PRESIDENT AND VICE-PRESIDENT, THE SENATE PRESIDENT OR, IN HIS ABSENCE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL THEN ACT AS PRESIDENT UNTIL THE PRESIDENT AND VICE PRESIDENT SHALL HAVE BEEN ELECTED AND QUALIFIED.

This is related to the other proposed amendment that the Commission still has to act upon on Section 5, pages 2 to 3. The members of the Committee have copies of this proposed amendment.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: For the benefit of all the Commissioners here, we have caused a reformulation of Section 5 with the assistance of the different sponsors, and which is now being reproduced for distribution to all the Commissioners so that they can follow the discussion. If Commissioner Rigos says that this also has reference to Section 5, then we request that we defer consideration of any proposed amendment to Section 9 until we have had reviewed and voted upon Section 5 because that may involve and affect the provisions in Section 9. He and Commissioner Davide can get together thereafter so that they can be coauthors of a proposed amendment.

REV. RIGOS: I agree, Madam President.

SARMIENTO. Madam President, may I ask that Commissioner Bacani be recognized for an anterior amendment.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: I beg the indulgence of the Committee since I was absent this morning. May I propose an amendment on Section 7, page 3, line 21 which reads, "The President and Vice-President shall receive a salary to be fixed by law." I would like to substitute the words "fixed by law" with "DETERMINED by law," the reason being that I would like to ask that the salary of the President not be fixed, to take account of possible high rates of inflation afterwards. The succeeding sentence which says, "They shall not receive during their tenure of office any other emolument from the government or any other source " is, therefore, retained. I would, however, suggest that it be deleted and transferred to the Transitory Provisions of the Constitution. The amended section will now read: "The President and Vice-President shall receive a salary to be DETERMINED by law. They shall not receive during their tenure of office any other emolument from the government or any other source."

In places like Italy, salary adjustments among government employees are made automatic when there is an inflation. So it may not be good to fix the salary of the President, but just to have it determined by law, and that future determination may be made such that for every rate of inflation, there will be a corresponding increase in the salary of the President.

THE PRESIDENT: Does the Committee accept the proposed amendment on line 21 ?

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, in connection with this, there was an omnibus motion to correct the sections that specify salaries and precisely to use the phrase "shall be determined by law." I thought we had agreed that the Transitory Provisions will provide for the starting salaries. In that way we resolve all the remuneration provisions in the Constitution.

BISHOP BACANI: Yes. My amendment will then be according to that.

THE PRESIDENT: Commissioner Bacani desires to change the word "fixed" to "DETERMINED." Is this acceptable to the Committee?

Is there any objection on the part of the Committee to change the word "fixed" on line 21 to "DETERMINED"?

MR. SUMULONG: The Committee accepts the amendment, Madam President.

FR. BERNAS: Madam President, is the Commissioner also deleting the clause "which shall not be increased or decreased during their term of office"?

BISHOP BACANI: Yes, Madam President, because my understanding is that the law itself later on will provide for an automatic increase or decrease, as the case may be, in case of inflation or deflation.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: In the omnibus amendment we agreed to harmonize the resolutions; therefore, we would say, "shall not be decreased during their term of office."

BISHOP BACANI: I will be agreeable to that.

THE PRESIDENT: So how will the sentence read now?

BISHOP BACANI: "The President and Vice-President shall receive a salary to be DETERMINED by law which shall not be decreased during their term of office."

MR. SUMULONG: Madam President.

THE PRESIDENT: Commissioner Sumulong is recognized.

MR. SUMULONG: We cannot accept deleting the clause "which shall not be increased or decreased during their term of office."

THE PRESIDENT: Is Commissioner Bacani seeking to delete that?

BISHOP BACANI: Only the part which says, "or decreased during their term of office." In other words, the salary can be increased, but not decreased.

FR. BERNAS: Madam President, this limitation on the power to decrease the salaries is put in there precisely to protect the independence of the President from the legislature.

BISHOP BACANI: Yes. Therefore, it cannot be decreased.

FR. BERNAS: It cannot be decreased.

THE PRESIDENT: It cannot be decreased.

BISHOP BACANI: Yes, that is the one that should not be deleted.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: I am sorry, but in the omnibus resolution, we said salaries shall not be decreased but we also said that any increase shall not be applicable to the incumbent. We leave it to the Committee on Style to harmonize all the resolutions to the effect.

BISHOP BACANI: Madam President, may I just simplify my amendment.

THE PRESIDENT: Yes, but we are concerned now with the Office of the Executive.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: I am the Chairman of the Committee on Style and I did not know that this matter would be left to the discretion of the Committee. This is not merely a matter of style; this involves substance. For example, if my Committee should delete the clause "which shall not be decreased during their term of office," we would be changing the substance and that is not within our power.

Madam President, this amendment would embrace not only the salaries of the President and the Vice President but also the salaries of many other officials — the members of the Supreme Court; justices of the Intermediate Court of Appeals; those in the constitutional offices and others. So, let us lay down a general principle — a general rule for all. The issue or the question is: In all these offices, whether in the Supreme Court, in the Congress or in the constitutional commissions, should we leave it entirely to the Congress to determine how much their Members would receive, and whether these salaries be increased or decreased even during their tenure or term of office? Should we maintain the present provision of the Constitution, restricting the powers of Congress to either decrease or increase these salaries?

MR. REGALADO: Madam President, I recall that Commissioner Monsod was the original Proponent of that uniform rule with respect to salaries and with respect to what would be placed in the Transitory Provisions.

May we ask Commissioner Monsod if he has a copy of his original proposal which applies to all officers, plus his formulation of what he expected to be placed in the Transitory Provisions, so that there will be an equal application and a uniform rule?

MR. MONSOD: Madam President, may we just defer this matter for a few minutes and take up other matters? I will look for the formulation.

THE PRESIDENT: May we call on Commissioner Bacani again later?

BISHOP BACANI: Thank you very much, Madam President.

MR. SARMIENTO: Madam President, may I ask that Commissioner Jamir be recognized for an anterior amendment.

THE PRESIDENT: Commissioner Jamir is recognized.

MR. JAMIR: Thank you, Madam President.

My amendment is with respect to Section 6, appearing on page 3 of the Committee's draft. On line 8, I propose to change the word "he" to THEY and eliminate the letter "s" in "enters" and change the word "his" to THEIR. On line 9, after the word "President," put a comma (,) and add THE VICE-PRESIDENT OR THE ACTING

PRESIDENT shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or the VICE- PRESIDENT or the ACTING PRESIDENT) of the Philippines, preserve and defend its Constitution . . ."

In other words, the amendment consists of adding the words VICE-PRESIDENT to the pertinent portions of the draft so that the oath provided herein should be used by all of the three officers mentioned: the President, the Vice-President and the Acting President.

May I know the response of the Committee, Madam President?

THE PRESIDENT: what does the Committee say?

MR. SUMULONG: E accept the amendment. Madam President.

MR. JAMIR: Thank you.

MR. SARMIENTO: Madam President, may I ask that we put this to a vote.

THE PRESIDENT: Is there any objection to the proposed amendment of Commissioner Jamir which has been accepted by the Committee? (Silence) The Chair hears none; the amendment is approved.

MR. SARMIENTO: Madam President, may I ask that Commissioner Rigos be recognized.

THE PRESIDENT: Commissioner Rigos is recognized.

REV. RIGOS: Madam President, I propose to delete the entire Section 10 on page 4, and in lieu thereof, substitute the following proposed provision: IN CASE OF VACANCY IN THE OFFICE OF THE PRESIDENT OCCURRING AT LEAST EIGHTEEN MONTHS BEFORE THE REGULAR ELECTION, THE SAME SHALL BE FILLED BY SPECIAL ELECTION TO BE CONDUCTED BY THE COMMISSION ON ELECTIONS IN ACCORDANCE WITH LAW AND THE PRESIDENT THUS ELECTED SHALL SERVE FOR THE UNEXPIRED TERM.

MR. REGALADO: May we ask Commissioner Rigos if we can have that proposed amendment by substitution reproduced so that copies can be distributed.

MR. JAMIR: Madam President, I just wish to make a slight correction or manifestation for the record. In this portion of the "oath" on line 15, Section 6, the phrase "execute its laws" does not apply to the Vice-President until he assumes the office of President.

Thank you.

THE PRESIDENT: Does the Committee Chairman have no objection to the insertion?

MR. SUMULONG: We have no objection, Madam President.

THE PRESIDENT: So let the proper insertion be made.

MR. SARMIENTO: Madam President, may I ask that Commissioner Rodrigo be recognized.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Madam President, my amendment is on Section 11, pages 5 to 6. May I explain the purpose of my amendment.

According to Section 11, if a majority of the members of the Cabinet transmit to the President of the Senate or to

the Speaker of the House a written declaration that the President is unable to discharge the powers and duties of his office, then the Vice-President takes over the duties of the President and he becomes Acting President. Then subsequently, if the President transmits a message to the President of the Senate and to the Speaker declaring that no inability exists, then the President takes over. Then within five days, the majority of the members of the Cabinet may again send a written communication stating that the President is incapable, and in that case, Congress will make an investigation and will make a decision.

But it is not clear in this provision who will act as President during the time that Congress is making the investigation and arriving at a decision. As a matter of fact, if we were to read the end of the section, it would appear that the Vice-President would also be the one in charge during the time that Congress is making its studies. However, during my interpellation, the Committee said that that was not their intention. That the intention of the Committee is to have the President act as President during the time that Congress is studying the matter.

And so that is the purpose of my amendment. I explained it because my amendment would consist of just changing a few words, a few punctuation marks, and might not be understood if I did not make this preliminary explanation. On page 5, line 21, after the words "duties of his office," I propose to place a period (.), to delete "unless" and instead substitute the words MEANWHILE, SHOULD.

Then on line 26, after the word "office," change the period (.) to a comma (,) and delete the word "thereupon." On page 6, line 3, delete the words "continue to discharge," and instead place the word ASSUME. On line 4, delete the word "resume," and instead place the word CONTINUE. The whole paragraph will now read: "Thereafter, when the President transmits to the President of the Senate and to the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office. MEANWHILE, SHOULD a majority of all the members of the Cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Congress shall decide the issue, convening within forty-eight hours for that purpose, if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration or, if not in session, within twenty-one days after it is required to assemble, determines by a two-thirds vote of both Houses of Congress that the President is unable to discharge the powers and duties of his office, the Vice-President shall ASSUME the same as Acting President; otherwise, the President shall CONTINUE the powers and duties of his office."

MR. REGALADO: Madam President, before the Committee makes its decision on whether to accept the amendment or subject it to a vote on the floor, may I verify some points. Line 31 on page 5 says: "determines by a two-thirds vote of both Houses of Congress that the President is unable to discharge; ." Does the Gentleman envision the voting of the two Houses of Congress here as voting in joint session or voting separately?

MR. RODRIGO: Voting separately, yes., May propose that on page 6, line 1, after the word "Congress," we place a comma (,) and insert VOTING SEPARATELY and another comma (,).

MR. JAMIR: Madam President, may I suggest that instead of using the word "MEANWHILE," we use the word HOWEVER.

MR. RODRIGO: The word "HOWEVER" seems to denote a contrary situation and it follows very closely the sentence where the President is the Acting President. And so, if we follow this sentence with "HOWEVER," it might denote that the President is no longer the one who continues to act but the Vice-President.

MR. SUMULONG: The Committee accepts the amendment.

MR. RODRIGO: Thank you.

THE PRESIDENT: Commissioner Rodrigo is asked to read the entire paragraph with his proposed amendments.

MR. RODRIGO: "Thereafter, when the President transmits to the President of the Senate and to the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office. MEANWHILE, SHOULD a majority of all the members of the Cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Congress shall decide the issue, convening within forty-eight hours for that purpose, if not in session. If the Congress within twenty-one days after receipt of the latter written declaration or, if not in session, within twenty-one days after it is required to assemble, determines by a two-thirds vote of both Houses of Congress, VOTING SEPARATELY, that the President is unable to discharge the powers and duties of his office, the Vice-President shall ASSUME the same as Acting President; otherwise, the President shall CONTINUE the powers and duties of his office."

MR. REGALADO: Madam President, just on a matter of style, after all, it is addressed to the Chairman of the Committee on Style — may we say on line 4, "the President shall CONTINUE EXERCISING the powers and duties of his office"?

MR. RODRIGO: Yes, Madam President.

MR. SARMIENTO: Madam President, I move that we put the matter to a vote.

THE PRESIDENT: Is there any objection to this particular amendment which has been accepted by the committee? (Silence) The Chair hears none; the amendment is approved.

MR. SARMIENTO: Madam President, may I ask that Commissioner Guingona be recognized for an anterior amendment.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Thank you, Madam President.

May I say that for this proposed amendment I have the following as my coproponents: the honorable Commissioners Regalado, Maambong, Davide, Ople and Rodrigo. I refer to page 5, Section 10, lines 2 to 4, and the amendment is to change the word "seventy" to ONE HUNDRED AND EIGHTY so that the last sentence will read as follows: "No special election shall be called if the vacancy occurs within ONE HUNDRED AND EIGHTY days before the date of the next presidential election."

THE PRESIDENT: How many days did the Gentleman propose?

MR. GUINGONA: One hundred and eighty days, Madam President.

THE PRESIDENT: Commissioner Rigos is recognized.

REV. RIGOS: There is a pending motion to delete the entire paragraph, but if Commissioner Guingona could wait, we would appreciate it very much.

THE PRESIDENT: May we ask if Commissioner Guingona is willing to defer this amendment?

MR. SARMIENTO: Madam President, may I ask that Commissioner Ople be recognized.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: Thank you, Madam President.

I propose to insert a new section to be numbered Section 11, immediately prior to Section 12 on page 6, line 6,

and which shall read: IN CASE OF SERIOUS ILLNESS OF THE PRESIDENT THE PUBLIC SHALL BE INFORMED OF THE STATE OF HIS HEALTH THROUGH THE MINISTER OF HEALTH OR OTHER APPROPRIATE AUTHORITY. THE CABINET MEMBER IN- CHARGE OF NATIONAL SECURITY AND FOREIGN RELATIONS AND THE CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES DURING SUCH TIMES SHALL NOT BE DENIED ACCESS TO THE PRESIDENT AS COMMANDER-IN-CHIEF.

May I briefly explain the reason for this amendment, Madam President.

THE PRESIDENT: Please proceed.

MR. OPLE: I think throughout history, there had been many recorded instances when the health of the President, or the emperor in Roman times, or the Chinese emperor in dynasties long past was concealed from the public. Generally, the wife conspires with others in order to conceal the leader's state of health. One effect of this has been on the necessary inputs to policy coming from Cabinet ministers which have been blocked from reaching the attention of the President in that state. This illness can occur during an awkward moment in the life of a nation when national survival ought to be secured in the face of a major threat short of, let us say, the proclamation of martial law or the suspension of the writ of habeas corpus when Congress comes in in order to exercise a monitoring function and, perhaps, a remedial function. We have not yet, in this example, attained that level of the seriousness of the situation. And yet the national security might be at stake. The national survival can hang in the balance and, therefore, the right of the people to know ought to be included in this Article on the Executive, not only the right of the people to urgent access to a President in a state of illness, but especially those who deal with the safety and survival of the nation. The Cabinet minister in charge of national security and foreign relations and the Chief of Staff of the Armed Forces ought to have access to the President as commander-in-chief. The people as well should have access to this man in that kind of dubious state so that even in that critical and awkward moment in the fortunes of the national leader, we can be sure that the people have access to him for purposes of safeguarding the national security. That is the reason the Chief of Staff of the Armed Forces is also mentioned in the proposal. I think this is based on contemporary experience as well. And if we delegate this merely to a forthcoming legislature, there will arise situations or embarrassment considering that many who will compose this legislature will be very deferential towards those in power and may not even mention this at all in their agenda.

