

JOURNAL NO. 63

VOL. II, August 23, 1986

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b282173c8f4c/>

Friday, August 22, 1986

CALL TO ORDER

At 9:47 a.m., the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, called the session to order.

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mr. Christian S. Monsod, to wit:

"Lord, allow me to draw from the wisdom of others.

It is said that only those who are willing to be fools for You truly give You glory. Only those who can accept humiliation can find humility. Only those who empty their cups fill them to the brim. So today we ask You to make us fools who accept to be diluted among the many, who make no pretensions of erecting our own monuments, who do not use our superiority of language or knowledge for our personal advantage. Help us to forget ourselves, and to love in more than words. Give us the grace not to succumb to the temptation of excitement that involves cost to others, that sacrifices persons for the advancement of a purpose.

Lord, we are here by Your divine plan. Sometimes we forget. How can we love 55 million faceless Filipinos if we cannot love 47 others among those in this Assembly? How can we tell our countrymen that this is a Constitution born of patience and trust and compassion if we cannot be all of that to those we work with?

Merciful Father, forgive me for all the unkind thoughts and all the unkind words I have said to my fellowmen. Forgive me for my lost opportunities to break down the walls of distrust that are rising among us. Now, more than ever, we need You to be with us. Let Your love dwell in us all, even when we disagree, and if there is silence among us, let it be the silence of shared understanding, not the absence of sound, but the absence of self.

Today is the first day of the rest of our lives. Help us begin anew for Your greater glory. This we ask of You through Jesus Christ, Your Son our Lord, now and forever.

Amen."

ROLL CALL

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

Alonto, A. D.

Nolledo, J. N.

Azcuna, A. S.
Padilla, A. B.
Bernas, J. G.
Muñoz Palma, C.
Rosario Braid, F.
Rama, N. G.
Calderon, J. D.
Regalado, F. D.
De Castro, C. M.
De los Reyes, R. F.
Colayco, J. C.
Rigos, C. A.
Concepcion, R. R.
Rodrigo, F. A.
Davide, H. G.
Romulo, R. J.
Foz, V. B.
Suarez, J. E.
Garcia, E. G.
Sumulong, L. M.
Gascon, J. L. M. C.
Tan, C.
Guingona, S. V. C.
Tingson, G. J.
Jamir, A. M. K.
Uka, L. L.
Monsod, C. S.
Villegas, B. M.
Nieva, M. T. F.

With 31 Members present, the Chair declared the presence of a quorum.

The following Members appeared after the Roll Call:

A.M.

Abubakar, Y. R.

Ople, B. F.

Aquino, F. S.

Quesada M. L. M.

Bennagen, P. L.

Sarmiento, R. V.

Laurel, J. B.

Tadeo, J. S. L.

Maambong, R. E.

Villacorta, W. V.

Natividad, T. C.

P.M.

Bacani, T. C.

Lerum, E. R.

Bengzon, J. F. S.

Messrs. Rosales and Treñas were sick.

Mr. Brocka was absent.

READING AND APPROVAL OF THE JOURNAL

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

REFERENCE OF BUSINESS

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

REFERRAL TO COMMITTEES OF COMMUNICATIONS

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

Communication No. 606 — Constitutional Commission of 1986

Letter from Mr. Sonny dela Cruz of 1912 S. Charlotte Avenue, San Gabriel, California 91776, U.S.A., submitting his proposed amendments to the 1935 Constitution with the hope to find some of these amendments included in the new Constitution

TO THE STEERING COMMITTEE

Communication No. 607 — Constitutional Commission of 1986

Letter from Mr. Romulo D. Plagata, Room 4, 2nd Floor, CVF Bldg., Gov. Lim Ave., Zamboanga City, pointing to the atrocious use of the term "Muslim Mindanao", saying that, except for Lanao del Sur and Sulu, Mindanao is predominantly inhabited by non-Muslims, particularly the Christians, suggesting therefore that a plebiscite be conducted to let the people in the area determine the kind of government to govern them

TO THE COMMITTEE ON LOCAL GOVERNMENTS

Communication No. 608 — Constitutional Commission of 1986 of the Philippines, transmitting a resolution urging the Constitutional Commission not to include a provision in the Constitution on the matter of United States military bases in the Philippines

TO THE COMMITTEE ON PREAMBLE, NATIONAL TERRITORY AND DECLARATION OF PRINCIPLES Communication No. 609 — Constitutional Commission of 1986

Letter from Mr. Wilfred D. Asis of the People's Consultative Conference on the New Philippine Constitution, Buenavista, Nasipit, Carmen, Agusan del Norte, submitting approved proposals and recommendations for consideration and inclusion in the new Constitution

TO THE STEERING COMMITTEE

Communication No. 610 — Constitutional Commission of 1986

Letter from Mr. Angel L. Lazaro III of LL Building, corner EDSA and Panay Avenue, Quezon City, recommending that the practice of professions be strictly limited to citizens of the Philippines, except in cases where reciprocity between the Philippines and a foreign country exists

TO THE COMMITTEE ON CONSTITUTIONAL COMMISSIONS AND AGENCIES

Communication No. 611 — Constitutional Commission of 1986

Telegram from Provincial Governor Bantas W. Suanding, reiterating the stand of the Province of Benguet for administrative regionalization, not regional autonomy

TO THE COMMITTEE ON LOCAL GOVERNMENTS

Communication No. 612 — Constitutional Commission of 1986

Letter from Mr. Felixberto M. Serrano, signed by his confidential Secretary, Conchita Baby Bustamante, submitting for consideration by the Constitutional Commission the first part of his comments on the New Constitution covering the Preamble and the National Territory, saying that he would be greatly relieved from the agonies of his ailments if the Constitutional Commission could give a modest share of its attention to the consideration of the views expressed therein

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

Communication No. 613 — Constitutional Commission of 1986

Letter from Mr. Hilarion A. Gusto of Grace Evangelical Mission, Inc., 2nd Street cor. 5th Avenue, East Grace Park, Caloocan City, Metro Manila, urging the Constitutional Commission to incorporate in the new Constitution a provision on the inviolability of the separation of the Church and State as embodied in the 1973 Constitution

TO THE COMMITTEE ON GENERAL PROVISIONS

QUESTION OF PRIVILEGE OF MR. ROMULO

At this juncture, Mr. Romulo took the floor on a question of privilege in connection with a newspaper report written by Mr. Tara Singh which appeared in the August 91, 1986 issue of Business Day. He stated that the report wrongly accused Mr. Villegas of changing Section 15 of the Article on National Economy and Patrimony by adjusting the 2/3 to 1/3 ratio for public utilities to 60:40. He added that the report also falsely alleged that he and Mr. Monsod were eager to approve the alleged surreptitious change by Mr. Villegas.

Thereupon, Mr. Romulo read the pertinent portion of Section 15 of the Committee Report, to wit:

"No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least two-thirds of whose voting stock or controlling interest is owned by such citizens."

He stressed that this belies the allegation that there was a revision. He explained that although the Committee had previously announced that a proposed amendment was filed to reduce the ratio to 60:40, this is different from saying that Mr. Villegas had covertly changed the ratio.

Mr. Romulo noted that the distortion of facts continued as Mr. Singh went on to cite a so called parliamentary precedent to the effect that the final report of the Committee is rarely revised, implying thereby that the Body, as a whole, seldom disagrees with a Committee recommendation when in fact there were basic fundamental revisions made by the Body on the floor which were contrary to those reported by the Committee such as the definition of "national territory" that dropped the Sabah claim; the unicameral system of Legislature which was changed to a bicameral one; the requirement that the President seek the concurrence of Congress before declaring martial law; and many others.

Mr. Romulo strongly deplored the distortions and misleading allegations in the news report, stating that it did no credit to a newspaper which has earned a reputation for professionalism and for accurate reporting. He expressed regret that those who opposed their stand had resorted to the smear tactics of the McCarthy era and to the big lie employed so effectively by the communists.

He pointed out that the issue is straightforward: some believe that the country needs foreign investment as a supplementary effort towards economic progress because of the insufficient domestic savings to support the industries which can provide jobs and which the country desperately needs, while others do not subscribe to that view. He asked whether in discussing this issue there is a need to resort to character in law, "if the law is against you, argue the facts; if the facts are against you, argue the law; and if the facts and law are against you, pound the table, shout like hell and abuse the other lawyer", Mr. Romulo stated that those who opposed their views have followed the third alternative.

Mr. Romulo reiterated he would yield to no one in his devotion to the national interest and would not apologize to anyone for his economic or political views. He stressed that he had and would always vote as his conscience dictates and not as pressure groups, vested interests or lobbyists would want him to vote no matter how they may ridicule or villify him in public, adding that underhanded tactics, rather than deter him from his chosen path, reinforce his determination to do what he believes is right for the common good.

In conclusion, Mr. Romulo quoted an eminent jurist: "If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought, not free thought for those who agree with us, but freedom for the thought that we hate."

MOTION OF MR. DAVIDE

Thereafter, Mo. Davide moved that a copy of Mr. Romulo's remarks on said question of privilege be immediately forwarded by the Secretary-General to the editor of Business Day for the latter to make the necessary rectification.

Mr. Foz suggested that another copy be sent to the publisher of the newspaper.

Mr. Davide accepted the amendment.

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

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

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

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

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

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 10:07 a.m.

RESUMPTION OF SESSION

At 10:14 a.m., the session was resumed.

INQUIRY OF MR. NOLLEDO

Thereupon, Mr. Nollado read, on page 2 of the approved provisions of the Article, the phrase which states: "at least sixty percent of whose capital or controlling interest is owned by such citizens". He pointed out that "controlling interest" seems to refer to associations other than corporations whose controlling interest may merely be 50% plus 1% which is lower than 60% and at the same time the phrase could also be inferred to mean that the 60% may be based not on capital but also on the controlling interest or 60% of 51%.

He also pointed out that Section 15 also contains the phrase "voting stocks or controlling interest". He explained that "voting stocks" as basis of Filipino equity implies that if 60% thereof should belong to Filipinos, the foreigners may own more than 40% of the capital as long as 40% or more are nonvoting stocks. He pointed out that under the Corporation Code of the Philippines, even nonvoting shares could vote on certain matters.

He then suggested that the Committee use "capital" uniformly instead of "controlling interest" in cases wherein foreign equity is permitted by law because the purpose, really, is to help Filipinos in the exploitation of natural resources and in the operation of public utilities.

Mr. Villegas concurred with the views of Mr. Nollado and, on behalf of the Committee, accepted the proposal to delete the phrase "or controlling interest" in all the provisions relating to foreign participation.

INQUIRY OF MR. MAAMBONG

Mr. Maambong observed that in corporation law, there are three types of capital — authorized capital stock, subscribed capital stock and paid-up capital stock. He stated that authorized capital stock could be interpreted as the capital or totality of the investment stated in the articles of incorporation. He then inquired whether the 60% ownership refers to the authorized capital stock or to the paid-up capital stock considering that as far as equity is concerned, subscription is the determinant as to who owns the corporation.