Therefore, I feel that there should be a constitutional cognizance of that danger, and the right of the people to know ought to be built into this Article on the Executive.

MR. NOLLEDO: Will the Gentleman yield to only one question?

MR. OPLE: Very gladly.

THE PRESIDENT: Commissioner Nolleddo is recognized.

MR. NOLLEDO: Will the proposed provisions apply if the President is absent because he claims to be writing a book?

MR. OPLE; Yes, but we put the burden on him to tell a lie to the people in derogation of his duties in the Constitution.

REV. RIGOS: Madam President.

THE PRESIDENT: Commissioner Rigos is recognized.

REV. RIGOS: Madam President, will the proponent entertain one very small amendment? In his proposal, the proponent says, "IN CASE OF SERIOUS ILLNESS OF THE PRESIDENT." Would he consider deleting the

word "SERIOUS" so that the phrase only reads: "IN CASE OF ILLNESS"? If we say "serious illness," we almost have to have someone who should determine whether his illness is serious or not. So, I suggest that we delete the word "SERIOUS."

MR. OPLE: Madam President, if a President is merely down with flu, I do not think this safeguard ought to operate. But medical authorities — and we have an ample supply of them in this country — will know exactly when an illness has become serious.

REV. RIGOS: But the former President was reported to be suffering from flu and yet nobody believed it.

MR. OPLE: At that time, he had no constitutional standard to satisfy.

MR. ABUBAKAR: May I ask the proponent a few questions?

Concerning the President or the Executive of any state, his health primarily does not only concern the nation but also his family and probably his own personal advisers and physician. Then, why should we subject the state of health of the President to another institution or entity which has no direct concern over his health and may not know the background of his illness?

MR. OPLE: Is the Gentleman referring to the Minister of Health or other appropriate authority?

MR. ABUBAKAR: Yes. He could be the Minister of Health in as far as the President views the health situation of the country and his people. But this is a personal matter concerning the health of the President. Like us, the Members of the Commission, we do have our personal physicians, and this is a matter between us and our own physicians. So, the state of health or analysis as to the actual condition of the President should be left to the President and his doctor.

MR. OPLE: Is Commissioner Abubakar suggesting that we eliminate the phrase "THROUGH THE MINISTER OF HEALTH OR OTHER APPROPRIATE AUTHORITY"?

MR. ABUBAKAR: Yes.

MR. OPLE: We accept the amendment, madam President.

MR. ABUBAKAR: Thank You.

MR. OPLE: The first sentence will now read: IN CASE OF SERIOUS ILLNESS OF THE PRESIDENT THE PUBLIC SHALL BE INFORMED OF THE STATE OF HIS HEALTH.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

Will the Gentleman yield to only one clarificatory question?

MR. OPLE: Very gladly.

MR. SUAREZ: Thank you.

In all seriousness, will the proponent give us examples of what he would consider a serious illness? This for purposes of clarification in the record, Madam President.

MR. OPLE: A serious illness in my layman's opinion ought to be one that almost but not quite incapacitates the President for that period of the serious illness.

MR. SUAREZ: Is there no duration as to the physical incapability or incapacity of the incumbent President?

MR. OPLE: I feel that as the proponent of this amendment, I might be usurping the competence others technically better prepared to answer this question. If there is a doctor in the Commission, maybe we can recruit him right now for his expert advice.

MR. SUAREZ: Maybe the Honorable Quesada could be of some assistance to us in this regard.

MR. ROSALES: Will the Gentleman yield to question, Madam President?

MR. OPLE: Very gladly.

MR. ROSALES: Is a President, receiving dialysis treatment, considered seriously ill?

MR. OPLE: Since this deals with what is generally considered a serious organic ailment, a systemic disease, I suppose that, yes, this could come under the class of serious illness.

MR. ROSALES: Thank you.

MR. SUAREZ: I think in fairness to future interpreters of our Constitution, we have to give examples of what would constitute serious illness on the part of the President that would necessitate the issuance of a medical bulletin, in a manner of speaking, Madam President.

MR. OPLE: Yes. I already defined the standard that if this illness is systemic or organic, it affects the whole organism. An example mentioned by Commissioner Rosales is a more or less advanced state of kidney illness that requires treatment by dialysis. There are, of course, infinite examples. But the standard I would like to suggest is one where he is not really incapacitated but seriously inconvenienced in the conduct of his urgent duties as President.

THE PRESIDENT: At any rate, the thrust of the amendment is that at least the public should be informed.

MR. OPLE: Yes, Madam President. It is the public's right to know; besides, the safeguarding of our national survival and security can be irretrievably impaired if the access of those in charge of national security and foreign relations is cut off through confabulations in the household, so that the President is kept in a state of ignorance about a period of national danger.

THE PRESIDENT: With the elimination of the Minister of Health, who will then inform the public? I just want to clarify that.

MR. OPLE: Madam President, I think we will leave the burden to the Office of the President to choose the appropriate means of releasing information to the public.

THE PRESIDENT: What does the Committee say?

MR. GUINGONA: Madam President, I was going to propose an amendment because, from the discussion, it would seem that there are many details that have to be filled in. Commissioner Ople mentioned about who should give the information, and Commissioner Suarez was talking about what kind of illness would fall within the perception of the proponent. So, I thought, if the distinguished proponent would accept, the details should be left to the Congress to determine by law, because we have no physician in this body, and perhaps the legislature would be able to provide the details. I agree fully with the principle or the concept expressed by the honorable proponent.

MR. OPLE: I accept the amendment, and so the first sentence will now read: IN CASE OF SERIOUS ILLNESS OF THE PRESIDENT, THE PUBLIC SHALL BE INFORMED OF THE STATE OF HIS HEALTH AS MAY

BE PROVIDED BY LAW.

Madam President, I think I have just changed my mind after an expert on medical matters came around. We are called upon to be more trusting with respect to the Office of the President that they will know what appropriate means to take in order to release this information to the public in satisfaction of the public's right to know about the presidency.

MR. GUINGONA: Madam President, may I explain? I thought all along that the honorable proponent was thinking of a situation such as when recently there was an attempt on the part of the Executive not to inform the public. And now, we are going to entrust this obligation or duty . . .

MR. OPLE: Madam President, we will leave something for people power to do. Maybe Commissioner Aquino can lead a march, if they are not satisfied with the information coming from the Office of the President.

THE PRESIDENT: So, the proponent does not accept the amendment.

MR. OPLE: Thank you.

THE PRESIDENT: Is Commissioner Guingona also not insisting on his proposed amendment?

MR. GUINGONA: No, Madam President.

THE PRESIDENT: Are we now ready to vote?

MR. RODRIGO: Madam President, just one question.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: If there is such a provision in the Constitution, there must be a sanction for the violation of that provision. So, for the record, if the incumbent President fails to comply with this provision, will this be considered as culpable violation of the Constitution which is ground for impeachment?

THE PRESIDENT: What does Commissioner Ople say?

MR. OPLE: Did the Gentleman ask if this will be a culpable violation of the Constitution?

MR. RODRIGO: If the President fails to comply with this, would it be classified as culpable violation of the Constitution?

MR. OPLE: I think we are using the moral pressure of the Constitution.

MR. RODRIGO: For the record, would failure to comply with this constitutional mandate be considered culpable violation of the Constitution which is one of the grounds for impeachment?

MR. OPLE: In the sense that a constitutional standard was violated, I think that is a perfectly censurable act. But I am not inclined to say at this point that it attains to the level of a culpable violation.

MR. RODRIGO: Thank you.

FR. BERNAS: Madam President, since it is not clear who is commanded to make the revelation, we cannot determine really who culpably violates the Constitution. I think the intention of the proponent is merely to establish a principle in general terms.

MR. OPLE: Yes, Madam President.

MR. ABUBAKAR: Will the proponent yield to a question?

MR. OPLE: Does the Rules allow two interpellations on the same subject by the same person? If the Rules so allows then I will be happy to yield to Commissioner Abubakar.

MR. ABUBAKAR: Since the proponent has indirectly expressed a wish not to be interpellated, I yield.

MR. OPLE: No, Madam President. I will be glad to be interpellated in accordance with the Rules.

MR. ABUBAKAR: If it is in accordance with the Rules that there be no double interpellation, I also yield.

THE PRESIDENT: What does the Committee say? Is the Committee reacting favorably to this proposed amendment of Commissioner Ople?

MR. SUMULONG: The Committee accepts the amendment.

MR. OPLE: Thank you very much, Madam President.

THE PRESIDENT: The proposed amendment has been sufficiently explained and debated upon.

Is there any objection to this proposed amendment of Commissioner Ople which has been accepted by the Committee? (Silence) The Chair hears none; the amendment is approved.

MR. SARMIENTO: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. SARMIENTO: May I ask that Commissioner Davide be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President. On Section 10, line 20, page 4, I propose to insert between "vacancy" and "occur" the following phrase: IN THE OFFICE OF THE PRESIDENT AND THE VICE-PRESIDENT. The whole line as amended will read: "morning of the third day after the vacancy IN THE OFFICE OF THE PRESIDENT AND THE VICE PRESIDENT occurs, convene."

REV. RIGOS: Madam President, I think we have a pending motion on Section 10. The copies of the proposed provision have been distributed.

THE PRESIDENT: So we will defer that.

MR. DAVIDE: Madam President, if I may be allowed to explain to the Committee.

Section 10 is lifted from the 1984 Amendments to the 1973 Constitution and is related precisely to the situation then obtaining where we did not have a Vice-President. And so, Section 10 was inserted in the 1973 Constitution pursuant to the 1984 Amendments to take care of a rule on succession before the mandated election of the President in 1987. The situation now contemplated is a vacancy in the offices of the President and the Vice-President; therefore, there is an immediate need for a special law calling for the election of the President and the Vice-President at the same time.

FR. BERNAS: This is just a clarificatory amendment because it really follows from the preceding paragraph.

MR. DAVIDE: Yes.

FR. BERNAS: Even if it is not there, what is meant is vacancy in the offices of the President and the Vice-President. So all it does is clarify the matter.

MR. DAVIDE: It will clarify the matter.

REV. RIGOS: Madam President, the proposed amendment on Section 10 follows Section 9. This is why in Section 10 we speak only of the vacancy in the Office of the President. The vacancy in the Office of the Vice-President is taken care of in Section 8.

MR. DAVIDE: I can defer my proposal.

SUSPENSION OF SESSION

THE PRESIDENT: The Acting Floor Leader is recognized the Committee to confer and see how Section 10 is affected by the proposed amendment of Commissioner Rigos.

The session is suspended.

It was 3:38 p.m.

RESUMPTION OF SESSION

At 3:51 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. SARMIENTO: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. SARMIENTO: May I ask that the Vice-Chairman of the Committee on the Executive be recognized.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Madam President, with respect to the proposed amendments on Section 10, the proponents have agreed to withdraw their amendments after it had been explained to them that they refer to the election of the President and the Vice-President.

THE PRESIDENT: Is the Gentleman referring to Commissioners Rigos and Nollado?

MR. REGALADO: Yes, Madam President. With respect to the same Section 10, the only other proposed amendment is the proposal of Commissioners Nollado and Guingona to change "seventy days" on line 4, page 5, to "ONE HUNDRED EIGHTY days." The Committee accepts the amendment.

THE PRESIDENT: The body shall now vote on the proposed amendment.

Is there any objection to change the word "seventy" to "ONE HUNDRED EIGHTY"? (Silence) The Chair hears none; the amendment is approved.

MR. GUINGONA: Madam President, may I just clarify. My coproponents are Commissioners Maambong, Davide, Ople and Rodrigo.

MR. REGALADO: Madam President, there was a proposed amendment by Commissioner Bacani which we deferred until we had conferred with Commissioner Monsod. The latter has informed me that they have come to a happy meeting of the minds.

THE PRESIDENT: Is the Gentleman referring to Section 7?

BISHOP BACANI: Yes, Madam President. Commissioner Monsod and I propose to reword Section 7 as follows: THE SALARIES OF THE PRESIDENT AND VICE-PRESIDENT SHALL BE DETERMINED BY LAW AND SHALL NOT BE DECREASED. NO INCREASE IN SAID COMPENSATION SHALL TAKE EFFECT UNTIL AFTER THE EXPIRATION OF THE TERM OF THE INCUMBENT DURING WHICH SUCH INCREASE

WAS APPROVED. THEY SHALL NOT RECEIVE DURING THEIR TENURE ANY OTHER EMOLUMENT FROM THE GOVERNMENT OR ANY OTHER SOURCE.

That is the first part of the amendment.

MR. REGALADO: May we have it a little slowly, Commissioner Bacani? Do we maintain the first sentence?

BISHOP BACANI: Yes, the first sentence is maintained.

MR. REGALADO: "The President shall have an official residence."

BISHOP BACANI: And then, THE SALARIES OF THE PRESIDENT AND VICE-PRESIDENT SHALL BE DETERMINED BY LAW AND SHALL NOT BE DECREASED. NO INCREASE IN SAID COMPENSATION SHALL TAKE EFFECT UNTIL AFTER THE EXPIRATION OF THE TERM OF THE INCUMBENT DURING WHICH SUCH INCREASE WAS APPROVED. THEY SHALL NOT RECEIVE DURING THEIR TENURE ANY OTHER EMOLUMENT FROM THE GOVERNMENT OR ANY OTHER SOURCE.

The sentence that follows, it is presumed, will be transferred to the Transitory Provisions.

MR. REGALADO: For the sake of uniformity, and because we have applied this in the other departments and offices, the Committee accepts the amendment and with the reservation for the Transitory Provisions of the corresponding provision. May we call the attention of Commissioner Suarez to please take note of that. Commissioner Suarez has been complaining that there have been no formulations. So, we will also request Commissioners Bacani and Monsod to make a formulation so that there will be less transiting on the part of Commissioner Suarez.

BISHOP BACANI: Yes, we will do so, Madam President.

MR. GUINGONA: Madam President, I would like to present the situation that since we are drafting a Constitution not only for a few years but for centuries, perhaps, there is a possibility of an extraordinary inflation. For example, at the beginning of the term of a Senator or a President, there is a devaluation. I think it would be unfair to tie down the President and the Senator to their salaries in these cases. Perhaps, we could leave this matter of salaries to the Committee on Amendments and Transitory Provisions for further study so that we could make a study in case there are extraordinary events that will require an increase in the salaries of our officials; otherwise, they would be receiving compensations which would not be adequate to their responsibilities.

MR. REGALADO: Insofar as the President and the Vice-President are concerned, they have allowances to make up for the inadequacy. The observation may be valid with respect to, say, the constitutional commissioners.

THE PRESIDENT: The Committee has accepted the amendment.

Is there any objection to the proposed amendment? (Silence) The Chair hears none; the amendment is approved.

MR. SARMIENTO: Madam President, may I ask that Commissioner de los Reyes be recognized for his reformulated amendment.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Before we leave Section 10, I had a pending amendment which was supposed to be the subject of the motion of Commissioner Rigos because of their so-called anterior amendment, but which was withdrawn. I wonder if the Committee is now prepared to accept that amendment.

I am referring to my amendment to insert the words IN THE OFFICE OF THE PRESIDENT AND THE VICE-PRESIDENT between "vacancy" and "occurs" on line 20, page 4.

MR. REGALADO: I think the Committee is willing to accept that because it clarifies and specifies the offices involved.

MR. DAVIDE: Yes.

THE PRESIDENT: Is there any objection to the proposed amendment on line 20 of Section 10, page 4, which has been accepted by the Committee? (Silence) The Chair hears none; the amendment is approved.

MR. REGALADO: Madam President, before Commissioner de los Reyes proceeds with the reformulated Section 5 which was made in collaboration with the Committee and Commissioners Davide and Maambong, may I call the attention of the body that in the draft circulated, the word "DEATH" was omitted on line 19 after the word "OF."

MR. DE LOS REYES: And on line 14, between "or" and "both," we insert WHERE. That is the amendment of Commissioner Rosario Braid. May I now proceed to read the reformulated Section 5, Madam President.

THE PRESIDENT: Please proceed.

MR. DE LOS REYES: SECTION 5. THE PRESIDENT-ELECT AND THE VICE-PRESIDENT-ELECT. SHALL ASSUME OFFICE AT THE BEGINNING OF THEIR TERMS.

Second paragraph: IF THE PRESIDENT-ELECT FAILS TO QUALIFY, THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT UNTIL THE PRESIDENT-ELECT SHALL HAVE QUALIFIED.

Third Paragraph: IF A PRESIDENT SHALL NOT HAVE BEEN CHOSEN, THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT UNTIL A PRESIDENT SHALL HAVE BEEN CHOSEN AND QUALIFIED.

Fourth paragraph: IF AT THE BEGINNING OF THE TERM OF THE PRESIDENT, THE PRESIDENT-ELECT SHALL HAVE DIED OR SHALL HAVE BECOME PERMANENTLY DISABLED, THE VICE-PRESIDENT-ELECT SHALL BECOME PRESIDENT.

Fifth paragraph: WHERE NO PRESIDENT AND VICE-PRESIDENT SHALL HAVE BEEN CHOSEN OR SHALL HAVE QUALIFIED, OR WHERE BOTH SHALL HAVE DIED OR BECOME PERMANENTLY DISABLED, THE SENATE PRESIDENT, OR IN CASE OF HIS INABILITY, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL ACT AS PRESIDENT UNTIL A PRESIDENT OR A VICE-PRESIDENT SHALL HAVE BEEN CHOSEN AND QUALIFIED.

Sixth paragraph: THE CONGRESS SHALL PROVIDE BY LAW FOR THE CASE OF DEATH, PERMANENT DISABILITY OR INABILITY OF THE OFFICIALS MENTIONED IN THE NEXT PRECEDING PARAGRAPH AND THE MANNER IN WHICH ONE WHO IS TO ACT AS PRESIDENT SHALL BE SELECTED UNTIL A PRESIDENT OR A VICE-PRESIDENT SHALL HAVE QUALIFIED.

This is a consolidated amendment of Commissioners Padilla, Nollado, Rigos, Maambong, Davide and Guingona, in collaboration with Commissioner Regalado.

MR. REGALADO: The Chairman has asked me to announce that the Committee accepts the reformulated amendment on Section 5.

MR. DE LOS REYES: Thank you.

THE PRESIDENT: May we ask Commissioner de los Reyes to read the amendment so that we can put this to a

vote.

MR. DE LOS REYES: THE PRESIDENT-ELECT AND THE VICE-PRESIDENT-ELECT SHALL ASSUME OFFICE AT THE BEGINNING OF THEIR TERMS.

IF THE PRESIDENT-ELECT FAILS TO QUALIFY, THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT UNTIL THE PRESIDENT-ELECT SHALL HAVE QUALIFIED.

IF A PRESIDENT SHALL NOT HAVE BEEN CHOSEN, THE VICE-PRESIDENT-ELECT SHALL ACT AS PRESIDENT UNTIL A PRESIDENT SHALL HAVE BEEN CHOSEN AND QUALIFIED.

IF AT THE BEGINNING OF THE TERM OF THE PRESIDENT, THE PRESIDENT-ELECT SHALL HAVE DIED OR SHALL HAVE BECOME PERMANENTLY DISABLED, THE VICE-PRESIDENT-ELECT SHALL BECOME PRESIDENT.

WHERE NO PRESIDENT AND VICE-PRESIDENT HAVE BEEN CHOSEN OR SHALL HAVE QUALIFIED OR WHERE BOTH SHALL HAVE DIED OR BECOME PERMANENTLY DISABLED, THE SENATE PRESIDENT, OR IN CASE OF HIS INABILITY, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL ACT AS PRESIDENT UNTIL A PRESIDENT OR A VICE- PRESIDENT SHALL HAVE BEEN CHOSEN AND QUALIFIED.

THE CONGRESS SHALL PROVIDE BY LAW FOR THE CASE OF DEATH, PERMANENT DISABILITY OR INABILITY OF THE OFFICIALS MENTIONED IN THE NEXT PRECEDING PARAGRAPH AND THE MANNER IN WHICH ONE WHO IS TO ACT AS PRESIDENT SHALL BE SELECTED UNTIL A PRESIDENT OR VICE-PRESIDENT SHALL HAVE QUALIFIED.

MR. SUAREZ: Madam President, may we just clarify one point from the distinguished proponent.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. DE LOS REYES: Yes, gladly.

THE PRESIDENT: The Commissioner will please proceed.

MR. SUAREZ: May I call Commissioner de los Reyes' attention to the first and second paragraphs, lines 1 to 5, of his draft.

MR. DE LOS REYES: Yes, madam President.

MR. SUAREZ: On line 2, the word "ASSUME" was used and on line 3, the phrase "FAILS TO QUALIFY" was used. Suppose the President-elect does not assume office at the beginning of his term? Questions have already been raised here sometime ago that that could possibly constitute an abandonment of office, and that is not equivalent to failure to qualify which appears on line 3.

So in a situation which I envision in that a President-elect will not assume office at the beginning of his term, who would assume the presidency, and in what character would the assumption be?

MR. DE LOS REYES: Although the situation is rather remote, the successor will, of course, be the Vice-President.

MR. SUAREZ: In a permanent capacity?

MR. DE LOS REYES: If the failure to assume office reaches that stage where it constitutes abandonment, then the Vice- President assumes presidency in a permanent capacity.

FR. BERNAS: But, Madam President, I think it is clear that failure to assume office is something that is temporary, and that is explained by lines 4 and 5 — that the Vice-President-elect shall act as President until the President-elect shall have qualified.

It is the same President-elect, on line 2, who fails to qualify, and on lines 4 and 5, who shall have qualified. So it is clear that it is not an abandonment of office.

But if we have a situation where there is a clear abandonment of office, then this section is not applicable.

MR. SUAREZ: I thank Commissioner Bernas for the clarification, Madam President.

THE PRESIDENT: Is there any other comment on this particular Section 5 as redrafted?

Does the Committee accept the amendment?

MR. REGALADO: Yes, Madam President.

THE PRESIDENT: The Committee has accepted the amendment.

Is there any objection to the proposed amendment as read? (Silence) The Chair hears none, the amendment is approved.

MR. DE LOS REYES: Madam President, this second amendment which is on Section 9, lines 6 to 18, is related to Section 5.

THE PRESIDENT: May we hear the second amendment of Commissioner de los Reyes.

MR. DE LOS REYES: The proposal is to delete the sentences on Section 9 from lines 6 to 18 starting from "The Congress" up to "Acting President" and insert the following: THE RULES SET FORTH IN SECTION 5 HEREOF SHALL APPLY ALSO IN CASE OF PERMANENT DISABILITY, DEATH, REMOVAL FROM OFFICE OR RESIGNATION OF BOTH THE PRESIDENT AND VICE-PRESIDENT

MR REGALADO: Madam President

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: We regret to state that it is different because this refers to the situation of the death, permanent disability or resignation of the Acting President.

MR. DE LOS REYES: No, the first paragraph of Section 9 does not refer to the Acting President.

FR. BERNAS: Madam President, Section 9 refers to the period when somebody is actually in office. Section 5 deals with the situation before the assumption of office or before the beginning of the term of office; whereas Section 9 deals with the situation during the term.

MR. DE LOS REYES: No. The idea of the proponents of this proposal is that instead of still making the Congress provide a law of succession to the presidency or the vice-presidency in case of permanent disability, death or removal from office or resignation of the President or Vice-President, the Senate President or the Speaker of the House of Representatives, as the case may be, shall be the successor.

FR. BERNAS: As a matter of fact, if the Commissioner is to take that out, what would be applicable would be lines 19 to 23 of Section 5.

MR. DE LOS REYES. Lines 19 to 23 of Section 5.

FR. BERNAS. Yes, of Section 5. That would be the only portion that the Commissioner could make applicable.

So there is no harm in repeating this.

MR. DE LOS REYES: I withdraw the amendment.

MR. SARMIENTO: Madam President, I ask that Commissioner Davide be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Madam President, my amendment is on page 5, Section 11, lines 27 to 31.

On line 27, after "convening," add the following: IN ACCORDANCE WITH ITS RULES WITHOUT NEED OF CALL and a comma (,), and between "if" and "not," insert IT IS.

On line 28, delete "twenty-one" and substitute TEN.

On lines 29 to 31, delete the phrase "or, if not in session, within twenty-one days after it is required to assemble," so that lines 26 to 31 will now read: "There-upon, the Congress shall decide the issue, convening IN ACCORDANCE WITH ITS RULES WITHOUT NEED OF CALL, within forty-eight hours for that purpose, if IT IS not in session. If the Congress, within TEN days after receipt of the latter written declaration determines by a two-thirds vote of both Houses . . ."

MR. REGALADO: Will Commissioner Davide kindly explain why he requests to delete "or if not in session within twenty- one days after it is required to assemble"?

MR. DAVIDE: Yes, that is necessary because it is; consequence of the convening of the Congress without need of call within 48 hours if it is not in session.

Since there is an immediate call in the event that the Congress is not in session, necessarily the Congress can act immediately, which I limit to 10 days because there might be a constitutional crisis if the period is too long.

MR. REGALADO: In other words, the Congress shall remain in session the moment it has immediately convened without call, or the moment the situation arises and until it has eventually determined the conflicting views of the members of the Cabinet and the President as to his inability.

MR. DAVIDE: Yes, and it should be limited to 10 days because a longer period might be dangerous constitutionally because there might be a constitutional crisis.

FR. BERNAS: If the Congress has to convene within 48 hours, that is two days. The applicable limit to a situation when Congress is not in session should be two days longer.

MR. DAVIDE: Yes, 12 days.

FR. BERNAS: So instead of "TEN" it must be TWELVE. So it will read: "or, if not in session within TWELVE days after it is required to assemble . . ."

MR. DAVIDE: So "TWELVE days." That would be a good compromise. I accept, Madam President.

MR. REGALADO: We will delete that portion referring to the situation where the Congress is not in session, to read: "within TWELVE days after receipt of the latter written declaration."

MR. DAVIDE: We will make a uniform rule whether or not the Congress is in actual session — at the time of the receipt of the written declaration.

FR. BERNAS: Madam President, it will read: "If the Congress, within TEN days after receipt of the latter written declaration, or if not in session, within TWELVE days after it is required to assemble . . ."

MR. DAVIDE: That is on line 30.

FR. BERNAS: Yes.

MR. DAVIDE: I agree, Madam President.

MR. REGALADO: So line 27 would read: "convening in ACCORDANCE WITH ITS RULES WITHOUT NEED OF CALL," but line 30 would read: "within TWELVE days after it is required to assemble."

MR. DAVIDE: "After it is required to assemble," because there is no need of a call.

MR. REGALADO: Yes, "within TWELVE days after it is required to assemble."

MR. DAVIDE: Yes.

MR. REGALADO: A moment, please, so that we can clarify this.

MR. RODRIGO: Madam President, I would like to ask a question or two for the record. What would be the consequence if the Congress fails to get the two-thirds vote of both Houses within the time limit of 10 days or 12 days?

MR. DAVIDE: In that particular case, I understand that the President will continue in his functions.

MR. RODRIGO: And Congress may no longer declare the incapacity of the President?

MR. DAVIDE: Pursuant to the Commissioner's amendment earlier.

MR. RODRIGO: No, that was not covered by my amendment. What I mean is the Congress is limited to 10 days or 12 days to act on the issue, and that is to gather the two-thirds vote of both Houses. Let me make the question specific. After the lapse of 10 days, if Congress is in session, may it still on the 15th day, if it gets two-thirds vote of both Houses, reinstate or declare the President incapacitated?

MR. DAVIDE: Yes, that should really be.

MR. RODRIGO: So even if the 10-day period lapses, the Congress can still act.

MR. DAVIDE: It might until it has voted; the President anyway continues exercising his powers and functions.

MR. RODRIGO: Then what is the use of the amendment?

MR. DAVIDE: The idea is to compel the legislature to act immediately, because otherwise a prolonged period for it to decide may constitute or may give way to a constitutional crisis.

MR. RODRIGO: The only way anybody can be compelled to act is to state what would be the consequence if he does not comply with the compulsion.

FR. BERNAS: For that matter, the Commissioner's question applies also even if the limit were 21 days.

MR. RODRIGO: My question now is: We are prescribing a limit. If we are prescribing a limit within which the Congress should act, then there must be a consequence in case the Congress fails to act within the limit; otherwise, the limit is useless. So my question is: If the time limit of 10 days or 12 days lapses and the Congress fails to act, fails to get the two-thirds vote of both Houses, what is the consequence? May the Congress still act or not and thereby the President continues indefinitely to occupy the position?

FR. BERNAS: I would say that if the Congress does not act within that period, that means the President stays. And if the situation is changed, then we have to restart the process.

MR. RODRIGO: We have to restart the process, which means the Cabinet by a majority vote of its members will send a letter to the Senate President and the Speaker?

FR. BERNAS: Yes, we will restart the process.

MR. RODRIGO: Thank you very much.

MR. REGALADO: Will Commissioner Davide please restate the provision starting from line 21? May remind Commissioner Davide that there was an amendment here which is to add a period (.) after "office."

MR. DAVIDE: That will not be affected by my amendment.

MR. REGALADO: On line 26, before "his office," the word "Thereupon" has been eliminated. This is just for purposes of Commissioner Davide reading this portion.

MR. DAVIDE: So I will begin from line 26. The proposed amendment as modified and as accepted by the Committee is as follows: "The Congress shall decide the issue convening IN ACCORDANCE WITH ITS RULES WITHOUT NEED OF CALL, within forty-eight hours for that purpose, if IT IS not in session. If the Congress within TEN days after receipt of the latter written declaration, or, if not in session, within TWELVE days after it is required to assemble, determines by a two-thirds vote of both Houses . . ."