In reply, Mr. Suarez stated that while there could be differences in the interpretation of the term "capital" in relation to the percentage of foreign investments, the interpretation should be based on paid-up capital. He stated that the Committee had precisely done away with the terms "voting stock" or "controlling interest" because subscribed capital would be correct only in connection with the matter of voting. He noted, moreover, that corporations declare dividends based on paid-up capitalization. He stressed that paid-up capital should be the dominant consideration in determining the 60-40 ratio.

Mr. Maambong, by way of a rejoinder, reiterated that the determinant in the ratio of ownership would be the subscribed capital stock and not paid-up capital. He explained that in a corporation with an authorized capital stock of P1 million, a subscription of 60% or P600,000 would be the determinant or basis of the sharing inasmuch as once a capital stock is subscribed, it does not matter whether it is paid up or not because as far as the books of the corporation is concerned, it is owned by the person who made the subscription.

In reply thereto, Mr. Suarez stated that for the same amount of authorized stock, under the rules of the Securities and Exchange Commission, at least 25% thereof must be subscribed and that at least 25% of this subscribed capital stock should be paidup.

To illustrate the ratio of 60-40 ownership, Mr. Suarez explained that 60% or P600,000 worth of subscriptions of this corporation would be allocated to Filipinos and 40% would be allocated to foreigners which under the present rules, should be fully paid up. With respect to the 60% owned by the Filipinos, 25% of this must be paid up to comply with the Corporation Law although compliance with the 25% requirement would be fulfilled with the full payment of the 40% foreign-owned subscribed capital stock, in which case, the 60% Filipino participation may not even have to comply with the 25% requirement because of the full payment of the 40% foreign investors' interest — a situation which the Committee would like to avoid.

Mr. Maambong reiterated that the subscription should be the proper determinant, adding that to base the ratio of ownership of 60-40 on paid-up capital stock might create a problem where the 40% is fully paid up and the 60% would not be paid up which may be contrary to the provisions of the 1986 Constitution. He stressed that the Committee should give the proper interpretation as it may cause havoc on the interpretation of the Corporation Law.

Mr. Romulo noted that if the Committee is to go by the established rule, it would be based on the subscribed capital. He stated that there is only one possible exception a very rare provision in the bylaws which would prohibit the subscribers from voting.

Upon inquiry of Mr. Maambong whether Mr. Romulo was revising the answer of Mr. Suarez, Mr. Romulo stated that there was no contradiction inasmuch as Mr. Suarez was referring to an instance where the subscriber is a nonresident who fully pays for his subscription.

Mr. Maambong clarified that it was his understanding that in the computation of the 60-40 sharing under the present formulation, the determinant would be the paid-up capital to which he disagreed. Mr. Romulo, on his part, stated that it would be the subscribed capital stock.

PROPOSED AMENDMENT OF MR. TINGSON

On Section 4, Mr. Tingson proposed an additional sentence to read: FOR A PERIOD OF TEN YEARS IMMEDIATELY FOLLOWING THE RATIFICATION OF THIS CONSTITUTION, LOGGING FOR EXPORT SHALL BE PROHIBITED IN ENDANGERED FORESTS AND WATERSHED AREAS, coauthored by Messrs. Ople, Davide, Rigos, Treñas, Rodrigo, de los Reyes, Uka, Ms. Aquino, Messrs. Natividad, Rosales, Rama, Mrs. Quesada, Ms. Tan, Messrs. Gascon, Tadeo, Mrs. Rosario Braid, Messrs. Garcia, Abubakar and Bacani.

Mr. Villegas, in accepting the amendment on behalf of the Committee, stated that it could be more appropriately placed in Section 5 in which the Constitution mandates Congress to fix forest lands and national parks. He also proposed a rephrasing, to wit: CONGRESS SHALL PROVIDE FOR SUCH PERIOD AS IT MAY DETERMINE, PROHIBITION AGAINST LOGGING IN ENDANGERED FORESTS AND IN WATERSHED AREAS which would allow Congress itself to determine the period. He also pointed out that logging in endangered forests, whether for domestic use or export, should be prohibited.

Thereupon, Mr. Tingson stated that he would introduce his amendment when the Body considers Section 5.

PROPOSED AMENDMENT OF MR. COLAYCO

On page 3, line 1, Mr. Colayco proposed, between "forests" and "mineral," to delete the word "or". Mr. Villegas, however, informed that the line had been amended at the suggestion of Mr. Concepcion to "forest or TIMBER, mineral lands and national parks".

Thereupon, Mr. Colayco desisted from pursuing his amendment.

AMENDMENTS OF MR. DAVIDE

As proposed by Mr. Davide and accepted by the Committee, the Body approved the following amendments, one after the other:

1) On Section 4, page 3, line 6, after the word "leased", insert the phrase FOR A PERIOD NOT EXCEEDING TWENTY-FIVE YEARS, RENEWABLE FOR NOT MORE THAN TWENTY-FIVE YEARS so that the line would read: "hold alienable lands of the public domain except by lease FOR A PERIOD NOT EXCEEDING TWENTY-FIVE YEARS, RENEWABLE FOR NOT MORE THAN TWENTY-FIVE YEARS".

2) On the same page, line 10, substitute the word TWELVE for "twenty-four"

Mr. Davide explained that the reduction from 24 to 12 hectares would allow more people to enjoy the benefits of homestead grants.

In reply to Mr. Monsod's inquiry on the technical basis of the proposal, Mr. Davide noted that many homestead grants were placed at exactly 24 hectares.

In reply to Mr. de los Reyes' query on the effect of the amendment to pending applications of applicants who have already cultivated 24 hectares, Mr. Davide replied that upon approval of the Constitution, only 12 hectares can be granted although a possible exception can be incorporated under the Transitory Provisions. He affirmed that the 12-hectare limitation would apply only to future applications that perfected applications would not be prejudiced.

3)

On the same page, line 12, after the word "resources", insert the clause AND SUBJECT TO THE PRINCIPLES OF AGRARIAN REFORM; and delete lines 16 and 17.

At the instance of Mr. de los Reyes, Mr. Davide accepted the retention of the word "requirements" instead of "principles" in the phrase so that line 12 would read: "of the natural resources, AND SUBJECT TO THE REQUIREMENTS OF AGRARIAN REFORM, shall determine by law the size".

At this juncture, Mr. Maambong invited attention to the repeated use of the word "requirements" in the same sentence.

Mr. Villegas suggested that the matter be left to the Committee on Style to formulate the proper phraseology.

INQUIRY OF MR. TADEO

With reference to line 5 which states "No private corporation or association may hold alienable lands of the public domain except by lease, not to exceed one thousand hectares", Mr. Tadeo inquired what effect it would have on corporations such as Dole, Del Monte, Sime Darby and others which violated the aforesaid provision through Amendment No. 6.

In reply, Mr. Villegas stated that such corporations would have to comply with the 1986 Constitution and that the law would ensure their compliance. He noted that such corporations were able to circumvent the provision through service contracts, adding that under the 1986 Constitution, such service contracts would no longer apply to agricultural lands.

Mr. Tadeo remarked that such lease would be renewable for another 25 years.

As to whether such corporations would be exempted from the provision because of prior rights, Mr. Monsod replied that there would be no exceptions and that there would be a limit to what such corporations can hold. He added that such corporations would have to adjust.

Mr. Tadeo adverted to Section 6 of the Article on Social Justice which states "The State shall apply the principle of agrarian reform or stewardship whenever applicable in accordance with law in the disposition or utilization of other natural resources, including lands of the public domain suitable to agriculture under lease or concession". He underscored that the term "prior rights" would refer to the previous rights of indigenous cultural communities to their lands. Mr. Monsod corrected that the phrase mentioned by Mr. Tadeo has been dropped. He observed, moreover, that in the interpellation on the Article on Social Justice it was made clear that in the event of unjust acquisition, the law would have to deal with it as such, but in case of just and legal acquisition, compensation would be forthcoming.

Upon inquiry of Mr. Tadeo whether Dole or Del Monte would be entitled to only 1,000 hectares after approval of the 1986 Constitution, Mr. Monsod replied that such is the intent of the provision.

INQUIRY OF MR. REGALADO

In the light of the scenario drawn by Mr. Tadeo wherein Del Monte's landholdings would be reduced to 1,000 hectares and pending the application of the agrarian reform program on that particular area, Mr. Regalado inquired if the Committee would be amenable to a proposal to provide in the Transitory Provisions that until Congress shall have provided, reversion proceedings may be instituted by the State with respect to the excess area. In reply, Mr. Villegas stated that it would be a just provision. Additionally, Mr. Monsod noted that in the event of distribution of the land, the plantation could continue to operate under Filipino ownership.

Mr. Regalado observed that the proposal would provide for the right of the State to institute reversion proceedings because, as presently contemplated, such proceedings would refer to public lands illegally acquired. He noted, moreover, that there is a need to expand the reversion proceedings to apply even to lands supposedly legally

acquired under the previous regime in excess of the maximum limits allowable. He stated that the right to institute reversion proceedings would be preliminary to the implementation of the agrarian reform program.

Mr. Monsod agreed with such position.

INQUIRY OF MS. TAN

In reply to the queries of Ms. Tan, Mr. Villegas agreed that private corporations in this section would include family corporations which own thousands of hectares of land, and would also include friar lands that the church got from the King of Spain.

INQUIRY OF MR. DE LOS REYES

Adverting to Section 11 of the 1973 Constitution which provides that "No private corporation or association may hold alienable lands of the public domain except by lease not to exceed one thousand hectares in area", Mr. de los Reyes inquired whether the area given to Dole Philippines was by virtue of Amendment No. 6 or by virtue of the martial law powers of the President, to which Mr. Villegas replied that he could not comment thereon as he had no knowledge of the facts.

Mr. de los Reyes stated that he asked the question because it seemed that this is the first time that the Constitution would limit the lease to 1,000 hectares which is not so, to which Mr. Villegas replied that the question of fact was whether or not some of these lands were leased through service contract, which the Committee found as a way by which some corporations were able to circumvent specific provisions of the 1973 Constitution.

INQUIRY OF MR. OPLE

In reply to Mr. Ople's query on whether the Committee would be willing to accept an amendment that would place a strong safeguard against the abuse of service contract, considering that the Commission had come upon the fact that this provision of the 1973 Constitution had been circumvented, Mr. Villegas stated that there would be no possibility of applying service contract arrangements on agricultural lands.

With respect to the service contracts overtaken by the new Constitution, Mr. Villegas stated that a reversion process in the Transitory Provisions as recommended by Mr. Regalado would be included.