MR. REGALADO: No, two days plus 10 days.

FR. BERNAS: No, but if it is after it has assembled, we might as well make it 10 days.

The additional two days was precisely to give the Congress the opportunity to assemble.

MR. DAVIDE: Yes.

FR. BERNAS: If we make the starting point after it has assembled, then we might as well make it 10 days also.

MR. DAVIDE: That was the original proposal, to make it uniform.

FR. BERNAS: That is why my recommendation was: "if not in session, within TWELVE days after it is required to assemble."

MR. DAVIDE: So the amendment is as is then, "TWELVE days after it is required to assemble."

FR. BERNAS: The additional two days is to give the Congress time to assemble.

MR. DAVIDE: So lines 28 to 31 will read: "If the Congress within TEN days after receipt of the latter written declaration, or, if not in session, within TWELVE days after it is required to assemble . . ."

FR. BERNAS: ". . . within TEN days . . ."

MR. DAVIDE: ". . . within TEN days," rather.

FR. BERNAS: No, "TWELVE days after it is required to assemble." The additional two days is for them to assemble.

MR. DAVIDE: That is it, "within TWELVE days after it is required to assemble."

MR. REGALADO: The Committee accepts the amendment.

THE PRESIDENT: For clarification and the information of the Commissioners before they vote, will Commissioner Davide please restate the provision starting from line 26.

MR. DAVIDE: The provision starting from line 26 will now read as follows: "The Congress shall decide the issue, convening IN ACCORDANCE WITH ITS RULES WITHOUT NEED OF CALL, within forty-eight hours for that purpose, if IT IS not in session. If the Congress, within TEN days after receipt of the latter written declaration, or, if not in session, within TWELVE days after it is required to assemble, determines . . ."

THE PRESIDENT: This proposed amendment has been accepted by the Committee.

Is there any objection to the proposed amendment on page 5, lines 26 to 31?

MR. PADILLA: Madam President, I have no objection to the clarifications, but to probably make the provision clearer, why do we not say "If the Congress is in session," then continue with the others? This is just a suggestion.

MR. DAVIDE: With that intention, I will leave it to the Committee on Style.

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

MR. DAVIDE: Madam President, another amendment on Section 12, page 6, line 6: to delete the word "shall" and substitute it with MAY. On lines 8 and 9, delete the following phrase: "without the concurrence of at least a majority of all the members of the Congress" and substitute it with the following: EXCEPT IN THE MANNER AND SUBJECT TO THE CONDITIONS PRESCRIBED IN SECTION 15 OF THIS ARTICLE; so that Section 12 will read: "An Acting President MAY not declare martial law or suspend the privilege of the writ of habeas corpus EXCEPT IN THE MANNER AND SUBJECT TO THE CONDITIONS PRESCRIBED IN SECTION 15 OF THIS ARTICLE."

MR. NOLLEDO: Madam President.

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: I submitted a similar amendment to the Committee, and I presume the Committee has accepted it. Will Commissioner Davide please accept my amendment to his amendment?

MR. DAVIDE: If it was accepted by the Committee, then we could consider it as a joint amendment.

MR. NOLLEDO: Madam President, my amendment is with respect to lines 8 and 9, which should now read: EXCEPT UNDER THE CONDITIONS OF AND SUBJECT TO THE PROVISIONS SET FORTH IN SECTION 15 HEREOF, so that Section 12 would now read: "An Acting President MAY not declare martial law or suspend the privilege of the writ of habeas corpus EXCEPT UNDER THE CONDITIONS OF AND SUBJECT TO THE PROVISIONS SET FORTH IN SECTION 15 HEREOF."

What does Commissioner Davide say? The Committee has already accepted this amendment.

MR. DAVIDE: If the Committee has accepted the amendment, it would carry the same intention and effect.

FR. BERNAS: Let me just ask. Is it really necessary to say this?

MR. NOLLEDO: Yes, because if I may answer also on behalf of Commissioner Davide, as originally worded, Section 12 states "without the concurrence of at least a majority of all the members of the Congress" and the amendment to Section 12 which refers to Section 15 states: EXCEPT UNDER THE CONDITIONS OF AND SUBJECT TO THE PROVISIONS SET FORTH IN SECTION 15 HEREOF. So that if we adopt the original provision, it will carry the impression that a vote of a majority of all the Members of Congress will suffice without the other provision set forth in Section 15 as applicable. So we would like the other provision of Section 15 likewise apply to a declaration of martial law or suspension of the privilege of the writ of habeas corpus even if made merely by an Acting President.

FR. BERNAS: But if we do not say anything about his power to impose martial law, then it is understood that if he is going to impose martial law at all, it will have to be according to Section 15.

MR. NOLLEDO: Yes.

FR. BERNAS: Otherwise, he will have more powers than the President. So it would seem to me that the first paragraph of Section 12 is unnecessary.

MR. DAVIDE: Yes. I think we better delete Section 12.

FR. BERNAS: Not the whole Section 12, but its first paragraph.

MR. DAVIDE: The first paragraph of Section 12 should be deleted.

MR. NOLLEDO: Yes, we can delete the first paragraph of Section 12. I agree.

MR. REGALADO: There were those in the Committee who wanted this clarified because Section 15 refers to a President. There might always be a little loophole where the Acting President whose position is only temporary in character will say: "Well, that was with respect to the President who is permanent in nature." So to avoid precisely the possibility of hairsplitting technicalities, we make it specific that just like the President, the Acting President also cannot just declare martial law, and conjointly with the second paragraph, the limitations on his power of appointment. Making it specific will avoid any questions later because we know how lawyers are; they can always try to squeeze out of a situation and make distinctions where distinctions should not really exist.

MR. DAVIDE: Madam President, the idea of deleting the first paragraph is simply this: An Acting President exercises all the powers of the President and, therefore, he can declare martial law, but the manner under which he may would be subject to Section 15. So it is not really necessary to insert in the first paragraph of Section 12 the right of the Acting President to declare martial law because, in effect, we would be conceding to him a greater power than that of a regular President.

MR. RAMA: Madam President.

THE PRESIDENT: Commissioner Rama is recognized.

MR. RAMA: I would like to support the idea of Commissioner Davide that there is absolutely no need for this Article defining the powers of the Acting, President which powers will be the same as the President. The situation stated by Commissioner Regalado that an Acting President's power must be defined would create a lot of complications because we have to define also the powers of the Acting Chief Justice of the Supreme Court, the Acting Vice-President, etc. There is no need to define their powers because they have the powers of the office that they are acting in. And I think we should not clutter up the Constitution with all these unnecessary provisions which would yield to varying interpretations.

MR. REGALADO: If it is on record that that is the understanding, then the first paragraph may be deleted.

MR. RAMA: Thank you.

MR. NOLLEDO: Thank you.

THE PRESIDENT: Does everybody agree? Does Commissioner Nolleto agree to the deletion?

MR. NOLLEDO: I agree, Madam President.

Thank you very much.

THE PRESIDENT: How about Commissioner Davide, does he also agree?

MR. DAVIDE: Yes, but only with the deletion of the first paragraph of Section 12.

THE PRESIDENT: So the first paragraph of Section 12 is deleted.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

May we know the sponsors of this amendment to delete the first paragraph of Section 12.

MR. SARMIENTO: The sponsors are Commissioners Davide, Nollado and Rama.

Madam President, I ask that Commissioner Monsod be recognized.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD: Madam President, I would like to propose an amendment to Section 15, lines 1 and 2, page 7, which is to delete the phrase "and, with the concurrence of at least a majority of all the members of the Congress."

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Yesterday during our deliberations, Commissioner Padilla made a proposal that we treat the suspension of the privilege of the writ of habeas corpus separately from the declaration of martial law. And whereas concurrence of at least a majority of all the Members of Congress might not be necessary or might be harmful for purposes of imposing martial law, it may not be harmful for purposes of suspending the privilege of the writ of habeas corpus — two different effects. So if, perhaps, we would yield to the desire of Commissioner Padilla that we treat these separately, if in the end we arrive at the conclusion that we use the same rules, we can put them together again. But I think it is necessary to discuss the two powers separately. Perhaps, we ask Commissioners Padilla and Monsod to get together to see if some kind of coordination can be done.

MR. PADILLA: Madam President.

THE PRESIDENT: So we will entertain this later.

Commissioner Padilla is recognized.

MR. PADILLA: I have no objection to the proposal of Commissioner Monsod in the sense that the suspension of the writ of habeas corpus by the President under certain conditions does not need the concurrence of the majority of the Members of Congress. And I would go further that even the proclamation of the state of martial law under certain conditions also should not secure the a priori concurrence of the majority of the Members of Congress, for after all as the section provides, the Congress may revoke such proclamation or suspension or even extend the period of 60 days. But for the initial declaration either of the suspension of the writ or of the proclamation of martial law, it should not be necessary to secure the concurrence of a majority of the Members of Congress.

FR. BERNAS: So in other words, Commissioner Padilla is not pushing his idea of separating them.

MR. PADILLA: I have my own proposed amendment to classify Section 15 into three situations, as follows: (1) to prevent or suppress lawless violence; (2) to suspend the writ of habeas corpus; and (3) to proclaim martial law. Because it seems to me that these three are separate stages in the exercise of the powers of the President as commander-in-chief when public safety demands.

MR. REGALADO: Madam President, it being our snack time, could the Commissioner get together with Commissioner Monsod to discuss the matter?

MR. PADILLA: Yes, and with all other Commissioners who may have proposed amendments to Section 15.

MR. DE CASTRO: May we omit the first paragraph, Madam President?

MR. OPLE: Madam President.

MR. MONSOD: Madam President.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended.

It was 4:38 p.m.

RESUMPTION OF SESSION

At 5:17 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

The Acting Floor Leader is recognized.

MR. ROMULO: Madam President, I ask that Commissioner Monsod be recognized for an amendment on Section 15.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. TINGSON: Madam President, before Commissioner Monsod takes the rostrum, may I just add this for the record. Upon the request of Commissioner Ople, I went to our Medical Service and Dr. Fe Soriano, Chief of the Medical Service of our Constitutional Commission Secretariat, gave this opinion about serious illness. So for the record, may I read what she wrote, Madam President.

THE PRESIDENT: Commissioner Tingson will please proceed.

MR. TINGSON: Dr. Fe Soriano, Chief of our Medical Service, said that serious illness means any condition that could cause imminent death or would incapacitate the person to the extent, for example, that his mental faculties would deteriorate.

I thought that that might be good for our record, Madam President.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: If the intention there is to put a definition of serious illness, I do not think the Commission or those who will interpret the Constitution should be bound by that particular opinion. We leave the matter to the Supreme Court to interpret it later.

MR. OPLE: We intended to have nothing more than the persuasive weight of the definition, Madam President.

Thank you.

THE PRESIDENT: That is the opinion of a doctor; that is all.

Commissioner Monsod is recognized.

MR. MONSOD: Madam President, we were not able to get together with the Committee on a consolidated amendment, so we are back to my original amendment, except that I believe Commissioner Padilla would like to discuss his proposal because that is anterior.

So may I request that my proposed amendment be temporarily held in abeyance in order that Commissioner

Padilla may be given a chance to propose his.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Madam President, some of the Commissioners who have proposed amendments on Section 15 have met together, although we could not directly confer with all the members of the Committee, but its distinguished Chairman knows of these proposed amendments.

On Section 15, page 6, line 26, the first sentence remains: "The President shall be the commander-in-chief of all the armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence..." My amendment is to substitute OR PUBLIC DISORDER in lieu of "invasion or rebellion" on line 29. That is the first situation.

On the same page, line 30, insert the word ACTUAL between "of" and "invasion" and on line 31 insert the clause BY PROCLAMATION, PLACE THE PHILIPPINES OR ANY PART THEREOF UNDER MARTIAL LAW. THE PERIOD OF SUCH SUSPENSION OR PROCLAMATION SHALL NOT EXCEED . . .

On page 7, lines 1 to 4, delete "and, with the concurrence of at least a majority of all the members of the Congress, suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law."

On the same page 7, lines 21 to 23, substitute the whole paragraph with: DURING THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF habeas corpus, ANY PERSON WHO HAS BEEN ARRESTED AND DETAINED SHALL BE JUDICIALLY CHARGED WITHIN FIVE WORKING DAYS OTHERWISE HE SHALL BE RELEASED.

The reason for the substitution of these last three lines is that during the martial law regime, several innocent persons were arrested by virtue of ASSO, PCO and PDA and some of them had been detained not only for one month, but for one year or more without any charge in court, and some of these persons did not know why they were arrested.

As worded, however, it says that it shall apply only to persons judicially charged. So if the person has been judicially charged, there must have been a warrant of arrest issued. There would be no problem as to that because the person arrested would have his judicial remedies. What we are avoiding or preventing is the situation wherein a person is arrested during the suspension of the writ of habeas corpus without any criminal information or judicial charge filed.

With regard to the distinction that we try to make among, first, the situation of lawless violence; second, the suspension of the privilege of the writ of habeas corpus; and, third, the proclamation of martial law, it seems to us that these situations are really three different stages.

We all agree that the suspension of the writ or the proclamation of martial law should not require beforehand the concurrence of the majority of all the Members of the Congress. However, as provided by the Committee, the Congress may revoke, amend, shorten or even increase the period of such suspension.

I realize that in the provisions of the Article on the Bill of Rights on the suspension of the writ of habeas corpus, there was a great deal of discussion regarding the words "imminent danger" of rebellion or invasion. Many of us wanted to retain the words "imminent danger" as provided in the 1935 and 1973 Constitutions. And I know that the majority decision was to delete the words "imminent danger," so that it would be limited to actual invasion or rebellion.

We feel, Madam President, that if there is already an actual invasion or rebellion, then the suspension of the writ

may become a useless formality. But, precisely, the intention is to provide for the suspension of the writ under certain conditions short of actual rebellion or invasion.

I recall that during the time of President Quirino, he never declared martial law although he suspended the writ of habeas corpus. So we feel that the two situations are not similar. Martial law contemplates a graver situation than the mere suspension of the writ.

This morning Commissioner Monsod gave us a copy of his reminders stating that in our effort to prevent abuses by government, we are unduly curtailing and restricting the exercise of the powers of the President. One such restriction is the elimination of the words imminent danger, because under that provision, the President as commander-in-chief of all the Armed Forces cannot suspend the writ of habeas corpus unless there be actual invasion or rebellion.

I realize that there may be many objections to this differentiation between suspension of the writ and the declaration of martial law, particularly in that others may attempt to reconsider the provision on the Article on the Bill of Rights and to reinsert this phrase "imminent danger." I believe, Madam President, that while we respect the majority decision in the consideration of the Article on the Bill of Rights, particularly that provision on the suspension of the writ of habeas corpus, this body should not be completely deprived of an opportunity to reconsider or improve provisions that we have already approved in past sessions. In fact, it would be healthy if after many of these committee reports have been considered, discussed, debated on and approved, there be an opportunity for all to resubmit a few important and, perhaps, debatable issues for further deliberation by the Commissioners.

MR. NATIVIDAD: Madam President.

THE PRESIDENT: Commissioner Natividad is recognized.

MR. NATIVIDAD: Will the distinguished Gentleman yield to a few questions?

MR. PADILLA: Very gladly.

MR. NATIVIDAD: Some of us have similar amendments and we would rather just ask some clarificatory questions than propose these amendments we have in mind if we were satisfied with the answers.

MR. PADILLA: Yes, very gladly.

MR. NATIVIDAD: First and foremost, we agree with the Commissioner's thesis that in the first imposition of martial law there is no need for concurrence of the majority of the Members of Congress because the provision says "in case of actual invasion and rebellion." If there is actual invasion and rebellion, as Commissioner Crispino de Castro said, there is need for immediate response because there is an attack. Second, the fact of securing a concurrence may be impractical because the roads might be blocked or barricaded. They say that in case of a rebellion, one cannot even take his car and go to the Congress, which is possible because the roads are blocked or barricaded. And maybe if the revolutionaries are smart, they would have an individual team for each and every Member of the Congress so he would not be able to respond to a call for a session. So the requirement of an initial concurrence of the majority of all the

Members of the Congress in case of an invasion or rebellion might be impractical as I can see it.

Second, Section 15 states that the Congress may revoke the declaration or lift the suspension.

And third, the matter of declaring martial law is already a justiciable question and no longer a political one in that it is subject to judicial review at any point in time. So on that basis, I agree that there is no need for concurrence as

a prerequisite to declare martial law or to suspend the privilege of the writ of habeas corpus. I notice in the Commissioner's proposal that he is requiring less factors for the suspension of the privilege of the writ of habeas corpus than for the declaration of martial law. Is that correct?

MR. PADILLA: That is correct.

MR. NATIVIDAD: And the Commissioner said that in case of subversion, sedition or imminent danger of rebellion or invasion, that would be the *causus belli* for the suspension of the privilege of the writ of habeas corpus. But I wonder whether or not the Commissioner would consider intelligence reports of military officers as evidence of imminent danger of rebellion or invasion because this is usually the evidence presented.

MR. PADILLA: Yes, as credible evidence, especially if they are based on actual reports and investigation of facts that might soon happen.

MR. NATIVIDAD: Then the difficulty here is, of course, that the authors and the witnesses in intelligence reports may not be forthcoming under the rule of classified evidence or documents. Does the Commissioner still accept that as evidence?

MR. PADILLA: It is for the President as commander-in-chief of the Armed Forces to appraise these reports and be satisfied that the public safety demands the suspension of the writ. After all, this can also be raised before the Supreme Court as in the declaration of martial law because it will no longer be, as the former Solicitor General always contended, a political issue. It becomes now a justiciable issue. The Supreme Court may even investigate the factual background in support of the suspension of the writ or the declaration of martial law.

MR. NATIVIDAD: As far as the Commissioner is concerned, would he respect the exercise of the right to, say, classified documents, and when authors of or witnesses to these documents may not be revealed?

MR. PADILLA: Yes, because the President, in making this decision of suspending the writ, will have to base his judgment on the document because, after all, we are restricting the period to only 60 days and further we are giving the Congress or the Senate the right or the power to revoke, reduce or extend its period.

MR. NATIVIDAD: I heard the Commissioner mention that it is possible under his proposal to get the concurrence not of the Congress, but of the Senate. This, again, is an area where I vacillate because the House is composed of elected Members who are closer to the people. It might be a little bit more difficult to consult with the House, but then it is a factor that will give support to the President later on if we are able to get the consent and concurrence of the House. And in the case of the declaration of martial law, I think the Chief Executive would need all the friends that he or she can get and, therefore, getting the nod of the House in a matter of the declaration of martial law, I think, should not be given up as far as this Constitution is concerned.

MR. PADILLA: Personally, I am not very emphatic as to the change of "Congress" to SENATE. It could remain with the Congress. Some other Commissioners, especially Commissioner Monsod ant, as concurred in by the Chairman of the Committee, I think that the word "Congress" could be substituted by SENATE.

MR. NATIVIDAD: Lastly, the Commissioner pro- posed the substitution of the whole paragraph on page 7, lines 21 to 23, to: "DURING THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF habeas corpus, ANY PERSON WHO HAS BEEN ARRESTED AND DETAINED SHALL BE JUDICIALLY CHARGED WITHIN FIVE WORKING DAYS OTHERWISE HE SHALL BE RELEASED."

MR. PADILLA: That is correct.

MR. NATIVIDAD: If the government claims to charge him, then he will have to be released.

MR. PADILLA: That is correct.

MR. NATIVIDAD: I think this is a satisfactory compromise because this would prevent the recurrence of the incidents in the past when people under such a situation were detained for hundreds of days.

MR. PADILLA: That proposal is to prevent that odious occurrence before.

MR. NATIVIDAD: Under any circumstances, they cannot be detained beyond five working days.

MR. PADILLA: Yes, unless the proper criminal information is filed. In which case, it becomes the judicial prerogative whether or not the accused will be entitled to bail.

MR. NATIVIDAD: Yes. By that, the case is filed in court, not in the fiscal's office.

MR. PADILLA: Yes.

MR. NATIVIDAD: Yes, the criminal information must be filed in court. I would just like to make it of record that the accused must be charged in court. It is not enough that they are charged in the fiscal's office.

MR. PADILLA: We have not changed the wording in the committee report regarding persons judicially charged.

MR. NATIVIDAD: Judicially, yes. I would just like to clarify the record because in law enforcement there is always that loophole that the accused had been properly charged. But what we mean by "charged" is judicially charged in court and not in the fiscal's office.

Thank you, Madam President.

MR. PADILLA: Thank you.

MR. NATIVIDAD: Does Commissioner Padilla agree with that view?

MR. PADILLA: Yes, that is why we maintain the phrase "judicially charged."

MR. NATIVIDAD: Thank you.

MR. ROMULO: Madam President, Commissioner Suarez would like to interpellate.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

Will the distinguished Vice-President yield to a few clarificatory questions?

MR. PADILLA: Yes, very gladly.

MR. SUAREZ: Thank you.

The Commissioner is suggesting that in connection with Section 15, we delete the phrase "and, with the concurrence of at least a majority of all the Members of the Congress . . ."

MR. PADILLA: That is correct especially for the initial suspension of the privilege of the writ of habeas corpus or also the declaration of martial law.

MR. SUAREZ: So in both instances, the Commissioner is suggesting that this would be an exclusive prerogative of the President?

MR. PADILLA: At least initially, for a period of 60 days. But even that period of 60 days may be shortened by the Congress or the Senate because the next sentence says that the Congress or the Senate may even revoke the

proclamation.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, when we started on this amendment by Commissioner Padilla, I wanted to present my amendment but I gave way because of the anterior proposals of Commissioner Padilla. But I have a series of amendments on lines 1, 4, 5 and 7, page 7 that would have a different effect from the discussions now. I wonder if we can take these because the answers would be different, depending on whether or not my amendments would be accepted by the Committee.

THE PRESIDENT: Has Commissioner Monsod conferred with the Committee?

MR. MONSOD: Yes, Madam President, I have conferred with the Chairman, Commissioner Sumulong, on the substitution of SENATE for "Congress" and with Commissioner Bernas on the deletion of the phrase "revoke such proclamation or suspension."

THE PRESIDENT: Is there no way of consolidating the proposed amendment of Commissioner Padilla with that of Commissioner Monsod?

MR. MONSOD: Yes, we tried to do that, Madam President, and, in fact, the consolidated formulation that we tried to present to the Committee contained all of these. Some of the amendments in that consolidated formulation were accepted and others were not. So I gave way to Commissioner Padilla so he could discuss the parts that were not accepted by the Committee.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you, Madam President.

We will recall that during the period of sponsorship and debate, I was the first one who objected to the need for the concurrence of the majority of all the Members of the Congress before the President can proclaim martial law or suspend the writ. So I have my amendment on this, but I gave way to the amendment of Commissioner Padilla because the provision on the initial concurrence of Congress has already been eliminated. My next amendment is on the second sentence.

MR. MONSOD: For the information of Commissioner de Castro, there has been no elimination yet.

THE PRESIDENT: Let Commissioner de Castro finish first his amendment.

MR. PADILLA: Madam President.

MR. DE CASTRO: The Honorable Padilla proposed the deletion of the phrase "and; with the concurrence of at least a majority of the members of the Congress as appearing on page 7, line 1, which was also my amendment, so I did not propose it anymore. However, on the second sentence I would also like to propose an amendment as a result of Commissioner Monsod's amendment substituting "Congress" with SENATE.

THE PRESIDENT: So these are all joint amendments in that the Commissioners who proposed these amendments will be considered joint sponsors.

MR. DE CASTRO: The Chairman of the Steering Committee informed us that we will not talk first of the first paragraph of Section 15, instead we will talk of the second paragraph.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: After conferring with Commissioner Padilla, he has agreed that he will confine himself to the first paragraph of Section 15 on page 6 to which he has an amendment. So we will take that up first.

THE PRESIDENT: Is it on line 29?

MR. BENGZON: Yes, Madam President. Thereafter Commissioner Monsod will take over and present his amendments on page 7 and this is where an arrangement has been arrived at between Commissioners de Castro and Monsod on those amendments.

MR. DE CASTRO: Madam President, I do not agree with Commissioner Monsod on the substitution of "Congress" with "SENATE." I agree that we take up the first sentence first before we go to the second sentence of Section 15.

THE PRESIDENT: So, let us call first the amendment of Commissioner Padilla.

MR. DE CASTRO: Yes, Madam President.

MR. REGALADO: Madam President, so that the Committee can also follow the discussion, we will take up the amendments step by step; first, the grounds for the declaration of martial law or the suspension of the privilege of the writ of habeas corpus.

THE PRESIDENT: No. We will first hear the proposed amendment on line 29. May the Chair know the proposed amendment?

MR. PADILLA: On page 6, line 29, substitute "invasion or rebellion" with OR PUBLIC DISORDER.

THE PRESIDENT: Does the Committee accept the amendment on line 29 to substitute "invasion or rebellion" with OR PUBLIC DISORDER?

MR. SUAREZ: Madam President, may we continue our interpellation of the distinguished Vice-President on paragraph 1?

THE PRESIDENT: No, the amendment is on line 29.

MR. SUAREZ: I am sorry.

MR. SUMULONG: The Committee cannot accept the amendment on Section 15, line 29, to delete the phrase "invasion or rebellion" and to substitute it with "OR PUBLIC DISORDER" because under this first sentence of Section 15, the President may call out and make use of the Armed Forces to prevent or suppress not only lawless violence but even invasion or rebellion without declaring martial law. If we delete "invasion or rebellion" and substitute it with "OR PUBLIC DISORDER," then the President will have to declare martial law before he can make use of the Armed Forces to prevent or suppress invasion or rebellion. That is the reason we regret that we cannot accept the proposed amendment of the Commissioner on the first sentence of Section 15.

MR. PADILLA: The first sentence contemplates a lighter situation where there is some lawless violence in a small portion of the country or public disorder in another barrio. Naturally, the Armed Forces can be used to prevent or suppress that situation. And if the commander-in-chief can do that in a smaller degree, with more reason can he exercise the powers of the commander-in-chief when the situation becomes graver. What I mean is that the elimination of the phrase "invasion or rebellion" does not mean that in case of invasion or rebellion, the President cannot call on the Armed Forces to prevent or suppress the same. That will be a little absurd.

MR. REGALADO: Our problem, Madam President, is that both the 1935 and the 1973 Constitutions mentioned invasion and rebellion as among those instances where the President can call out the Armed Forces without the need of declaration of martial law or suspension of the privilege of the writ of habeas corpus. If we eliminate that, the necessary implication would be that there must have been a reason why we eliminated that which was enshrined in those two Constitutions. The construction of it would be that this Commission deliberately eliminated that because then the President should not be permitted to call out the Armed Forces in case of actual invasion or rebellion but can only do so by a proclamation of martial law and suspension of the privilege of the writ of habeas corpus.

MR. PADILLA: That is not the intention, Madam President.

MR. REGALADO: Public disorder is already more or less covered by "lawless violence."

MR. PADILLA: That is correct. That is the lighter situation.

MR. REGALADO: So why do we not just let the phrase "invasion and rebellion" remain as it is?

THE PRESIDENT: How about the inclusion of "OR PUBLIC DISORDER"?

MR. REGALADO: "Public disorder" could already be covered by "lawless violence." But we should retain "invasion or rebellion."

MR. PADILLA: The only problem is that invasion or rebellion has been understood as actual invasion or actual rebellion.

The President can call on the Armed Forces to suppress lawless violence and anything that affects public safety. That is understood. There is no intention that, if the situation becomes graver, he will have less power.

MR. REGALADO: But it could be argued the other way around also in that we specifically eliminated the power to call the Armed Forces because in case of invasion or rebellion, there must be a proclamation of martial law.

MR. PADILLA: If that is the fear of the members of the Committee, I will not insist on my amendment because that is not my primary purpose. I am just trying to distinguish three different stages or three separate situations.

THE PRESIDENT: So, we could proceed to line 30. Is there any proposed amendment on line 30?

MR. PADILLA: On line 30, I propose to include: IN CASE OF SUBVERSION, SEDITION OR IMMINENT DANGER OF REBELLION OR INVASION WHEN THE PUBLIC SAFETY DEMANDS IT, HE MAY SUSPEND THE WRIT OF habeas corpus IN ANY PART OF THE PHILIPPINES.

THE PRESIDENT: The proposed amendment would increase the grounds for the suspension of the privilege of the writ of habeas corpus.

MR. SARMIENTO: Madam President.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: May I just be allowed to ask one question of Commissioner Padilla. The Commissioner added the word "SUBVERSION" as one of the grounds for the suspension of the privilege of the writ of habeas corpus. As defined, is the Commissioner referring to RA 1700 as amended by P.D. No. 885, which is the Anti-Subversion Law as amended?

MR. PADILLA: Yes, with the stress that subversion, as correctly understood, is with the aid or assistance, overt or covert, of an alien power.

FR. BERNAS: Point of order Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: The matter proposed adds new grounds for the suspension of the privilege of the writ of habeas corpus. In the Article on the Bill of Rights which we have already approved on Third Reading, we limited the grounds for the suspension of the privilege of the writ of habeas corpus to actual rebellion and actual invasion. So before we can rediscuss this, we would have to reconsider our Third Reading approval of the Article on the Bill of Rights, and before we can reconsider that, we will have to suspend the Rules because the period of reconsideration has already passed.

THE PRESIDENT: Is that the reason for the Committee not accepting the proposed amendment of Commissioner Padilla?

MR. REGALADO: That is not all, Madam President.

THE PRESIDENT: No, for this line; we are just on line 30, on the additional grounds for the suspension of the privilege of the writ of habeas corpus.