On the Chair's query whether the Commission was pursuing a principle that the Constitution would be given retroactive; rather than prospective effect, Mr. Villegas replied that it was not the thinking of the Committee, but if it could be proven that some of these acquisitions were unjust, then the Transitory Provisions would come in.

REMARKS OF MR. TADEO

Mr. Tadeo stated that a certain Minister under the Marcos regime and still Minister under the Aquino administration was able to acquire 2,000 hectares of land in Basilan City despite the Constitutional provision.

INQUIRY OF MR. CALDERON

In reply to Mr. Calderon's query relative to Ms. Tan's earlier interpellation, Mr. Villegas explained that the interpellation was on whether the phrase "private corporation" applies to family corporations or friar lands, and his reply was to the effect that if they had been organized as corporations, they would be included as private corporations.

On whether lands donated to the church or to any other group by virtue of a last will and testament would be

covered by the specific provision, Mr. Villegas stated that they would not be covered because the provision covers only lands of the public domain which are alienable. He stated that the situation contemplated by Mr. Calderon would be included either in the provisions on Social Justice or Agrarian Reform.

MR. AZCUNA'S AMENDMENT TO THE AMENDMENT

Mr. Azcuna proposed an amendment to the amendment by inserting the word GRANT after "homestead" on line 9 of page 3.

Mr. Villegas accepted the amendment to the amendment, and there being no objection, the same was approved by the Body.

INQUIRY OF MR. MAAMBONG

In reply to Mr. Maambong's query on whether the Committee had decided upon his amendment to insert the word "subscribed" before the word "capital" in Section 3, Mr. Romulo stated that the Committee had decided to retain the traditional wordings therein inasmuch as both the Corporation Law and jurisprudence are very clear that capital is subscribed. He pointed out, however, that the Committee could not agree to the words "subscribed capital" because it also applies to associations which may not have shares of stock. In this regard, he stated that the words "controlling interest" had been deleted and the word "capital" had been used in its generic sense.

Mr. Maambong recalled that under the present Corporation Law and under the ruling of the Supreme Court, a person who subscribes to the capital stock of the corporation could already vote even if he has not yet paid fully, which has been a departure from the previous rulings of the Supreme Court. He stated that once the subscription is fixed at 60% Filipino and 40% foreign, it would not matter whether it has been paid up or not, to which Mr. Romulo replied that, although Mr. Maambong was correct, the Committee wanted to use the word "capital" in a generic sense because it involves not only corporations but also noncorporations, like associations.

Thereupon, Mr. Maambong did not insist on his amendment on the understanding that the word "capital" would be read with reference to subscribed capital stock.

INQUIRY OF MR. SUAREZ

In reply to Mr. Suarez' apprehension on the possibility that Filipinos who are subscribers and incorporators in the 60%-40% corporation may not at all pay any of their subscriptions because it may come to a point where the 40% fully paid-up capital would represent at least 25% of the paid-up subscribed capital of the entire corporation, Mr. Maambong agreed that the problem would not have arisen if the Corporation Law had not been amended or the Supreme Court had not reversed its previous stand, since, at present, once a person subscribes to the capital stock of a corporation as long as there is no declaration that such a subscription has been declared delinquent, that person has the right to vote his shares of-stock based on his subscription.

On the possibility that there would be no necessity to require the 60% Filipino subscription to be paid considering that the 40% share of the foreigners had already been fully paid up and had satisfied the 25% requirement, Mr. Maambong stated that under such situation, the subscribed capital stock would still prevail.

INQUIRY OF MR. REGALADO

In reply to Mr. Regalado's query on whether he heard Mr. Suarez right when he stated that even if the subscriber does not pay a centavo on his subscription, the stocks to which he has subscribed shall already be considered for purposes of the computation, Mr. Suarez affirmed that this is the usual practice. He stated that the point he was

trying to raise with Mr. Maambong was the fact that a so-called subscriber who has not paid even the minimum 25% under the Corporation Code could still be considered a subscriber because under the present Corporation Code, 25% of the authorized capital stock must be subscribed and 25% of the subscribed capital stock must be paid up irrespective of who is holding the 25%.

At this juncture, Mr. Maambong interposed an objection to the statement that an individual subscriber may be given a share of stock based on his subscription without paying a single centavo because the corporate practice is always such that he has to pay a certain percentage.

INQUIRY OF MR. PADILLA

In reply to Mr. Padilla's query whether, upon the ratification of the Constitution, those Filipino domestic corporations holding 1,024 hectares granted under the 1935 Constitution and which had been fully developed would be reduced to 1,000 hectares in view of the proposal of Mr. Regalado for a reversion of the excess, Mr. Romulo stated that rights which are derived from the Constitution itself such as the one contemplated by Mr. Padilla cannot be retroactively affected.

AMENDMENT OF MR. DAVIDE

As proposed by Mr. Davide and accepted by the Sponsor, the Body approved an amendment on page 3, line 18, to delete the phrase "Upon recommendation of the President".

Mr. Davide explained that the Ministry of Natural Resources would be in a better position to make the delimitations or delineations.

PROPOSED AMENDMENT OF MR. DAVIDE

On the same page 3, line 19, Mr. Davide proposed to insert, before "Congress" the words THE FIRST; and after "Congress" the words ELECTED UNDER THIS CONSTITUTION.

Mr. Villegas accepted the amendment.

INQUIRY OF MR. RODRIGO

In reply to Mr. Rodrigo's query on whether the Second Congress could not act if the First Congress fails to act, Mr. Davide stated that the Second Congress could continue to act but that his proposal would emphasize the fact that the First Congress must really act so as not to further deplete the forests to avoid further denudation. He agreed that the First Congress should not be penalized if it fails to pass the law.

SUGGESTION OF MR. MAAMBONG

Mr. Maambong observed that the proposed amendment of Mr. Davide would be very limiting and suggested that to avoid any confusion the same should not be placed therein.

Reacting thereto, Mr. Villegas opined that, considering the problem of denudation to be very urgent, the proposal would emphasize the urgency of the problem, on the understanding that if the First Congress fails to act, the Second Congress would have to pass the law.

AMENDMENT OF MR. TINGSON

As proposed by Mr. Tingson and accepted by the Sponsor, the Body approved the following amendment as an additional sentence to Section 5, to wit:

CONGRESS SHALL PROVIDE FOR SUCH PERIODS AS IT MAY DETERMINE, MEASURES TO PROHIBIT LOGGING IN ENDANGERED FOREST AND WATERSHED AREAS.

Mr. Tingson manifested that Messrs. Ople, Davide, Rigos, Treñas, Rodrigo, de los Reyes, Uka, Ms. Aquino, Messrs. Natividad, Rosales, Rama, Mrs. Quesada, Ms. Tan, Messrs. Gascon, Tadeo, Mrs. Rosario Braid, Messrs. Garcia, Abubakar, Bacani and Guingona were coauthors of said amendment.

RESTATEMENT OF SECTION 5

Mr. Villegas restated the entire Section 5, as amended, to wit:

THE FIRST CONGRESS, ELECTED UNDER THIS CONSTITUTION, SHALL DETERMINE BY LAW THE SPECIFIC LIMITS OF FOREST LANDS AND NATIONAL PARKS MARKING CLEARLY THEIR BOUNDARIES ON THE GROUND. THEREAFTER, SUCH FOREST LANDS AND NATIONAL PARKS SHALL BE CONSERVED AND NOT BE DIMINISHED.

CONGRESS SHALL PROVIDE FOR SUCH PERIODS AS IT MAY DETERMINE, MEASURES TO PROHIBIT LOGGING IN ENDANGERED FORESTS AND WATERSHED AREAS.

INQUIRY OF MR. BENNAGEN

In reply to Mr. Bennagen's query on the meaning of the word "conserve", Mr. Villegas stated that it would refer to taking care of trees and would include the utilization and management of development projects. He also agreed that it would include the possibility of changing the specific limits of national parks in regard to the total boundaries of forest lands and national parks.

Mr. Bennagen then stated that he was satisfied with the provision on the understanding that Congress, depending on development in management and forest technology, shall be empowered to make the necessary adjustments or pass laws to respond to changing requirements of forest development and the national economy.

MR. LAUREL'S AMENDMENT TO THE AMENDMENT

On page 3, line 19, Mr. Laurel proposed an amendment to Mr. Davide's amendment by inserting the words AS SOON AS POSSIBLE between the words "shall" and "determine".

Mr. Laurel stated that this Constitution is supposed to govern the future and, therefore, should not limit it to the First Congress.

Mr. Davide accepted the amendment to his amendment.

The Sponsor, likewise, accepted the amendment, and there being no objection, the same was approved by the Body.

INQUIRY OF MR. ROMULO

Mr. Romulo stated that he had some misgivings about the answer of the Sponsor to the queries of Mr. Bennagen on whether Congress, after this provision shall have been ratified, may subtract from the areas determined or declared as forest land and national parks, to which Mr. Villegas pointed out that it was the understanding of the

Committee that Congress would be empowered to change the area of forest lands and national parks after a certain period of time.

The Chair, however, affirmed the observation of Mr. Rodrigo that Section 5 categorically states that Congress may not diminish said forests and national parks.

Mr. Villegas suggested that after the word "diminished", the phrase "unless subsequently changed by law" be added, to which Mr. Monsod proposed that it should rather be "and the limits, as may be determined by law, shall".

Mr. Rodrigo also proposed to put a period (.) after the word "conserved" on line 22.

Likewise, Mr. Davide proposed to change the phrase "and not be diminished" with the phrase AND MAY NOT BE DIMINISHED EXCEPT BY LAW, in reply to which Mr. Bennagen opined that it should not only include the decrease in area but also the expansion thereof, so that the word "diminished" should be substituted by the word CHANGED.

Mr. Rodrigo observed that the word "changed" may not be appropriate because it can be a change in quality, not necessarily in area.

In view thereof, Mrs. Nieva proposed to insert the words NOR INCREASED after the word "diminished" in Mr. Davide's proposal.

The Chair suggested that the term could be subject to further modification but the principle is that it may only be diminished or increased by law.

The Committee accepted the amendment of Mr. Davide, as amended.

APPROVAL OF SECTION 5, AS AMENDED

Thereafter, Mr. Villegas read Section 5, as amended:

CONGRESS SHALL, AS SOON AS POSSIBLE, DETERMINE BY LAW THE SPECIFIC LIMITS OF FOREST LANDS AND NATIONAL PARKS, MARKING CLEARLY THEIR BOUNDARIES ON THE GROUND. THEREAFTER, SUCH FOREST LANDS AND NATIONAL PARKS SHALL BE CONSERVED AND MAY NOT BE INCREASED NOR DIMINISHED EXCEPT BY LAW. CONGRESS SHALL PROVIDE FOR SUCH PERIODS AS IT MAY DETERMINE MEASURES TO PROHIBIT LOGGING IN ENDANGERED FORESTS AND WATERSHED AREAS.

Submitted to a vote, and with 31 Members voting in favor, none against and one abstention, Section 5, as amended, was approved by the Body.

PROPOSED AMENDMENT OF MR. SUAREZ

On Section 6, in reply to Mr. Suarez' query, Mr. Villegas affirmed that private lands refer to private agricultural lands; the phrase "acquire and hold" includes lease; and that lands of the public domain refer to alienable public land or to pasture lands and other lands not necessarily agricultural, which may be transferred to individuals, corporations or associations qualified to acquire or hold said lands. Mr. Villegas also affirmed that Section 6 would not be limited to citizens of the Philippines.

In this connection, Mr. Monsod stated that "agricultural lands" in Section 4 is used in the generic sense and that there are only four classifications, namely, agricultural lands, forest lands, mineral lands and national parks.

In view thereof, Mr. Suarez proposed, on page 3, line 26, between "hold" and "lands" to insert the word AGRICULTURAL.

OBSERVATIONS OF MESSRS. RODRIGO AND CONCEPCION

At this juncture, Mr. Rodrigo observed that the term "public domain" is found in the 1935 and 1973 Constitutions and therefore it should be retained in the proposed Section 6 because it has already an adopted meaning in jurisprudence, in reply to which Mr. Villegas pointed out that it was not deleted in the proposed amendment of Mr. Suarez.

Mr. Concepcion, however, pointed out that the insertion of the word "agricultural" might change the original meaning of the same provision found in the 1935 and 1973 Constitutions. He suggested that the original phraseology of the Committee be retained.

In view thereof, Mr. Suarez withdrew his proposed amendment, on the understanding that lands of the public domain refer to agricultural lands.

APPROVAL OF SECTION 6

Thereafter, Mr. Villegas read Section 6, to wit:

SECTION 6. SAVE IN CASES OF HEREDITARY SUCCESSION, NO PRIVATE LANDS SHALL BE TRANSFERRED OR CONVEYED EXCEPT TO INDIVIDUALS, CORPORATIONS, OR ASSOCIATIONS QUALIFIED TO ACQUIRE OR HOLD LANDS OF THE PUBLIC DOMAIN.

There being no objection, the Body approved Section 6.

PROPOSED AMENDMENT OF MR. PADILLA

On Section 7, Mr. Padilla stated that since Section 7 would be an exception to Section 6, he would propose another exception regarding industrial lots with a limited area under certain conditions to be prescribed by law which foreign investors may use in the manufacture of export products, to wit:

FOREIGN INVESTORS ENGAGED IN THE MANUFACTURE OF EXPORT PRODUCTS AS CERTIFIED BY THE BOARD OF INVESTMENTS MAY BE ALLOWED TO ACQUIRE, HOLD OR OWN PRIVATE LOTS WITH LIMITED AREA REQUIRED IN THE OPERATION OF THEIR EXPORT-ORIENTED INDUSTRIAL ENTERPRISES UNDER SUCH CONDITIONS AS MAY BE PRESCRIBED BY LAW.

Adverting to the reason why his proposal was not accepted by the Committee that is, that the industrial lots may be covered by long-term leases, Mr. Padilla explained that an owner may not enter into a long-term lease with fixed monthly or annual rental because economic and financial conditions always change, therefore, a long-term lease may not be an incentive for both the foreign investor and the private owner. He added that there would be no danger that the foreign investor would get away with the lot from the country.

In reply to Mr. Villacorta's query, Mr. Padilla clarified that with Section 6 as the general rule, if the foreign investor is not qualified to acquire or hold lands of the public domain, he is also disqualified from owning an industrial lot.

Mr. Villacorta then asked for instances of other countries where foreign investors are allowed to own industrial lots, to which Mr. Padilla replied that in most countries, foreigners are allowed even to acquire private lands, which Section 6 prohibits. He added, however, that in order to attain a more progressive economy and to give more job opportunities to the people, foreign capital should likewise be allowed to engage in productive industrial

enterprises.

But Mr. Villacorta noted that during the public hearings when the same question was raised, the resource persons informed the Committee that countries like Singapore, Taiwan, Japan and Malaysia which were successful in inviting foreign investments, do not allow foreign investors to own lots of any kind.

He also pointed out that since millions of Filipinos are landless, it would be unfair to them to allow foreigners to own big tracts of land, in reply to which Mr. Padilla stated that his proposal would not involve big tracts of land but limited areas required for the construction of manufacturing plants, to be determined by law. He added that the foreign enterprises would be engaged in the manufacture and export of products made with local labor.

Thereupon, Mr. Villegas disclosed that the Committee was divided on the matter and he suggested that it be submitted to the Body.

On Mr. Suarez' suggestion that foreign investors could instead enter into lease contracts which could even be extended to 99 years, Mr. Padilla reiterated that this would not be practical because a reasonable rental could not be fixed for a long period considering the economic and financial changes.

Mr. Suarez pointed out that an English businessman who appeared before the Committee had no complaint about making profits although he does not own the lot on which his industrial project is established; therefore, it would not be necessary for foreign investors to own lots in order to make profits.

Mr. Padilla contended that his proposal would allow foreigners to own industrial lots subject to the conditions to be determined by Congress. He underscored that these foreign investors are now prohibited from owning private lots, but that they should be so allowed as additional incentives for them to produce goods for export using local materials and Filipino labor. He affirmed that his proposal would be a second exception to the provision of Section 6 which already provides for hereditary succession as an exception to the acquisition of public lands.

On the observation that foreign investors who would be engaged in so-called export-oriented industries may abuse the authority to own private agricultural lands, Mr. Padilla stated that he could not foresee any abuse considering the restrictive character of the proposal in the sense that 1) it would be limited to foreign investors engaged in the manufacture of export-oriented products, 2) it would provide only a limited area; 3) the acquisition of industrial lot would be required for the operation of their manufacturing enterprises; and 4) it would still be subject to conditions which Congress may provide. Mr. Padilla stressed that the purpose of his proposal is to give additional incentives to produce more export-oriented goods in the country and create more employment opportunities, adding that the benefits of this economic expansion would be shared by all.

On the observation that it would be more prudent to encourage the foreign investors, to move over to the export processing zones where a number of multinational companies have been flourishing, Mr. Padilla assured that his proposal would not prevent the establishment or continuance of these export processing zones although he learned that the Bataan Export Processing Zone has not been very successful.

REMARKS OF MR. SARMIENTO

Speaking against the proposal, Mr. Sarmiento stated that the provisions on agrarian reform have already been criticized for several loopholes. He noted that the proposed amendment would grant foreign investors additional privilege at the expense of the people because it would take away from the marginal sector lands that could otherwise be parcelled out under the agrarian reform program.

He quoted an article written by Professor Leonor Briones, an associate professor in the College of Public Administration, University of the Philippines, to wit:

"The roots of the present crisis can be traced to a politico-economic system characterized by the dominance in control of foreign capital. Such dominance is immediately visible in all sectors of the economy — private financial institutions, industry and manufacturing, agriculture, general services, public finance and financial institutions and public enterprises."

Finally, Mr. Sarmiento warned that the grant of this privilege to foreign investors would aggravate the country's economic problems.

REMARKS OF MRS. QUESADA

Mrs. Quesada noted that it could be the Filipino hospitality which encouraged Mr. Padilla to present his proposal. However, she expressed concern over this extension of hospitality, stating that the influx of more foreign investors would be a degradation of the country's environment in the sense that they could contribute to the ecological imbalance by setting up manufacturing establishments. She also pointed out that the grant to foreign investors of the privilege to own lots would deplete the land resources which are not even enough for distribution under the agrarian reform program.

Mrs. Quesada then urged rejection of the proposed amendment to free the Body from another accusation of giving incentives in the guise of national development which in the long run would not benefit the masses.

REMARKS OF MS. TAN

Ms. Tan registered a vehement objection to Mr. Padilla's amendment on the ground that 1) the foreigners are wealthy enough that they would not need additional privileges; and 2) they would contribute to health hazards of factory workers.

REMARKS OF MR. BENNAGEN

Mr. Bennagen stated that the proposed amendment was premised on the altruism of foreign investors and on the assumption that these foreigners come to the Philippines to offer benefits to a large segment of the population. He recalled, however, that in one of the Committee hearings, Dr. Mahar Mangahas argued very strongly against foreigners owning lands and natural resources in the country for the simple reason that these resources are scarce and nonrenewable and, therefore, should only be reserved for Filipinos.

REMARKS OF MR. COLAYCO

Mr. Colayco expressed the view that some Members are overreacting against foreign carpetbaggers. He pointed out that Mr. Padilla's proposal would not leave the doors completely ajar considering that it is conditioned on the action of Congress to impose conditions which may be necessary not only to safe-guard the country's interests but also to determine whether it would benefit the country economically. He opined that it would be too early to judge whether these foreigners would contribute to the ecological imbalance or do any harm. He believed that should Mr. Padilla accept a proposal for the reversion of the property to Filipino ownership after termination of the business of the foreign investors, the amendment would be received with more sympathy. He then asked whether Mr. Padilla would be amenable to such a proposal.

In reply, Mr. Padilla stated that he would not object to such a proposal clarifying that it was not his intention to allocate industrial lots forever to foreigners especially if these lots would no longer be needed in the operation of their industrial enterprises.

INQUIRY OF MS. TAN

On Ms. Tan's query whether business ever terminate, Mr. Padilla stated that some businesses, be it foreign or local, either close or withdraw once they cease to be profitable.

REJOINDER OF MR. PADILLA

Commenting on Mr. Sarmiento's remarks on the possible loss of agricultural lands that would be available to the people, Mr. Padilla pointed out that his amendment refers to industrial lots and not to subdivisions of agricultural land, and only when required for the construction of the manufacturing plant. He disputed the claim that the amendment would not benefit the people because it is precisely aimed at economic advancement for the benefit of the people.

On Mrs. Quesada's claim that manufacturing plants would contribute to the ecological imbalance, Mr. Padilla stated that the problem could be taken care of by zoning ordinances which do not allow the establishment of industrial plants that emit dangerous or obnoxious substances within residential areas.

Mr. Padilla noted that several remarks against his proposal were imaginary and sometimes emotional. He observed that many want to be identified as nationalists who profess to help the people but he lamented the fact that oftentimes the poor people cannot even help themselves. He stressed that if domestic capital is not available, the government should attract foreign investors, not for the domination, much less exploitation of the country for their exclusive benefit, but for the production of more wealth to be shared by all.

Mr. Padilla stated that altruism on the part of foreign capital is not the issue, pointing out that it is but natural for profit motive to come in with business and capital and that there is nothing wrong as long as the enterprise is good for the country and create more employment and increase productivity. He then urged the Members to be more practical and face the problem squarely rather than being emotional. He appealed to the Members to ask themselves the question whether his proposed amendment is against the interest of the people or whether it would help advance the economic development of the country.