MR. REGALADO: Yes, Madam President. The Committee does not accept the proposed amendment not only because it has, in a manner of speaking, been foreclosed by the Article on the Bill of Rights having been passed on Third Reading, but also because of the additional grounds like sedition, subversion or imminent danger thereof. Of course, as to the elimination of the phrase "imminent danger" in both the Articles on the Bill of Rights and on the Executive, that has already been explained thoroughly here on the floor. There is a fear that the President could base the suspension of the writ on alleged intelligence reports which cannot be looked into and the veracity of which is dependent on the classification by the military. This could lead to a situation where these reports could easily be manufactured and attributed to anybody, without even the judiciary being in a position to refuse or look into the truth of the same. If they say it is classified as class "A" or class "B," how can even the judiciary dispute the authenticity and the truth of those classifications? With respect to sedition, this only involves a public up rising; not an armed-public uprising. The purpose of sedition is only to prevent the public authorities, including the judiciary, from carrying out their functions. It is not rebellion. Also, sedition is for the purpose of despoiling a particular social class, or an attack upon the lives of persons or private property of public officers just because they are public officers. It is on a much lesser magnitude because it does not involve an armed public uprising. The moment there is an armed public uprising, it becomes rebellion.

MR. PADILLA: It is correct that sedition is of a lesser magnitude than rebellion. That is why it is one of the grounds proposed for the suspension of the writ; whereas, actual rebellion or invasion is one of the grounds for the declaration of martial law. Admittedly, sedition is of a lesser magnitude than rebellion but sedition also involves a public uprising, maybe, for political or social ends. Under Article 139 of the Revised Penal Code, there are a number of offenses mentioned that can fall under sedition. Whereas, under Article 134, the purpose of rebellion is to overthrow the government or to deprive the government of a portion of a territory, or to disrupt the prerogatives of the President or of the legislature. Definitely, rebellion is more serious than sedition and that is the reason I suggested that short of actual invasion or rebellion, which is considered as the admitted ground for the declaration of martial law, there will be lesser grounds to justify the suspension of the privilege of the writ of habeas corpus.

THE PRESIDENT: Does the Committee not believe that we can submit this proposed amendment to a vote now?

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Before we discuss any additional ground for the suspension of the privilege of the writ of habeas corpus, may I ask for a ruling on the point of order raised? May we reopen that considering that the matter has been approved on Third Reading?

RULING OF THE CHAIR

THE PRESIDENT: The ruling of the Chair is that what has been approved on Third Reading can no longer be reconsidered.

MR. PADILLA: Madam President, these are now the powers of the President as commander-in-chief. Of course, we have to harmonize the different provisions of the Constitution. But the fact that a majority voted to eliminate the phrase "imminent danger thereof" should not be conclusive, final and unappealable. As stated earlier, I realized that when the others and I were insisting on the retention of the phrase that was already in our two Constitutions, a majority decided otherwise. I admitted that in my statement, but if we consider these powers of the President and the majority should find some merit in these proposed amendments, I believe there is nothing that will prevent us from also harmonizing the provision previously approved on the Bill of Rights.

MR. OPLE: Madam President.

MR. PADILLA: As a matter of fact, I made a suggestion.

MR. OPLE: Point of inquiry.

MR. PADILLA: Just one more sentence, please. I thought I made the suggestion in my remarks that the fact that we have approved on Third Reading a certain article of the Constitution should not prevent us later on, if circumstances so permit and justify, from making improvements on the amendments without considering this technicality, because otherwise we will be prevented from improving the Constitution.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: My point of inquiry consists of asking whether or not Commissioner Padilla is appealing the ruling of the Chair.

MR. PADILLA: No, Madam President, because we are now talking about the Article on the Executive, and we are discussing Section 15 as is or as proposed.

I am not asking that the provision of the Bill of Rights on the suspension be reconsidered as yet or in the future. We are not talking now of the Bill of Rights. although I realize there must be a harmony. Two provisions cannot be contradictory in a good Constitution. But we are discussing this Section 15 now. The fact that several weeks ago we approved the Article on the Bill of Rights by eliminating some grounds for the suspension. I do not think that should prevent a deliberative body like this which is considering the Constitution to say that because of a previous decision on a prior article, we are now helpless, precluded, prevented and deprived of some careful consideration of this particular section on the Article on the Executive.

FR. BERNAS: Madam President, there was no attempt at all to stop any debate on this, but if we have to debate on it. we have to do so according to the Rules. In order to reopen that question. there should first be a motion for reconsideration, but before one can have a motion for reconsideration. there must be a suspension of the Rules. So, if we pass those two hurdles, then we discuss additional grounds for a suspension of the Rules.

MR. PADILLA: Madam President, I am not asking now for an explanation.

SUSPENSION OF SESSION

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

It was 6:05 p.m.

RESUMPTION OF SESSION

At 6:12 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

When the Chair suspended the session to clarify the situation and also our Rules with the parties concerned, the Chair regrets, that it had to maintain its ruling that the proposed amendment of Vice-President Padilla was out of order because it would involve a reconsideration of what had been approved in the Bill of Rights. So then, we can proceed to another proposed amendment.

MR. PADILLA: Madam President, I respect the decision of the Chair, but I regret to state that if any and all decisions on Third Reading will become final, not subject to any future deliberation even if we are restricting the power of the President to suspend the writ, unless there be actual invasion or rebellion that will nullify the suspension of the writ and even the declaration of martial law — and which is like a rock that cannot even be moved — I am afraid we will have a bad Constitution.

THE PRESIDENT: What is the next proposed amendment?

MR. ROMULO: I ask that Commissioner Monsod be recognized.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Thank you.

We are back to Section 15, page 7, lines 1 and 2. I just want to reiterate my previous proposal to amend by deletion the phrase "and, with the concurrence of at least a majority of all the members of Congress."

THE PRESIDENT: Who are the Commissioners with similar proposals?

MR. MONSOD: They are Commissioners de Castro, Bengzon, Natividad, de los Reyes, Colayco, Foz, Rigos and Nollado.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

May we interpellate the distinguished Gentleman?

THE PRESIDENT: Please proceed.

MR. OPLE: Madam President, may I request the Acting Floor Leader to tell us about the precedence of the interpellators according to his list?

MR. ROMULO: Commissioner Suarez has registered to interpellate; after him would be Commissioner Ople.

MR. OPLE: Thank you very much.

THE PRESIDENT: And then Commissioner de Castro.

MR. DE CASTRO: May I have a word on the provision on rebellion?

MR. ROMULO: Is Commissioner de Castro interpellating?

MR. DE CASTRO: I am not interpellating. I am explaining why I am one of those in favor of eliminating the words stated by Commissioner Monsod.

MR. ROMULO: So, the Commissioner is a cosponsor?

MR. DE CASTRO: May I have my turn now?

THE PRESIDENT: Excuse me, the Chair has already recognized Commissioner Suarez. So, we will call on Commissioner de Castro after Commissioner Ople. Is that correct?

MR. DE CASTRO: Yes, thank you.

MR. ROMULO: Yes, Madam President.

MR. SUAREZ: Thank you, Madam President.

The Commissioner is proposing a very substantial amendment because this means that he is vesting exclusively unto the President the right to determine the factors which may lead to the declaration of martial law and the suspension of the writ of habeas corpus. I suppose he has strong and compelling reasons in seeking to delete this particular phrase. May we be informed of his good and substantial reasons?

MR. MONSOD: This situation arises in cases of invasion or rebellion. And in previous interpellations regarding this phrase, even during the discussions on the Bill of Rights, as I understand it, the interpretation is a situation of actual invasion or rebellion. In these situations, the President has to act quickly. Secondly, this declaration has a time fuse. It is only good for a maximum of 60 days. At the end of 60 days, it automatically terminates. Thirdly, the right of the judiciary to inquire into the sufficiency of the factual basis of the proclamation always exists, even during those first 60 days.

MR. SUAREZ: Given our traumatic experience during the past administration, if we give exclusive right to the President to determine these factors, especially the existence of an invasion or rebellion and the second factor of determining whether the public safety requires it or not, may I call the attention of the Gentleman to what happened to us during the past administration. Proclamation No. 1081 was issued by Ferdinand E. Marcos in his capacity as President of the Philippines by virtue of the powers vested upon him purportedly under Article VII, Section 10 (2) of the Constitution, wherein he made this predicate under the "Whereas" provision:

Whereas, the rebellion and armed action undertaken by these lawless elements of the Communists and other armed aggrupations organized to overthrow the Republic of the Philippines by armed violence and force have assumed the magnitude of an actual state of war against our people and the Republic of the Philippines.

And may I also call the attention of the Gentleman to General Order No. 3, also promulgated by Ferdinand E. Marcos, in his capacity as Commander-in-Chief of all the Armed Forces of the Philippines and pursuant to Proclamation No. 1081 dated September 21, 1972 wherein he said, among other things:

Whereas, martial law having been declared because of wanton destruction of lives and properties, widespread lawlessness and anarchy and chaos and disorder now prevailing throughout the country, which condition has been brought about by groups of men who are actively engaged in a criminal conspiracy to seize political and state power in the Philippines in order to take over the government by force and violence, the extent of which has now assumed the proportion of an actual war against our people and the legitimate government . . .

And he gave all reasons in order to suspend the privilege of the writ of habeas corpus and declare martial law in our country without justifiable reason. Would the Gentleman still insist on the deletion of the phrase and, with the

concurrence of at least a majority of all the members of the Congress"?

MR. MONSOD: Yes, Madam President, in the case of Mr. Marcos, he is undoubtedly an aberration in our history and national consciousness. But given the possibility that there would be another Marcos, our Constitution now has sufficient safeguards. As I said, it is not really true, as the Gentleman has mentioned, that there is an exclusive right to determine the factual basis because the paragraph beginning on line 9 precisely tells us that the Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof and must promulgate its decision on the same within 30 days from its filing.

I believe that there are enough safeguards. The Constitution is supposed to balance the interests of the country. And here we are trying to balance the public interest in case of invasion or rebellion as against the rights of citizens. And I am saying that there are enough safeguards, unlike in 1972 when Mr. Marcos was able to do all those things mentioned..

MR. SUAREZ: Will that prevent a future President from doing what Mr. Marcos had done?

MR. MONSOD: There is nothing absolute in this world, and there may be another Marcos. What we are looking for are safeguards that are reasonable and, I believe, adequate at this point. On the other hand, in case of invasion or rebellion, even during the first 60 days when the intention here is to protect the country in that situation, it would be unreasonable to ask that there should be a concurrence on the part of the Congress, which situation is automatically terminated at the end of such 60 days.

MR. SUAREZ: Do we not have to make a distinction between invasion and rebellion? The Gentleman concentrated on the matter of actual invasion and if we are going to go by international rules, there need not really be an actual invasion in that concept. That can also serve as a predicate by the unscrupulous President to declare a state of war or invasion.

MR. MONSOD: This provision previously contained the words. "insurrection" and "imminent danger thereof." And any interpretation of this section very clearly will see the intention of this body that by removing those two phrases, the right of the President is limited to invasion or rebellion. And in the interpellations, those have been interpreted as actual invasion or actual rebellion.

MR. SUAREZ: Would the Gentleman not feel more comfortable if we provide for a legislative check on this awesome power of the Chief Executive acting as Commander-in-Chief?

MR. MONSOD: I would be less comfortable if we have a presidency that cannot act under those conditions.

MR. SUAREZ: But he can act with the concurrence of the proper or appropriate authority.

MR. MONSOD: Yes. But when those situations arise, it is very unlikely that the concurrence of Congress would be available; and, secondly, the President will be able to act quickly in order to deal with the circumstances.

MR. SUAREZ: So, we would be subordinating actual circumstances to expediency.

MR. MONSOD: I do not believe it is expediency when one is trying to protect the country in the event of an invasion or a rebellion.

MR. SUAREZ: No. But in both instances, we would be seeking to protect not only the country but the rights of simple citizens. We have to balance these interests without sacrificing the security of the State.

MR. MONSOD: I agree with the Gentleman that is why in the Article on the Bill of Rights, which was approved on Third Reading, the safeguards and the protection of the citizens have been strengthened. And on line 21 of this

paragraph, I endorsed the proposed amendment of Commissioner Padilla. We are saying that those who are arrested should be judicially charged within five days; otherwise, they shall be released. So, there are enough safeguards.

MR. SUAREZ: These are safeguards after the declaration of martial law and after the suspension of the writ of habeas corpus.

MR. MONSOD: That is true.

MR. SUAREZ: Thank you.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: Thank you, Madam President.

Will the sponsor consider an amendment to his amendment? I refer to lines 1 and 2 on page 7, Section 15. May I state the proposed amendment, Madam President? It consists of substituting the word "concurrence" with the word CONSULTATION, so that this particular clause will read: "IN CONSULTATION WITH members of the Congress." And may I explain briefly my proposed amendment to the amendment.

Madam President, the proclamation of martial law by a President, under the proposed amendment of Commissioner Monsod and the other authors, can now be unilaterally made by the President. Nevertheless, it is a decision of the highest importance and with the most critical implications for the life of every Filipino citizen. That is why I think the representatives of the people should be consulted. The views of the Congress in a system of consultation will not bind the President, but as a rational leader willing to take advice from the elected representatives of the people, consultation need not be a useless and futile exercise.

May I point out, Madam President, a case in the United States, specifically referring to the war powers' resolution of 1973, which was vetoed by President Nixon and that veto was overridden. What did it say? Congress links its power under the necessary and proper clause with the commander-in-chief clause so as to restrain the executive deployment of the United States Armed Forces. It did so by enumerating the circumstances — I am now quoting from this book by Laurence H. Tribe of Harvard:

. . . in which deployment abroad is permitted and by limiting such deployment in any situation to 60 days unless Congress in the interim passes authorizing legislation.

The resolution which became law on November 7, 1973, upon receiving the two-thirds vote necessary to override President Nixon's veto, announced that its purpose was, and I quote:

To fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States armed forces into hostilities.

And may I just continue this paragraph, Madam President.

Such collective judgment is to be effected by heightened consultations between the President and Congress. In every possible instance, the consultation is to occur before American forces are introduced into hostilities. When the President is required to act without prior consultation however . . .

May I repeat that — "When the President is required to act without prior consultation . . ." — because that can happen as when those to be consulted are not available:

. . . he shall submit within 48 hours to Congress a report in writing setting forth:

(a) The circumstances necessitating the introduction of United States armed forces;

- (b) The constitutional and legislative authority under which such introduction took place; and
- (c) The estimated scope and duration of the hostilities or involvement.

So, my proposed amendment, Madam President, merely contemplates consultations with Members of the Congress. If this is not possible, I would like to propose an alternative amendment which would require the President of the Philippines, within 48 hours of the proclamation of martial law, to render a report in writing to the Congress of the Philippines.

THE PRESIDENT: So, let us take up first the proposed amendment on consultation. Does Commissioner Monsod accept?

MR. DE CASTRO: Madam President, before we take up the amendment to the amendment, may I be given permission to say something about the statements of Commissioner Ople.

THE PRESIDENT: Yes, but the Chair will first ask Commissioner Monsod if he is accepting the amendment to the amendment.

MR. MONSOD: I regret, Madam President, that I cannot accept the proposed amendment.

THE PRESIDENT: Does Commissioner Ople insist on his proposed amendment to the amendment?

MR. OPLE: I will then fall back on the alternative amendment, Madam President.

THE PRESIDENT: So, we will take that up later.

Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you, Madam President.

The matter we are discussing now is on line 30, page 6, which says: "In case of invasion or rebellion . . ." Those are the two situations by which the President may be given the authority to suspend the privilege of the writ or to proclaim martial law.

Let us consider invasion. In my interpellation, even during the period that we were discussing the Bill of Rights, I was given the answer that invasion is actual invasion. When I asked, "If you see the ships coming from Japan or somewhere else already within sight at Lingayen Gulf, is that invasion?" They said that is not yet actual invasion because the troops of the enemy have not yet landed.

Madam President, when we talk of invasion, we are talking of an external force, an enemy force ready to invade the Philippines; and if I were the invader, the first thing that I will do is to land within the easy shores, perhaps Lingayen Gulf, and have a vertical envelopment of Manila. There will be no chance for the President of the Philippines to declare martial law or to suspend the privilege of the writ. There will be fighting right then and there, and the rules of land warfare shall take over. The suspension of the privilege of the writ or declaration of martial law would not fit anymore in case an enemy force or an external force invades the Philippines because, as I said, if I were the invading force, there will be vertical envelopment, perhaps capturing already the President in Malacañang. That is why the proposition of Commissioner Padilla is in order with regard to subversion, sedition or imminent danger thereof, because the proclamation of martial law and the suspension of the writ will become useless if there is an actual invasion of the country by an external force.

Let us now consider rebellion. Allow me to answer Commissioner Ople. He stated that the President of the United States is in consultation with the Members of Congress before the employment of U.S. forces. Certainly, they are to be employed outside the United States. There is no invasion in the United States, and therefore, he has all the

time to consult the Members of Congress. After all, before I employ my forces, who are being killed? It is not the citizens of the United States but the citizens of a Third World country in which the U.S. would like to employ their forces.

This is the very defect of the Mutual Defense Treaty between the Philippines and the United States. They say that they will employ their forces only in accordance with constitutional processes. And this was what this humble servant had been objecting to when he was in the Armed Forces — that this Mutual Defense Treaty is useless because before the United States can help us or can comply with the treaty, we are already conquered because they will still have to talk about constitutional processes in the employment of their forces here. This is in answer to Commissioner Ople's statements regarding consultations.

But how about our President when there is already actual invasion and actual rebellion? Will he still be consulting Members of the Congress? Will he still be asking the Congress that he be authorized to declare martial law or suspend the writ? I do not believe that the President will have that time; neither shall we have the time during actual invasion.

MR. NOLLEDO: Madam President.

MR. DE CASTRO: Please, I still have the floor.

Let us consider actual rebellion, Madam President. We have heard and read in the newspapers that hundreds and hundreds of NPAs, sometimes 200 in number, can get into a municipality and capture that municipality, and I was even asking: Why? What happened to our intelligence system? Do we not know that hundreds and hundreds of NPAs are concentrating on attacking a certain area? And if our intelligence system and the various units that we have are deficient, what will prevent hundreds of NPAs from marching along the streets of Metro Manila and attacking Malacañang or the Congress? Will our President still have the time to consult the Congress when there is actual rebellion? Will our President have the time to declare martial law? The first thing she will do is to employ all the Armed Forces. A declaration of martial law may be done later.

MR. NOLLEDO: Will the Gentleman yield to some questions?

MR. DE CASTRO: This is an answer. Allow me to finish, please.

THE PRESIDENT: We will call on Commissioner Nolleddo later.

MR. DE CASTRO: When the Gentleman was the one talking I did not prevent him, never. (Laughter)

MR. NOLLEDO: No, please.

THE PRESIDENT: Commissioner de Castro will please proceed.

MR. DE CASTRO: Thank you, Madam President.

I am just stating the facts; I am just stating what is happening, what may happen and what we have witnessed. I am pointing out the defect of our Mutual Defense Treaty. When we come to it, I will expose in this hall why we do not like the Mutual Defense Treaty of the United States, which resulted in the installation of the military bases. I am not anti-bases; I am for not stating in our Constitution anything about the bases in order to give the Chief Executive and the legislative an opportunity to have their options.

Now, Commissioner Nolleddo may have the floor, if the President will allow him. (Laughter)

Thank you, Madam President.

MR. NOLLEDO: Madam President, may I be allowed to propound some questions to the Gentleman?

THE PRESIDENT: Is Commissioner de Castro willing to be interpellated?

MR. NOLLEDO: Just a few questions to my distinguished classmate in the College of Law.

MR. DE CASTRO: Willingly, to my distinguished classmate.

MR. NOLLEDO: Thank you.

MR. ROMULO: But, Madam President, may I just say something before the two engage in their interpellations. We still have another amendment which Commissioner Ople would like to propose.

THE PRESIDENT: But the Chair said that we will take the alternative amendment later on. We will just finish this interpellation.

MR. NOLLEDO: The questions are highly pertinent, Madam President. Thank you very much.

Does Commissioner de Castro agree with me that the President need not declare martial law or suspend the privilege of the writ of habeas corpus if there is actual invasion or rebellion because he is authorized under Section 15 of the committee report to call out such Armed Forces to prevent or suppress lawless violence, invasion or rebellion?

MR. DE CASTRO: We are talking of the next sentence with the words "in case of invasion or rebellion." This becomes a useless sentence. In fact, the questions of Honorable Suarez and the statements of Honorable Ople do not fall on these two situations.

MR. NOLLEDO: No, the first sentence is very material because if there is an invasion, the President can immediately call upon the Armed Forces.

MR. DE CASTRO: That is why I said in case of invasion . . .

THE PRESIDENT: One at a time, please

MR. DE CASTRO: That is why I said in case of actual invasion or actual rebellion. the President will have no more time to say "I declare martial law." He will just order the Armed Forces to go there and repel the enemy.

MR. NOLLEDO: Madam President, the argument of Commissioner de Castro seems to indicate that the President is powerless without declaring martial law. The first sentence is very clear, that in case of lawless violence, invasion or rebellion, the President may immediately call the Armed Forces to prevent or suppress the same. And it is only when public safety requires it that the President may decide to declare martial law or suspend the privilege of the writ of habeas corpus. So, I would like to correct the impression that the President has no power to meet the invasion or rebellion without the declaration of martial law.

That is all, Madam President. Thank you.

MR. DE CASTRO: What I am thinking is this: The President, in actual invasion or actual rebellion, will not have the time to declare martial law nor suspend the privilege of the writ, much more to consult or ask Congress for a majority rule for the suspension of the privilege of the writ. That is why since the very beginning we have been fighting for the retention of the phrase "or imminent danger thereof" because even if one sees the ships of the Russians in the Lingayen Gulf, so long as they do not land, that is not yet invasion. And the President is not yet authorized to suspend the privilege of the writ of habeas corpus. That is the very reason why we lost during the debate on the Bill of Rights.

MR. REGALADO: Madam President, the Committee would like to react to that statement on the so-called actual invasion, so that the records will be straight and the minutes can be consulted. It has been attributed to the

Committee that even if the ships are already leaving the foreign shores on their way to invade or overrun the country, that is not yet actual invasion. The records will show that I was the only member of the Committee who stated that under the rules of international law, we do not have to wait for an actual overrunning of the country, otherwise it will abound. What I stated then, precisely and in accordance with the House Conventions on the Laws of War is that any overt belligerent act intended for the projected invasion is already actual invasion. Hence, the mere fact that the vessel, even if it has not left the shores, are intended, and are being refueled for the purpose of attacking the Philippines, that is already the start of invasion; that is actual invasion. If planes are already warming up, loaded with bombs in an airport of a foreign country, that is already the start of invasion because that is an overt belligerent act precisely for the purpose of invading the country; otherwise, we will have an absurd situation where the country is already completely surrounded by foreign warships, submarines and airplanes flying and buzzing around the country before we can say that that is actual invasion. Precisely, I made it very plain that any start of any overt belligerent act for the purpose of invading another country is not only an imminent danger; that is already actual invasion. And that appears in the Journal

MR. DE CASTRO: Madam President.

MR. ROMULO: Madam President.

THE PRESIDENT: The Acting Floor Leader is seeking recognition.

MR. ROMULO: I think this matter has been discussed fully.

THE PRESIDENT: Yes, the matter has been sufficiently discussed.

MR. DE CASTRO: Madam President, just one sentence.

THE PRESIDENT: We will have to go back to the proposed amendment of Commissioner Monsod with respect to the deletion of the words "and, with the concurrence of at least a majority of all the member of Congress."

MR. ROMULO: That is right.

THE PRESIDENT: That was sought to be amended by Commissioner Ople. It has not been accepted by the proponent, Commissioner Monsod. So, I think we have to vote on that first.

MR. OPLE: No, Madam President, I withdraw that amendment in favor of an alternative amendment on the same subject.

THE PRESIDENT: What is the alternative amendment?

MR. OPLE: With the kind permission of the Chair may I proceed to read it. It is a proposed amendment with Commissioners Davide, Nollado and myself as the authors. It reads as follows: THE PRESIDENT SHALL WITHIN FORTY- EIGHT HOURS FOLLOWING SUCH PROCLAMATION APPEAR BEFORE THE CONGRESS TO REPORT ON HIS PROCLAMATION IF THE SAME IS IN SESSION AND, IF IT IS NOT IN SESSION, HE SHALL WITHIN THE SAME PERIOD CALL THE CONGRESS TO A JOINT SESSION FOR THE PURPOSE. So, it is just a reporting requirement w but, at the same time, it will give the Congress the opportunity to consider its own role in helping the President manage a rebellion or an invasion, and I think this does not in any manner detract from the power of a President under the Monsod, et al. amendment to initiate the proclamation of martial law without consultation or concurrence. But shall we begrudge the representatives of the people at least the minimum dignity of being involved as to why there has been such a proclamation of martial law. Is that too much to expect? Is this asking too much of the President?

THE PRESIDENT: The Chair believes that before we can take up this proposed amendment. we have to vote

first. Do we agree to delete the phrase sought to be deleted?

MR. OPLE: Yes.

THE PRESIDENT: If there is no concurrence then the alternative proposal would come in.

MR. OPLE: Yes, the Chair is right. Thank you.

MR. GARCIA: Madam President, I would like to argue against the deletion proposed by Commissioner Monsod.

THE PRESIDENT: Commissioner Garcia is recognized.

MR. GARCIA: I think it is important to consider that the imposition of martial law is not a singular event that happened in the Philippines. There are many instances where a state of emergency, a state of martial law, estado de sitio, was imposed in different parts of the world: in Brazil in 1964; in Argentina and Zaire in 1966; in Peru in 1968; in Bolivia in 1970; in Uruguay in 1972; in Chile in 1973. The point of all of these is that the imposition of martial law or emergency measures, in a sense, leads later on to violations of basic guarantees and allows the militarization of politics. That is precisely the reason why the concurrence of Congress is necessary and which, I think, is a very strong point in the committee report. It is at the very start of the militarization of politics where we must put a stop to it, if possible, and try to get popular support. Because if martial rule is going to be genuinely beneficial, it must be supported by the representatives of the people; otherwise, what we will have is a militarization of politics, once the military tastes power and the radicalization of social conflicts which later on lead to different forms of resolving political problems.

Secondly, as was already pointed out very well by Commissioner Nolleto, if there is a case of rebellion or invasion, Section 15, in fact, grants the President the power to stop it by calling out the Armed Forces. But what I am objecting to is the declaration of martial law which institutionalizes the presence of the military in civilian life and its predominance during this period. It is at the very beginning, I believe, where the concurrence of the representatives of the people is essential and important.

I also would like to remind ourselves that very often the doctrine of national security is given as a reason to impose extraordinary measures which, once begun, leads to many other violations. I believe this is something that we must guard against from the very beginning.

Another point for us to consider is that, in fact, the International Covenant of Civil and Political Rights, in Article 27 thereof, allows states, of course, to declare martial law but even asks the member-states of the United Nations to make a written report to the Secretary-General of the United Nations stating their specific reasons and the length of time for the declaration of martial law.

And, lastly, I would like to remind ourselves that in the public hearings that we had, one of the most insistent demands of our peoples was precisely the concurrence of the legislature in the declaration of martial rule. I understand the comments of Commissioner Monsod earlier today when he said that because of the bicameral system now, there are more checks and balances. I admit, I agree, but at the same time, because of our recent history and experience of the past, we cannot but heed the very strong clamor of the people to precisely participate through their representatives in Congress, if and when martial law is deemed necessary in our land.

MR. MONSOD: May I respond, Madam President?

THE PRESIDENT: Excuse me, is there any other speaker who would like to interpellate?

BISHOP BACANI: Madam President.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: May I respond to Commissioner Garcia's statements?

THE PRESIDENT: Commissioner Monsod desires to respond. Commissioner Monsod then is recognized.

MR. SARMIENTO: Madam President, may I briefly speak against the amendment before the response of Commissioner Monsod?

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: Madam President, I see the wisdom for the inclusion of this concurrence. It is precisely the noninclusion of this provision in the 1973 Constitution that we had untold sufferings and miseries during the past administration. If we include this provision, then we will prevent the rise of another dictator in our midst. They say the length or the time limit will be good for only 60 days, but 60 days will be too much for us, for our civil liberties and human rights. It was precisely during the past administration when arrests and incarcerations were made during the initial days of that period. And, secondly, it is only after martial law is proclaimed that the Supreme Court can inquire into the factual basis. So, many things can happen during the initial days of martial law. Even the Justices can be arrested; the Supreme Court can be padlocked.

I agree with Commissioner Garcia when he said that in our public hearings, the people were very supportive of the provision that the proclamation of martial law should have the concurrence of majority of the Members of Congress.

Thank you, Madam President.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: In view of the fact that there were two speakers who objected, may I request the Chair to allow Commissioner Bacani to say a few words, and then if I may also have a few words, Madam President?

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: Yes, just a few words, Madam President. Yesterday, I remember that during the deliberation, Commissioner Bernas stressed that when we speak of martial law, we revert to a classical concept of martial law, which means that we are referring to an actual theatre of war; I repeat, an actual theatre of war. If such be the case, then it would not be reasonable to always bind the President, as is stipulated here, to seek the concurrence of the Congress before he can impose martial law because the reality of an actual theatre of war will not always allow him to do so. And if we put that condition in the Constitution, he will not be allowed at all to impose martial law unless he gets that concurrence which may not always be possible.

That is what I want to submit, Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MONSOD: With all due respect to the comments of my colleagues, we were given examples here of situations in Latin America. I do not know if their constitutions contain the safeguards that we are putting here or if the entire system that their constitutions have set up has the safeguards that we have in this Constitution. So, I am not prepared to accept the analogy until I see that the situation and their constitutions as bases are the same.

Second, we have been given a spectre of non sequitur that the mere declaration of martial law for a fixed period not exceeding 60 days, which is subject to judicial review, is going to result in numerous violations of human rights, the predominance of the military forever and in untold sufferings. Madam President, we are talking about

invasion and rebellion. We may not have any freedom to speak of after 60 days, if we put as a precondition the concurrence of Congress. That might prevent the President from acting at that time in order to meet the problem. So I would like to suggest that, perhaps, we should look at this in its proper perspective. We are only looking at a very specific case. We are only looking at a case of the first 60 days at its maximum. And we are looking at actual invasion and rebellion, and there are other safeguards even in those cases.