REMARKS OF MR. TADEO

Mr. Tadeo read the statements of Mr. Alexander Padilla which appeared in Philippine Society in Perspective: a National Situationer, to wit:

"There shall be a strict implementation of the rule that no foreign entity can own land or exploit the country's natural resources. Loopholes such as the admissibility of service contracts and leasing of lands shall be plugged."

COMMENTS OF MR. PADILLA

Mr. Padilla thanked Mr. Tadeo for quoting some statements of his son, Mr. Alexander Padilla, but he pointed out that many of these statements were against the Marcos regime. He stressed that the Commission is writing a Constitution under the Aquino administration. He expressed the hope that the proposal would not be judged on emotional or theoretical basis but on what it purports to be — one which offers a practical solution to advance the country's economic interest.

REJOINDER OF MR. SARMIENTO

By way of a rejoinder, Mr. Sarmiento disputed the claim of Mr. Padilla that export-oriented industries create more wealth and increase productivity. He maintained that on the contrary, the country's economic rut was caused by the export-oriented industries and their labor-intensive, export-oriented development strategy. He stressed that what the country needs are capital-intensive industries.

REJOINDER OF MR. VILLACORTA

Mr. Villacorta pointed out that Mr. Padilla did not at all attempt to answer his question regarding the causal relationship between ownership of land by foreign investors in a host country and the volume of foreign investment in said country. He argued that this is not a theoretical question but a very empirical, real, practical question which does not demonstrate being emotional, idealistic and theoretical on the matter. He stated that Mr. Padilla's remark was an *ad hominem non sequitor* statement.

RESTATEMENT OF MR. PADILLA'S PROPOSED

AMENDMENT, AS AMENDED

Thereupon, Mr. Padilla restated his proposed amendment, as amended by Mr. Colayco, to wit:

FOREIGN INVESTORS ENGAGED IN THE MANUFACTURE OF EXPORT PRODUCTS AS CERTIFIED BY THE BOARD OF INVESTMENTS MAY BE ALLOWED TO ACQUIRE, HOLD OR OWN PRIVATE LOTS WITH LIMITED AREA REQUIRED IN THE OPERATION OF THEIR EXPORT-ORIENTED INDUSTRIAL ENTERPRISES UNDER SUCH CONDITIONS AS MAY BE PROVIDED BY LAW: PROVIDED, THAT AFTER THE TERMINATION OF THE BUSINESS, THE OWNERSHIP SHALL REVERT TO FILIPINO OWNERSHIP.

Submitted to a vote, and with 8 Members voting in favor, 27 against and 1 abstention, the amendment was lost.

AMENDMENT OF MR. MAAMBONG JOINTLY WITH

MESSRS. DAVIDE AND TREÑAS

Mr. Maambong proposed, on Section 7, page 3, line 30, to substitute the phrase "solely for residential purposes, not to exceed an area of one thousand square meters" with SUBJECT TO LIMITATIONS PROVIDED BY LAW.

Mr. Villegas accepted the amendment.

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

On Mr. Rodrigo's query whether a natural-born would fall under "natural-born citizen of the Philippines who has lost his Philippine citizenship", Mr. Villegas replied in the affirmative. On whether under the same Section 6 his children could succeed to the ownership of the land upon his death, Mr. Villegas likewise answered in the affirmative.

APPROVAL OF SECTION 7

Thereupon, Mr. Villegas read the whole Section 7, as amended, as follows:

SECTION 7. NOTWITHSTANDING THE PROVISIONS OF SECTION 6 OF THIS ARTICLE, A NATURAL-BORN CITIZEN OF THE PHILIPPINES WHO HAS LOST HIS PHILIPPINE CITIZENSHIP

MAY BE A TRANSFEREE OF PRIVATE LANDS SUBJECT TO LIMITATIONS PROVIDED BY LAW.

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

SUSPENSION OF SESSION

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

It was 12:21 p.m.

RESUMPTION OF SESSION

At 2:50 p.m., the session was resumed.

AMENDMENT OF MR. DAVIDE

Mr. Davide proposed, on Section 8, to reword the first paragraph to read as follows:

SECTION 8. CONGRESS MAY ESTABLISH AN INDEPENDENT ECONOMIC AND PLANNING AGENCY HEADED BY THE PRESIDENT, WHICH SHALL, AFTER CONSULTATIONS WITH THE APPROPRIATE PUBLIC AGENCIES AND THE PRIVATE SECTOR, INCLUDING LABOR AND PEASANT ORGANIZATIONS, RECOMMEND TO CONGRESS, AND IMPLEMENT, A CONTINUING INTEGRATED AND COORDINATED PROGRAM AND POLICIES FOR NATIONAL DEVELOPMENT

.Mr. Villegas accepted the amendment.

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

Mr. Monsod manifested that Mr. Bennagen made a reservation to present his amendments on the same section.

PROPOSED AMENDMENT OF MRS. ROSARIO BRAID

Mrs. Rosario Braid proposed, on page 4, line 8, to insert the following phrase after "government": WHICH SHALL PROMOTE COMPREHENSIVE DEVELOPMENT PLANNING, SET PRIORITIES FOR AGRICULTURE AND INDUSTRY, PROVIDE ADEQUATE INFORMATION CONCERNING THE MARKET, INCENTIVES FOR LOCAL INVESTORS, AND AN EFFECTIVE REGULATORY SYSTEM FOR EXTERNAL INVESTMENT INSTITUTIONS.

Mrs. Rosario Braid explained that the purpose of her proposal is to give a clearer signal to the business sector that the enumerated concerns are being seriously considered by the government.

Mr. Villegas explained that since the Constitution would now mandate Congress and the President to consult with the private sector, all the enumerated concerns are really part of the continuing integrated and coordinated programs and policies which are already referred to in the Section. He added that for the record, such concerns would be taken as part of these programs and policies.

With this understanding and assurance, Mrs. Rosario Braid did not insist on her proposal.

AMENDMENT OF MR. RIGOS JOINTLY WITH MESSRS. NOLLEDO, SARMIENTO AND GASCON

Mr. Rigos proposed to delete the entire Section 9 and to substitute the same with the following:

SECTION 9. ALL AREAS OF INVESTMENTS SHALL BE RESERVED TO CITIZENS OF THE PHILIPPINES OR TO CORPORATIONS OR ASSOCIATIONS WHOLLY OWNED BY FILIPINOS EXCEPT AS NOW OR MAY BE PROVIDED BY LAW AND THIS CONSTITUTION.

SUSPENSION OF SESSION

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

It was 2:58 p.m.

RESUMPTION OF SESSION

At 3:05 p.m., the session was resumed.

Upon resumption of session, Mr. Rigos withdrew his proposed amendment.

Thereupon, he proposed instead on Section 9, line 11, to substitute "voting stock or controlling interest" with CAPITAL.

Mr. Villegas accepted the amendment.

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

At this juncture, Ms. Aquino made a reservation to propose amendments on Section 9 which would be presented by Mr. Sarmiento.

AMENDMENT OF MR. NOLLEDO JOINTLY WITH MESSRS. RIGOS, GASCON, SARMIENTO AND MS. AQUINO

Mr. Nollado proposed, on Section 9, to add a new sentence on line 14 which would read as follows: IN THE GRANT OF RIGHTS, PRIVILEGES AND CONCESSIONS COVERING THE NATIONAL ECONOMY AND PATRIMONY, THE STATE SHALL GIVE PREFERENCE TO QUALIFIED FILIPINOS.

He explained that "Filipinos" would refer to individuals and to entities, embodying therein the so-called Filipino First policy.

Mr. Monsod accepted the proposal.

At this juncture, in reply to Mrs. Quesada's query as to the reason why he withdrew his first amendment, Mr. Rigos explained that he and his coauthors were satisfied with the Committee's explanation.

In addition thereto, Mr. Monsod stated that 1) on the question of 60% or wholly owned the Committee has decided to give Congress the leeway and the flexibility to dictate higher percentages than 60%; 2) to reverse the first by stating that "all areas are prohibited except those that may be allowed" would place a heavy burden on Congress to determine which economic activities may or may not be allowed considering that there are about 400,000 enterprises in the country, making the task virtually impossible.

Thereupon, Ms. Davide proposed to amend Ms. Nollado's amendment by substituting "qualified Filipinos" with CITIZENS OF THE PHILIPPINES OR CORPORATIONS OR ASSOCIATIONS WHOSE CAPITAL OR CONTROLLING STOCK IS WHOLLY OWNED BY SUCH CITIZENS.

Mr. Monsod pointed out that "Filipinos" in Mr. Nollado's proposal means individuals or corporations, which the latter affirmed.

On Mr. Davide's query whether the corporation's stock or controlling interest must be wholly owned by Filipinos, Mr. Monsod replied that the intention is that they must own at least 60% thereof.

On Mr. Rodrigo's query whether "qualified Filipinos" may be understood to mean preference to qualified Filipinos vis-a-vis Filipinos who are not qualified, Mr. Nollado explained that it should be understood to mean

qualified Filipinos under existing laws because there are certain conditions to be met before any business could be set up like capital and other qualifications.

Mr. Nollado agreed with Mr. Rodrigo's observation that preference to qualified Filipinos is understood to mean giving them preference as against Filipinos who are not qualified.

Mr. Nollado's proposal was submitted to a vote, and there being no objection, the same was approved by the Body.

AMENDMENT OF MR. DAVIDE

Mr. Davide proposed on Section 9, line 9, to insert a comma (,) after "shall" and to add the phrase UPON RECOMMENDATION OF THE ECONOMIC AND PLANNING AGENCY.

Mr. Villegas accepted the amendment.

On Mr. Rodrigo's query as to what is the "economic and planning agency" being adverted to in the proposal, Mr. Villegas replied that it is the one referred to in Section 8.

On the query whether the intention of the proposal is to limit the power of Congress, Mr. Davide replied in the affirmative, to which Mr. Villegas agreed.

On Mr. Bacani's query whether the proposal would be beneficial to Filipinos, Mr. Davide answered in the affirmative by stating that economic planning would be done by the National Economic and Planning Authority (NEPA), headed by the President, which would then recommend to Congress areas of investments to be reserved to Filipinos.

On the query whether in the absence of recommendation from NEPA Congress could not reserve to Filipino citizens certain areas of investments thereby giving rise to the influx of foreign capitalists, Mr. Davide replied that there will be no leeway for foreigners inasmuch as the provision is subject to the general restrictions in the matter of utilization, disposition and exploration of natural resources.

On the query of the Chair whether the Body would vote on Mr. Nollado's amendment, Mr. Tingson informed that there was a reservation on Section 9.

PROPOSED AMENDMENT OF MRS. QUESADA

On Section 10, line 17, after the word "sector", Mrs. Quesada proposed to insert the phrase REPRESENTING FILIPINO INTERESTS AND OF KNOWN PROBITY AND PATRIOTISM, such that the entire sentence, as amended, would read: "The Congress shall establish an independent central monetary authority, the majority of whose members shall come from the private sector, REPRESENTING FILIPINO INTERESTS AND OF KNOWN PROBITY AND PATRIOTISM.

Reacting thereto, Mr. Monsod informed that Mr. Davide has an amendment to Section 10 which could incorporate Mrs. Quesada's amendment, which proposal was confirmed by Mr. Davide.

INQUIRY OF MR. MONSOD

In reply to the observation of Mr. Monsod that it would be redundant to say REPRESENTING FILIPINO INTERESTS and at the same time mention PATRIOTISM since both imply a pro-Filipino sentiment, Mrs. Quesada admitted that the phrase would already encompass all the principles which would make one patriotic and agreed to delete "patriotism".

On the observation that no foreigner can be appointed to the Monetary Board, Mrs. Quesada maintained that there could be Filipinos who could act as dummies for foreign interest, hence, the need for the qualification.

Mr. Monsod remarked that it would be a bit paranoiac for the Body to put in the Constitution a suggestion that there are Filipinos who do not represent Filipino interests, to which Mrs. Quesada replied that in view of the importance of the Monetary Board, there would be a need for assurance that the private sector representatives would truly represent the national interest.

Upon the suggestion of Mr. Monsod, the Chair requested Mrs. Quesada and Mr. Davide to confer on the amendment.

REMARKS OF MR. BENGZON

Mr. Bengzon, reacting to the amendment of Mrs. Quesada, stressed that 1) those who would be appointed to the Monetary Board would be Filipinos; 2) these Filipinos would possess probity, independence and patriotism; and 3) that they are not dummies and if ever proven to be dummies, the Anti-Dummy Law can always be applied. He underscored that the proposal smacks of inferiority complex. He cautioned the proponents on their use of words, although he assured that the Committee would be willing to entertain amendments.

SUSPENSION OF SESSION

The Chair suspended the session.

It was 3:27 p.m.

RESUMPTION OF SESSION

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

PROPOSED AMENDMENT OF MR. DAVIDE

Mr. Davide proposed the following amendment to Section 10, to wit:

SECTION 10. THE CONGRESS SHALL ESTABLISH AN INDEPENDENT CENTRAL MONETARY AUTHORITY, THE MEMBERS OF WHOSE GOVERNING BOARD MUST BE OF KNOWN PROBITY, INTEGRITY AND PATRIOTISM, THE MAJORITY OF WHOM SHALL COME FROM THE PRIVATE SECTOR. THEY SHALL BE SUBJECT TO THE SAME DISABILITIES OR DISQUALIFICATIONS AS MEMBERS OF THE CONSTITUTIONAL COMMISSIONS. THE AUTHORITY SHALL PROVIDE POLICY DIRECTION IN THE AREAS OF MONEY, BANKING, . . .

Mr. Davide manifested that Mrs. Quesada and Messrs. Azcuna, Villacorta and Foz were coauthors of the amendment.

MR. FOZ' AMENDMENT TO THE AMENDMENT

Mr. Foz proposed an amendment to the amendment by inserting the words NATURAL-BORN CITIZENS before the words "of known probity".

Mr. Davide accepted the amendment to the amendment, which was, in turn, accepted by the Sponsor.

INQUIRY OF MR. SUAREZ

In reply to Mr. Suarez' query, Mr. Foz affirmed that all the members of the Central Monetary Authority must be natural-born citizens. In this regard, he stressed that the term "private sector" found on line 17 also includes the labor and peasant sector.

On the contention that in the composition of the Central Monetary Authority, it is not mandated that representatives of the labor and peasant organizations must be appointed, Mr. Foz pointed out that although there is no direct mandate, there is nothing to prevent the inclusion of representatives from the labor and peasant sector in such Central Monetary Authority since the interpretation given to the "private sector" on line 2 must be aligned with that found on line 17.

On his amenability to accept an amendment that would define "private sector" on line 17 to include labor and peasant organizations, Mr. Foz stated that he would have no objection thereto.

Thereupon, Mr. Villegas stated that the Commission would leave it to the record that "private sector" would include labor and peasant organizations without necessarily amending Section 10.

INQUIRY OF MR. BENNAGEN

In reply to Mr. Bennagen's query on the requirement in terms of professional training for members of the Monetary Board, Mr. Villegas stated that the original proposal of Mr. Davide enumerated, among others, sufficient knowledge of banking and finance, if they are going to set directions for money and credit.

INQUIRY OF MR. RODRIGO

Adverting to the provision which states that "The Congress shall establish an independent Central Monetary Authority", Mr. Rodrigo inquired as to how the independence of this authority can be supported by this Constitution, to which Mr. Villegas replied that the Commission should leave it to Congress to provide a fixed term for members of the Monetary Board who may not be removed from office except by impeachment, just like the members of the other Constitutional Commission.

INQUIRY OF MR. PADILLA

In reply to Mr. Padilla's query, Mr. Villegas stated that the President would appoint the members of the Monetary Board, and this would be left to Congress to specify in the law.

On the observation that the words "honesty", "probity", "nationalism" and "patriotism" are superfluous and redundant, Mr. Villegas stated that the words were incorporated therein for emphasis.

Mr. Padilla then stated that the persons appointed to the Monetary Board should be highly qualified in their knowledge of money, banking and finance, and not just those with assumed qualities of "honesty, probity, nationalism and patriotism". In this connection, he opined that the Committee had been liberal in accepting amendments which do not add substance to the provision.

APPROVAL OF MR. DAVIDE'S AMENDMENT

Mr. Davide restated his amendment, to wit:

SECTION 10. THE CONGRESS SHALL ESTABLISH AN INDEPENDENT CENTRAL MONETARY AUTHORITY, THE MEMBERS OF WHOSE GOVERNING BOARD MUST BE NATURAL-BORN FILIPINO CITIZENS, OF KNOWN PROBITY, INTEGRITY AND PATRIOTISM, THE MAJORITY OF

WHOM SHALL COME FROM THE PRIVATE SECTOR. THEY SHALL BE SUBJECT TO THE SAME DISABILITIES OR DISQUALIFICATIONS AS MEMBERS OF THE CONSTITUTIONAL COMMISSIONS. THE AUTHORITY SHALL PROVIDE POLICY DIRECTION IN THE AREAS OF MONEY, BANKING, . . .

The Sponsor accepted the amendment, and there being no objection, the same was approved by the Body.

Mr. Davide reiterated that the foregoing amendment was coauthored by Mrs. Quesada and Messrs. Azcuna, Villacorta and Foz.

PROPOSED AMENDMENT OF MR. GASCON

Mr. Gascon proposed an amendment to Section 10, either as an additional sentence or a separate paragraph, to wit:

FILIPINOS SHALL BE GIVEN PREFERENTIAL RIGHT TO ACCESS TO FINANCIAL RESOURCES.

Mr. Gascon explained that in providing financial resources which would include credit, Filipinos would be given preferential right to attain credit.

INQUIRY OF MR. SARMIENTO

In reply to Mr. Sarmiento's observation that the proposal would be covered by the newly approved section which provides that "In the grant of rights, privileges and concessions concerning the national economy and patrimony, the State shall give preference to Filipinos", Mr. Gascon stated that his proposal would concentrate on the issue of access to financial resources, with the hope that preferential treatment will be given to Filipinos as far as credit is concerned.

REMARKS OF MRS. ROSARIO BRAID

Mrs. Rosario Braid observed that the proposal of Mr. Gascon is a provision in the General Provisions which states that "wholly owned Filipino corporations shall be given priority to domestic credit facilities", to which Mr. Gascon maintained that the issue of banking, finance and credit is appropriate in this specific provision on the Central Monetary Board.

REMARKS OF MR. MONSOD

Reacting thereto, Mr. Monsod stated that it would be unproductive and redundant to be repeating pro-Filipino sentiments in the Constitution. He also stated that the act of lending money is a voluntary act and mandating discriminatory types of incentives would ultimately be bad for the Filipinos and the country.

Thereupon, in view of the fact that it would be provided in the Article on General Provisions, Mr. Monsod did not accept the amendment.

Mr. Gascon did not insist on his amendment.

INQUIRY OF MR. SUAREZ

In reply to Mr. Suarez' query on the scope of the institutions performing similar functions as provided for in Section 10, Mr. Villegas adverted to investment houses whose functions are similar to that of financial companies.

On the contention that there would be a conflict of jurisdiction between the Central Monetary Authority and the

Securities and Exchange Commission insofar as securities are concerned, Mr. Monsod stated that the latter has supervisory authority over finance companies, while the former would have regulatory authority.

APPROVAL OF SECTION 10, AS AMENDED

Thereafter, the Chair submitted Section 10 to a vote, and with 33 Members voting in favor, none against and 1 abstention, the same was approved by the Body.

MANIFESTATION OF MR. SARMIENTO

Thereupon, Mr. Sarmiento manifested withdrawal of his reservation to present amendments to Section 9.

AMENDMENTS OF MR. BENNAGEN

On Section 8, Mr. Bennagen proposed the following amendments:

- On line 2, insert a comma (,) after agencies; delete the word “and”; insert the word VARIOUS between “the” and “private”; add “s” to “sector” and thereafter add the words AND THE LOCAL GOVERNMENT UNITS; and

- On line 3, delete the words "including labor and peasant organizations, shall",

so that lines 2 and 3 would read: "appropriate public agencies, the VARIOUS private sectorS AND THE LOCAL GOVERNMENT UNITS".

Mr. Bennagen explained that the words “various private sectors” would include management, peasants, labor organizations, cooperatives, indigenous communities, academic and other sectors in the consultation. He stated that this form of consultation has already been practised by the NEDA in its "people powered" development plan. On the other hand, he stated that "local government units" would include the autonomous regions in order to reflect the relationship between the development plans of the autonomous regions and the national plans.

The Sponsor accepted Mr. Bennagen's proposed amendments.

On Mr. Rodrigo's inquiry as to how many sectors the President would have to consult before he acts, Mr. Monsod adverted to Mr. Davide's amendment which provides that consultation shall be undertaken during the formulation of the program before presentation by the President to Congress which, in turn, shall conduct public hearings. This approach, he stated, is being practised in consultations going on in all regions.

With respect to local government units, Mr. Monsod stated that there are at present regional consultations which involve representatives of the provinces and cities who are asked to present their respective plans and projects which would be the basis of the national development program.

There being no objection, the Body approved Mr. Bennagen's proposed amendments.