Thank you, Madam President.

THE PRESIDENT: What does the Committee say?

MR. REGALADO: Madam President, the Committee feels that the amendment which consists in the deletion of the phrase on lines I and 2, page 7, which reads: "and, with the concurrence of at least a majority of all the members of the Congress" be now submitted to a vote on the floor.

MR. DE LOS REYES: Madam President, before we vote, may I just ask some clarificatory questions of Commissioner Monsod?

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: In proposing that amendment, did Commissioner Monsod take into account the wise words in the case of *Barcelon vs. Baker*, 5 Phil. 87, where it is said that:

This power in the President is dangerous to liberty and may be abused. All powers may be abused if placed in unworthy hands but it would be difficult to point any other hands in which this power would be more safe and at the same time equally effectual.

It means that it should be given to the President.

MR. MONSOD: Yes, Madam President.

MR. DE LOS REYES: Thank you, Madam President.

VOTING

THE PRESIDENT: We are ready to vote now.

As many as are in favor of the proposed amendment of Commissioner Monsod to delete lines I and 2 which reads: "and, with the concurrence of at least a majority of all the members of the Congress, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

The results show 27 votes in favor and 11 against; the amendment is approved.

MR. SUAREZ: Madam President, may I be recognized?

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Normally, we are very supportive and cooperative, but may we ask for a nominal voting on this critical matter which affects the lives of our citizens.

NOMINAL VOTING

THE PRESIDENT: Nominal voting has to be approved by one-fifth of those present.

As many as are in favor that we proceed with a nominal voting on this particular amendment, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

There being the required number, the Chair declares that a nominal voting on this matter is in order.

The Secretary-General will call the roll.

FIRST ROLL CALL

THE SECRETARY-GENERAL, reading.

Abubakar Azcuna Yes

Alonto Bacani

Aquino

THE PRESIDENT: The Members are free to explain if they desire to do so.

COMMISSIONER BACANI EXPLAINS HIS VOTE

BISHOP BACANI: Yes, just two sentences. The reason I vote yes is that despite my concern for human rights, I believe that a good President can also safeguard human rights and human lives as well. And I do not want to unduly emasculate the powers of the President. Besides, it will not always be practicable, even possible, to get the concurrence of the Congress.

THE PRESIDENT: Just to clarify again. The yes vote is for the proposed amendment of Commissioner Monsod.

THE SECRETARY-GENERAL, reading:

Bengzon Yes Bennagen

COMMISSIONER BENNAGEN EXPLAINS HIS VOTE

MR. BENNAGEN: I am voting against the amendment. I think the first sentence of Section 15, lines 26 to 29, is sufficient to empower the President to act in those cases. And to declare martial law, I think, it is important to have the concurrence of the representatives of the people. We cannot emasculate the power of the President enough because the Office of the President already has the highest symbolic content which can produce other types of power unpredicted in the Constitution. I wish to argue that we never can emasculate the power of the President even with all these provisions.

Thank you, Madam President.

THE PRESIDENT: So, the vote is yes?

MR. BENNAGEN: I am against the amendment.

THE PRESIDENT: It is a no vote.

THE SECRETARY-GENERAL, reading.

Bernas Calderon

Rosario-Braid Yes Castro de

Brocka No

COMMISSIONER DE CASTRO EXPLAINS HIS VOTE

MR. DE CASTRO: Yes, because in case of actual invasion or actual rebellion, I do not like to see a useless President.

THE SECRETARY-GENERAL, reading:

Colayco Yes Foz Yes

Concepcion Yes Garcia

Davide Yes

COMMISSIONER GARCIA EXPLAINS HIS VOTE

MR. GARCIA: I am against the amendment for the following reasons: First, it is, in fact, in support of the President that we need the concurrence of the representatives of the people in the Congress. Martial law can be a very divisive action. And to gather legislative support in such a critical and difficult period is important for martial law to be understood and supported.

Second, I think it is our experience in the past and those of other Third World countries that when one calls for such extraordinary measures as martial rule, the entry of the military in politics or in government brings in possible abuses which are very difficult later on to check.

And, third — and this I feel very sad about — one of the clearest statements given to us by the people all over the Philippines in the public hearings we had was that after the sad experience of martial rule, they felt that one of the safeguards could be the concurrence of the Congress before martial law is declared. And I think this was a very clear statement given to us; and our vote today simply negates the value of that voice we have heard.

THE SECRETARY-GENERAL, reading:

Gascon

COMMISSIONER GASCON EXPLAINS HIS VOTE

MR. GASCON: Madam President, I would like to explain my vote.

I feel that in discussing the presidency and the issue of the declaration of martial law, we must assure the people that the evils of martial law which we have just experienced will not happen again. And we must also assure them that if in case such a situation occurs where we have to declare martial law, the people will be behind such a declaration. Therefore, I vote no.

THE SECRETARY-GENERAL, reading:

Guingona Jamir

COMMISSIONER JAMIR EXPLAINS HIS VOTE

MR. JAMIR: I vote no because martial law and the suspension of the privilege of the writ of habeas corpus are not defenses against actual invasion and rebellion. They are to be used only for the purpose of preventing the Filipino citizens from doing acts that will give aid and comfort to the enemy, and it is a dangerous presumption that the Filipino people are all treasonous.

I reiterate my vote of no.

THE SECRETARY-GENERAL, reading:

Laurel Yes Maambong

Lerum Yes

COMMISSIONER MAAMBONG EXPLAINS HIS VOTE

MR. MAAMBONG: Madam President. I vote yes. I took note of the quotation of my colleague, Commissioner de

los Reyes, in the case of *Barcelon vs. Baker*, and I think that the safeguard in the declaration of martial law is not really to clip the powers of the President, but for the people to really select a good President. So, the safeguard would be in the electoral process. Also, even if we put many safeguards in the Constitution, it will not stop a bad President from just declaring the Constitution ineffective. So, it is really in the person of the President that the safeguard can be achieved.

Thank you. Madam President.

THE SECRETARY-GENERAL, reading:

Monsod Yes Natividad

COMMISSIONER NATIVIDAD EXPLAINS HIS VOTE

MR. NATIVIDAD: Unlike the 1973 Constitution, this Constitution does not allow the President to declare martial law when there is imminent danger in the country. He can only declare martial law when there is act invasion or rebellion, and this is subject to legislative and judicial review; therefore, it can be reversed at a time. For these reasons, I vote yes.

THE SECRETARY-GENERAL, reading:

Nieva Yes Nollado

COMMISSIONER NOLLEDO EXPLAINS HIS VOTE

MR. NOLLEDO: I vote yes for two basic reason Madam President: 1) because of the Congressional power to revoke the proclamation at any time eve before the lapse of 60 days, in fact. even the day following the suspension of the privilege of the writ or the declaration of martial law; and 2) adverting to the opinion of Commissioner Rene Sarmiento the declaration of martial law or the suspension of the writ habeas corpus will not suspend the operation of the Constitution and, therefore, the declaration will not render inoperative the provisions of the Bill of Right Thus, the citizens are duly protected even in a star of martial law.

Thank you.

THE SECRETARY-GENERAL, reading:

Ople

COMMISSIONER OPLE EXPLAINS HIS VOTE

MR. OPLE: My vote is yes. May I explain this briefly, Madam President.

It is a tribute to this Constitutional Commission that early on, major decisions had been made strengthening the foundations of civil rights. In connection with the proclamation of martial law, this draft Constitution, in its present form, will not mean the abolition of the Congress. It will mean that the Congress will continue to exist. It will mean that the Constitution remains in full force and effect, including the Bill of Rights. It also means that no President may invoke the shield of political acts in order to exempt himself from judicial review, and any citizen may initiate this in terms of determining the sufficiency of the factual bases. And I think, in any number of forms, other countervailing safeguards have been introduced in this Constitution that will make it extremely difficult for a future President to abuse this power of declaring martial law eve without the concurrence of Congress. However, immediately after the voting, as the Chair has been notified, would like to propose a brief amendment that will help meet some of the concerns expressed here by those who are voting against this amendment.

Thank you. Madam President.

THE SECRETARY-GENERAL, reading:

Padilla

COMMISSIONER PADILLA EXPLAINS HIS VOTE

MR. PADILLA: Madam President, I vote yes because the Monsod amendment has included my own proposed amendment. I regret to state, however, that if the declaration of martial law or the suspension of the privilege of the writ of habeas corpus can only be based on actual invasion and actual rebellion, we might as well eliminate the provisions on suspension and proclamation because it will present an absurd situation. There is already an actual theatre of war and yet, we will still be talking about declaring martial law or suspending the privilege of the writ of habeas corpus. I regret that the situation to me looks very absurd unless we grant the President, as Commander-in-Chief of the Armed Forces, to exercise the powers of that office when public safety demands its not only in cases of actual invasion or rebellion but even imminent danger thereof.

Thank you.

THE SECRETARY-GENERAL, reading.

Quesada

COMMISSIONER QUESADA EXPLAINS HER VOTE

MS. QUESADA: I vote no. I believe that this very important decision of the President should really have the concurrence of the representatives of the people. And I agree with the reasoning of Commissioner Garcia that, in fact, when the President consults with the people through their representatives in the Congress, they will be more supportive of such a decision, if indeed it has this danger to the people. So, I feel very sad about this particular decision that has been approved by the body.

THE SECRETARY-GENERAL, reading:

Rama No Reyes de los

Regalado Yes

COMMISSIONER DE LOS REYES EXPLAINS HIS VOTE

MR. DE LOS REYES: May I explain my vote, Madam President.

My vote is yes. The power of the President to impose martial law is doubtless of a very high and delicate nature. A free people are naturally jealous of the exercise of military power, and the power to impose martial law is certainly felt to be one of no ordinary magnitude. . But as presented by the Committee, there are many safeguards: 1) it is limited to 60 days; 2) Congress can revoke it; 3) the Supreme Court can still review as to the sufficiency of the actual basis; and 4) it does not suspend the operation of the Constitution. To repeat what I have quoted when I interpellated Commissioner Monsod, it is said that the power to impose martial law is dangerous to liberty and may be abused. All powers may be abused if placed in unworthy hands. But it would be difficult, we think, to point out any other hands in which this power will be more safe and at the same time equally effectual. When citizens of the State are in arms against each other and the constituted authorities are unable to execute the laws, the action of the President must be prompt or it is of little value. I vote yes.

Thank you, Madam President.

THE SECRETARY-GENERAL, reading:

Rigos

COMMISSIONER RIGOS EXPLAINS HIS VOTE

REV. RIGOS: Madam President, I vote yes. But this vote is related to the understanding that Congress by a vote

of at least a majority of all its Members, in regular or special session, may revoke such proclamation or suspension. In other words, if the Members of Congress do not concur with the decision of the President, they can revoke such proclamation anytime they wish.

THE SECRETARY-GENERAL, reading:

Rodrigo Yes Rosales Yes

Romulo Yes Sarmiento Yes

COMMISSIONER SARMIENTO EXPLAINS HIS VOTE

MR. SARMIENTO: Madam President, I vote against the amendment. I am sad that the members of the Committee, after days of deliberation, made a radical turn-about. Madam President, dictatorship was the cause of untold sufferings to our people. I just could not describe the cries and the tears of the widows, orphans, victims of tortures, salvaging and hamletting. Madam President, never again should there be a dictatorship. To me, the deletion of this provision would pave the way for the rise of another dictator. So, I vote against the amendment.

THE SECRETARY-GENERAL, reading:

Suarez

COMMISSIONER SUAREZ EXPLAINS HIS VOTE

MR. SUAREZ: Madam President, if I can only vote one hundred times, I will vote one hundred times against this provision. The past is prologue; I am rather frightened about the potential exploitation of this awesome constitutional power.

Thank you, Madam President.

THE SECRETARY-GENERAL, reading:

Sumulong

COMMISSIONER SUMULONG EXPLAINS HIS VOTE

MR. SUMULONG: Madam President, I vote yes because, as pointed out by Commissioner Rigos, Section 5 of this resolution clearly provides that Congress, by a vote of at least a majority of all its Members in regular or special sessions, may revoke such proclamation or suspension. In other words, whenever Congress believes that the situation is such that public safety no longer requires the declaration of martial law or the suspension of the writ of habeas corpus, Congress can do it.

Thank you.

THE SECRETARY-GENERAL, reading:

Tadeo

COMMISSIONER TADEO EXPLAINS HIS VOTE

MR. TADEO: I vote no dahil sa mga sumusunod: Una, sinabi ko noon sa mga public hearings na lahat ng report ay aayusin at ang desisyon ng sambayanan ay mayroong impact sa Con-Com. Ito'y walang hunos-diling paglabag sa kagustuhan ng sambayanang Pilipino.

Pangalawa, ang phrase na "with the concurrence" ay isang safeguard, isang safety valve sa isang loophole. At sa nangyari sa araw na ito, mayroong mga pangamba sa aking sarili at nalulungkot ako.

THE SECRETARY-GENERAL, reading:

Tan Tingson

COMMISSIONER TINGSON EXPLAINS HIS VOTE

MR. TINGSON: Madam President, I vote yes for two reasons: 1) I do not want to see further emasculation of the President's power especially in actual time of danger against our nation's security; 2) now that we have opted for a presidency without further reelection in his lifetime, the future President of our country will become a statesman who will act and pray for the next generation rather than become a politician who only thinks of the next election.

I vote yes.

THE SECRETARY-GENERAL, reading:

Treñas Uka

COMMISSIONER UKA EXPLAINS HIS VOTE

MR. UKA: Madam President, after hearing the reasons of those who voted yes and in order to save time, I vote yes.

THE SECRETARY-GENERAL, reading:

Villacorta

COMMISSIONER VILLACORTA EXPLAINS HIS VOTE

MR. VILLACORTA: Madam President, I vote in the negative for two reasons: 1) no single official, not even the Commander-in-Chief, should be given the prerogative to deprive millions of his countrymen of their basic rights; 2) we should fully trust the judgment of the legislators, our people's representatives, and their ability discern clear dangers to public safety and national security and to make the appropriate decision expeditiously.

Thank you very much.

THE SECRETARY-GENERAL, reading:

Villegas Yes

How about the Madam President, will she cast her vote?

THE PRESIDENT EXPLAINS HER VOTE

THE PRESIDENT: I am voting no because this has been a promise that I had personally made during the time of the Marcos regime, the promise to the people that if ever the Opposition comes into power, this will be one of the things that we will do; that is, limit the power of the President in suspending the privilege of the writ of habeas corpus and declaring martial law. (Applause)

SECOND ROLL CALL

THE PRESIDENT: The Secretary-General will conduct a second call for those who have not registered their votes.

THE SECRETARY-GENERAL, reading:

Abubakar Calderon

Alonto Guingona

Aquino Tan

Bernas Treñas

THE PRESIDENT: The results show 28 votes in fat and 12 against; the Monsod amendment is approved.

ADJOURNMENT OF SESSION

MR. ROMULO: Madam President, I think we are in imminent danger of collapsing from fatigue, and so, move that we adjourn until tomorrow at nine-thirty in the morning.

THE PRESIDENT: The session is adjourned until tomorrow at nine-thirty in the morning.

It was 7:26 p.m.

[*] Appeared after the roll call.

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