RESTATEMENT AND APPROVAL OF SECTION 8, AS AMENDED

Mr. Villegas restated Section 8, as amended, to wit:

SECTION 8. CONGRESS MAY ESTABLISH AN INDEPENDENT ECONOMIC AND PLANNING AGENCY HEADED BY THE PRESIDENT WHICH SHALL, AFTER CONSULTATIONS WITH THE APPROPRIATE PUBLIC AGENCIES, THE VARIOUS PRIVATE SECTORS AND THE LOCAL GOVERNMENT UNITS RECOMMEND TO CONGRESS AND IMPLEMENT CONTINUING INTEGRATED AND COORDINATED PROGRAMS AND POLICIES FOR NATIONAL DEVELOPMENT.

UNTIL CONGRESS PROVIDES OTHERWISE, THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY SHALL FUNCTION AS THE INDEPENDENT PLANNING AGENCY OF THE GOVERNMENT.

Submitted to a vote, and with 30 Members voting in favor, 1 against and 1 abstention, the Body approved Section 8, as amended.

INQUIRY OF MR. FOZ

Relative to Section 9, in reply to Mr. Foz' inquiry, Mr. Nollado affirmed that in case the foreign and Filipino enterprises are both qualified, preference shall be given to the Filipino even if the foreigner is more qualified in some aspects.

RESTATEMENT AND APPROVAL OF SECTION 9,

AS AMENDED

Mr. Villegas restated Section 9, as amended, to wit:

SECTION 9. THE CONGRESS SHALL, UPON RECOMMENDATION OF THE ECONOMIC AND PLANNING AGENCY, RESERVE TO CITIZENS OF THE PHILIPPINES, OR TO CORPORATIONS OR ASSOCIATIONS AT LEAST SIXTY PERCENT OF WHOSE CAPITAL IS OWNED BY SUCH CITIZENS, OR SUCH HIGHER PERCENTAGE AS CONGRESS MAY PRESCRIBE, CERTAIN AREAS OF INVESTMENTS WHEN THE NATIONAL INTEREST SO DICTATES. IN THE GRANT OF RIGHTS, PRIVILEGES, AND CONCESSIONS COVERING THE NATIONAL ECONOMY AND PATRIMONY, THE STATE SHALL GIVE PREFERENCE TO QUALIFIED FILIPINOS.

Submitted to a vote, and with 37 Members voting in favor and none against, the Body approved Section 9, as amended.

REMARKS OF MR. MONSOD

Relative to Mr. Nollado's response to Mr. Foz' inquiry, Mr. Monsod clarified that in evaluating competing requests for grant, the word "qualified" shall cover all aspects including the benefits to the country.

INQUIRY OF MR. MAAMBONG

. In reply to Mr. Maambong's query, Mr. Villegas affirmed that "capital" would also refer to subscribed capital.

PROPOSED AMENDMENT OF MR. GARCIA

Mr. Garcia proposed the inclusion of a new Section on foreign loans, to wit:

SECTION___. FOREIGN LOANS SHALL BE CONTRACTED ONLY TO FINANCE VITAL UNDERTAKINGS IN LINE WITH THE NATIONAL DEVELOPMENT PROGRAM. A CEILING ON FOREIGN BORROWINGS SHALL BE FIXED BY CONGRESS, AND FOREIGN LOANS OF THE PRIVATE SECTOR SHALL BE SUBJECT TO STATE REGULATION.

CEILING ON INTERESTS AND PRINCIPAL PAYMENTS AS A PERCENTAGE OF EXPORTS SHALL BE IMPLEMENTED, AND INFORMATION AS TO THE TERMS AND CONDITIONS OF FOREIGN LOANS OBTAINED BY THE GOVERNMENT SHALL BE MADE AVAILABLE TO THE PUBLIC.

Mr. Monsod reminded Mr. Garcia that during the deliberations on the Article on the Executive, the Body had a

lengthy debate which led to the approval of the following provision:

"The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board and subject to such limitations as may be provided by law. The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on applications for loans to be contracted or guaranteed by the government-owned or controlled corporations which will have the effect of increasing the foreign debt and containing other matters as may be provided by law. "

This provision, he stated, would already implement the intent of the Commission with respect to foreign loans. He further stated that the Committee could not accept the proposed amendment because the features contained therein could be taken care of by appropriate legislation. He pointed out that there are several formulas which are sought to be linked to the deficit of the national budget depending on the circumstances and the state of the economy.

Responding thereto, Mr. Garcia pointed out that the very heart of the economic crisis is the foreign debt question which the proposed Article on National Economy and Patrimony should address. He maintained that his proposal does not go into details but simply states very vital points so that the country's borrowings should be based on its ability to pay and ability to earn foreign exchange. He added that his proposal would simply ask that the information regarding the terms and conditions of loans should be made public. He believed that the question of foreign debt deserves a place in the Article and that his proposal simply states vital issues which any sound economy must be able to address.

Mr. Villegas added that one reason why the Committee could not accept the proposal is that the foreign debt problem is not going to be forever. He stated that this is a very specific problem which properly belongs to the jurisdiction of Congress and does not fit into the basic law of the land.

Likewise, Mr. Monsod stressed that the economy is a very complicated set of transactions and is not the proper subject of a constitutional provision.

Mr. Garcia argued that one reason why many Third World countries are deeply tied to dependent, unequal development is the fact that they took borrowing rather lightly. He stressed the need for sufficient public discussion before a loan is under. taken considering that the repayment is shouldered by the great majority. He stated that his proposal would simply stress that foreign debt shall be considered a vital question both by the Executive and the Legislative.

Mr. Monsod stated that the Committee would be willing to formulate with Mr. Garcia a general statement on foreign loans consistent with Section 20 of the Article on the Executive. He maintained that it would not be possible to go into details which might limit or restrict Section 20.

DEFERMENT OF MR. GARCIA'S AMENDMENT

At this juncture, Mr. Suarez requested distribution of clean copies of the proposed amendment and deferment of its consideration, to which Mr. Garcia agreed.

FURTHER PROPOSED AMENDMENT OF MR. GARCIA

Mr. Garcia proposed another Section which would deal on trade policy, to wit:

SECTION____. THE STATE SHALL ADOPT A TRADE POLICY THAT WILL GIVE PRIORITY TO THE PRODUCTION OF GOODS FOR DOMESTIC REQUIREMENTS OVER EXPORT. IMPORTS SHALL BE GEARED TOWARD HASTENING NATIONAL INDUSTRIALIZATION.

THE STATE SHALL MAKE FULL USE OF ALL FORMS OF EXCHANGE INCLUDING COUNTERTRADE WITH ALL COUNTRIES ON THE BASIS OF EQUALITY AND MUTUAL BENEFIT.

Mr. Monsod stated that a general statement on trade policy would be a good statement but the idea of the sentences on imports geared towards hastening national industrialization had already been dealt with in Section 1. With respect to the priority given to the production of goods for domestic requirements over export, Mr. Monsod pointed out that this would involve a serious question on economic policy and on foreign trade. Adverting to the first sentence of Section 1, Mr. Monsod stressed that self-reliance is not the same as self-sufficiency as suggested by the proposed amendment. He informed that in drafting Section 1, it was the intent of the Committee to provide the same ideas contained in the proposal.

Replying thereto, Mr. Garcia stated that his proposal would give life to the self-reliance policy and with regard to self-sufficiency, he opined that this is a desired objective in order that the nation could provide the basic necessities of its people.

DEFERMENT OF MR. GARCIA'S PROPOSED AMENDMENT

At this juncture, Mr. Suarez made the same request for copies of the amendment to be furnished the Members and asked deferment of its consideration.

RESERVATION OF MR. OPLE

Mr. Ople stated that he had submitted several amendments to the Article on National Economy and Patrimony which might have been overtaken by subsequent amendments. He then made a reservation to present his amendments which, if approved, he would leave to the Committee to properly locate in the Article.

AMENDMENTS OF MR. DAVIDE

On Section 11, Mr. Davide proposed the substitution of the word may on line 26 to SHALL NOT and to insert between the comma (,) and "by" the word EXCEPT, so that the line would read "The Congress SHALL NOT, EXCEPT by general law, provide"

The Committee accepted the amendment, and there being no objection, the same was approved by the Body.

On line 28, Mr. Davide proposed to insert between the words "established" and "only" the words BY SPECIAL CHARTERS AND.

The Committee likewise accepted the amendment, and there being no objection, the same was approved by the Body.

PROPOSED AMENDMENTS OF MR. REGALADO

On line 28, Mr. Regalado proposed to add after the word "corporations" the words OR THEIR SUBSIDIARIES. Mr. Davide, however, explained that during the interpellation, the Committee pointed out that subsidiaries of government-owned or controlled corporations may be organized under the general law and that government-owned or controlled corporations may be organized by special charters.

In view of the explanation, Mr. Regalado withdrew his proposed amendment.

On the same Section 11, after the word "good" on line 30, Mr. Regalado proposed to change the period (.) to a comma (,) and to add UNLESS PROVIDED OTHERWISE, SHALL BE SUBJECT TO THE SAME REQUIREMENTS, OBLIGATIONS AND RESTRICTIONS AS PRIVATE CORPORATIONS, explaining that

there are instances in the past when government-owned or controlled corporations were created supposedly with the powers of private corporations but not with the obligations of private corporations. He cited the case of the Experimental Cinema of the Philippines which was given the power of a private corporation but never had a board of directors, only a director-general and an assistant director-general. He stressed that his proposed amendment would protect private interests so that in the absence of a specific provision in the special charter, the provisions of the Corporation Code may have a suppletory effect.

On Mr. Suarez' observation that his apprehension might be taken care of if these corporations would be created under a special charter, Mr. Regalado stated that although the Congress may be well-meaning, there may be some lacunas in the Charter's provisions which they might overlook. He reiterated that in the absence of a contrary specific provision in a special charter, the same should be subject to the provisions of the Corporation Law which would have a suppletory effect.

Mr. Suarez stated that the Constitution might be cluttered with superfluous provisions since it would be sufficient to say that Congress should consider the private interests in enacting special charters for government-owned or controlled corporations.

In view thereof, Mr. Regalado withdrew his proposed amendment to the amendment of Mr. Davide, on the understanding that government-owned or controlled corporations may be created or established by special charters in the absence of specific provisions thereon, and that the Corporation Code and other pertinent provisions of law shall have suppletory effect.

In this connection, Mr. Maambong pointed out the definition of government-owned or controlled corporations under Presidential Decree No. 2029 which, states that it is a stock or nonstock corporation whether performing governmental or proprietary functions which is directly chartered by special law or is organized under the General Corporation Law, is owned or controlled by the government, directly or indirectly, through a parent or subsidiary corporation, to the extent of at least a majority of its outstanding capital stock or voting capital stock.

Mr. Regalado contended that it was a general definition that requires some qualifications, and that the qualitative features in the same presidential decree has not yet been given jurisprudential interpretation in line with the provisions of the Corporation Code on consolidation and merger of corporations.

But Mr. Maambong pointed out that the same presidential decree further stated that a corporation created by special law which is intended to be transferred to private ownership under specified conditions shall be considered a government-owned or controlled corporation until it is transferred to private ownership, to which Mr. Regalado replied that it was precisely the subject of Mr. Davide's amendment that Congress shall not, except by general law, provide for the formation of private corporations, which amendment was intended to insulate Congress from pressures to create favored corporations.

Mr. Maambong maintained that under the presidential decree, a corporation that is established by special law but which is required by law to register with the Securities and Exchange Commission (SEC) to acquire juridical personality shall not be considered a government-owned or controlled corporation solely on the basis of said special law, in reply to which Mr. Regalado opined that it depends on the type of corporation, because a corporation created under a Congressional act would not be required to register with the SEC. But he opined that even if it had already acquired a juridical personality, it still has to be subject to auditing and to comply with the rules on divestiture of acquired assets and appraisal of values, if all these were not in the charter itself. He pointed out, however, that if they would be set out in their charters, then there would be no need for suppletory application of the Corporation Code.

Mr. Regalado further stated that the presidential decree mentioned would be subject to review by the new Congress, and that he was after the guidelines in the Constitution that would have suppletory effect in case there would be no such provision in the special charters to be enacted by Congress.

INQUIRY OF MR. FOZ

In reply to Mr. Foz' query on whether subsidiaries of government corporations could be organized by special law, Mr. Davide stated that although they could be organized under the general law, there would be nothing to prevent Congress from granting a special charter for the creation of another corporation.

On the meaning of subsidiaries, Mr. Davide affirmed that, as stated by Mr. Foz during the consideration of the Article on Constitutional Commissions, they are mere creations of government-owned or controlled corporations which must own a certain percentage of the outstanding capital stock as mother corporations. He stated that subsidiaries are created under the General Corporation Law.

But Mr. Davide underscored that it could not be considered an entirely private corporation because it would be performing the same functions as the mother corporation or the government-owned or controlled corporation, in reply to which, Mr. Foz stated that in 'such case there would be no need to create those subsidiaries.

On whether the subsidiaries should rather be performing special functions, Mr. Davide maintained that special functions have to be specified but generally, it would be performing other functions of the mother corporation.

Mr. Foz pointed out that the provisions of the Civil Service Law include government-owned or controlled corporations and their subsidiaries, but if subsidiaries would be outside the scope of the civil service, then they have to be private corporations, in reply to which Mr. Davide pointed out that it was precisely the reason why his amendment did not include "other subsidiaries".

INQUIRY OF MR. SUAREZ

In reply to Mr. Suarez' query, Mr. Davide affirmed that under Section 11, government-owned or controlled corporations would be created 1) by special charters; and 2) for the interest of the common good.

On the effect of Section 11 on government-owned or controlled corporations created during the Marcos administration which were not created by special charters or created for the interest of the common good, Mr. Davide opined that certain realignment has to be made in the Transitory Provisions so that they may comply with this Constitutional provision. He added that the Transitory Provisions should also provide the requirements for subsidiaries found violating existing laws or created only to protect the interest of certain cronies. He stated that they may have to be converted into corporations under special charters.

MR. OPLE'S AMENDMENT TO THE AMENDMENT

Thereafter, considering that some P200 billion worth of nonperforming assets have to be taken over by the government from some government corporations, Mr. Ople proposed to raise the standard for creating new government corporations, in addition to the requirement of the common good, by including ECONOMIC VIABILITY, to which Mr. Foz agreed on the ground that it was because of the lack of economic viability that the Presidential Commission on Reorganization had recommended the abolition of certain government corporations or their merger with other corporations.

Mr. Ople further explained that it was also due to lack of economic viability that the amount of P28 billion had to be paid for equity infusions, which was always invoked for the common good. He stated that the amount paid for

equity contributions should have been allocated to agrarian reform, social services, education or the increase in salaries of underpaid public servants.

In this connection, Mr. Monsod pointed out that economic viability is not synonymous with financial viability, and the former is more liberal because it allows for consideration of certain variables that could not be mandated into financial terms, in reply to which, Mr. Ople agreed to the use of FINANCIAL VIABILITY in lieu of "economic viability" to make the standard stricter.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 5:15 p.m.

RESUMPTION OF SESSION

At 5:52 p.m., the session was resumed

Upon resumption of session, Mr. Villegas stated that the Committee accepted both the amendments of Messrs. Davide and Ople..

RESTATEMENT OF SECTION 11

Mr. Davide restated Section 11, as amended, to wit:

SECTION 11. THE CONGRESS SHALL NOT, EXCEPT BY GENERAL LAW, PROVIDE FOR THE FORMATION, ORGANIZATION, OR REGULATION OF PRIVATE CORPORATIONS. GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS MAY BE CREATED OR ESTABLISHED BY SPECIAL CHARTERS AND ONLY IN THE INTEREST OF THE COMMON GOOD SUBJECT TO THE TEST OF ECONOMIC VIABILITY.

Mr. Villegas accepted the amendment.

INQUIRY OF MRS. QUESADA

In reply to Mrs. Quesada's query on the meaning of the term "economic viability", Mr. Monsod explained that this is determined by cost-benefit ratio that takes into consideration all benefits, including internal and external economic benefits, and would involve economic returns or benefits that are not quantifiable in financial terms.

On whether there has been a shift in emphasis in that common good is no longer the main consideration in the establishment of government-owned or controlled corporations, Mr. Monsod stressed that common good is still the number one criterion although economic viability would include non-financial returns. He also adverted to the section introduced by Mr. Sarmiento which makes reference to contracts involving foreign financial and management cooperation which makes real contributions to the economy. Mr. Monsod affirmed that the formulation would limit the entry of government corporations into the activities normally engaged in by corporations, consistent with the policy that there should be minimum government participation and intervention in the economy.

On whether the earlier formulation proposed by Mr. Davide would cover the criterion of economic viability, Mr. Ople, to whom Mr. Villegas yielded the floor, pointed out that during the past three decades, there has been a proliferation of government corporations, very few of which have succeeded and many of which are earmarked by the Presidential Reorganization Commission for liquidation because they failed the economic test. He also

adverted to the fact that P28 billion of new equity infusions in this year's budget of P115 billion was earmarked just to support some of these government corporations, particularly the Development Bank of the Philippines and the Philippine National Bank, which money could have gone into health care or other services.

He explained that if the additional standard of economic viability is not provided, the term "common good" could be used as a license by some people to set up more government corporations that would have to be funded by the taxpayers' money because of the absence of standard of the economic test.

Mrs. Quesada maintained that the reason for the failure of many government-owned or controlled corporations to come up with the economic test could be in the management of these corporations and not with the idea itself. She pointed out that the problems of efficiency and effectiveness of management of these corporations could be remedied, not by eliminating government corporations, but by improving the management which the technocrats could do by training and gaining some expertise on the job, in reply to which Mr. Ople stated that such is part of the economic viability.

Mr. Ople agreed that the Filipinos could benefit more if these government-owned or controlled corporations would be given to private hands so that more goods and services would be made affordable to the ordinary citizens, since there is nothing to prevent the formation of a government corporation through a special charter from Congress. He pointed out, however, that the Commission would be raising the standard a bit higher so that in the future, corporations that would be established by the government would meet the test of the common good within the framework of economic viability.

SUGGESTION OF MR. DE CASTRO

Mr. de Castro suggested changing the tense of the sentence from negative to positive so that the phrase would read THE CONGRESS SHALL, BY GENERAL LAW, PROVIDE.

Mr. Villegas stated that that was the original phraseology in the 1973 Constitution which the Committee wanted to change, so that some government corporations, as an exception, rather than as a general rule, may be created by special charter.

INQUIRY OF MR. PADILLA

In reply to Mr. Padilla's query on whether government corporations could compete with private corporations organised under the general law, Mr. Monsod stated that there are two types of government corporations, namely, those involved in performing governmental functions and those involved in business functions. He explained that there are two criteria that should be followed by government corporations that want to go into business, 1) that before going into purely business functions, they should first prove their efficiency in the areas which are properly their functions; and 2) they should not go into activities which the private sector can do better.

Mr. Padilla observed, however, that these criteria were not mentioned in the provision. He maintained that, as worded, the provision prescribed only two standards, namely, economic viability and common good and, therefore, special charters may be granted to government corporations in economic activities where the private sector is already engaged in, to which Mr. Monsod replied that the term "common good" already subsumed the meaning that the government should not go into business which would compete with the private sector.

Additionally, Mr. Villegas pointed out that private enterprises must be financially viable which means they must be making profits. He explained that the phrase "economic viability" means that even if the corporation could not recover all the revenues, the government could still put up a corporation by special charter because it would benefit society without, in turn, being able to capture that benefit through the so-called market forces or through

financial channels either because it is so capital-intensive that it would not be financially viable for a private corporation, or it has a lot of the external benefits that are not captured by the market, in which case, the government would still be entitled to go into these types of business for the common good.

FURTHER INQUIRY OF MRS. QUESADA

In reply to Mrs. Quesada's query, Mr. Villegas affirmed that government-owned or controlled corporations would include utilities like water, electricity and telephone companies. In this connection, Mr. Villegas gave the assurance that there is a regulatory board which makes sure that when public utilities are in the hands of the private sector, they could not increase their prices at will because they would be regulated by the government.

Additionally, Mr. Monsod stated that Section 14 which provides that "The State shall regulate or prohibit monopolies when the public interest so requires" would cover situations contemplated by Mrs. Quesada.

Mr. Villegas agreed that there is no assurance that utilities given to private enterprises would be for the betterment of the common good, thus Congress would have to study the specific circumstances that would warrant public cooperation.

INQUIRY OF MR. MAAMBONG

In reply to Mr. Maambong's observation that government controlled corporations could not be created or established by special charters because it is against the law and against corporate practice, Mr. Nollado stated that the phrase "owned or controlled" means the same thing, which is ownership of shares. Mr. Nollado observed that Mr. Maambong was delving on legal hermeneutics. He maintained that the Body is not bound by the provisions of Mr. Marcos' decrees which must yield to the Constitution once ratified.

Mr. Maambong maintained, however, that the Constitution could not just provide a general statement that government-controlled corporations may be created or established by special charter, to which Mr. Romulo replied that "owned or controlled" means the same thing with respect to the shares of the corporation.

Mr. Maambong suggested the deletion of the words "by special charter", stating that the problem is on the creation and not on the phrase "owned or controlled".

INQUIRY OF MR. SUAREZ

In reply to Mr. Suarez' inquiry whether he had in mind private corporations originally organized in accordance with the Corporation Code which thereafter became government-controlled and, therefore, would no longer need creation by special charter, Mr. Maambong pointed out that there are government-controlled corporations which started as private corporations and because these corporations owed the government so much, their indebtedness are being converted into equity and they eventually became government-owned or controlled corporations. It is for this reason, he stated, that he is seeking the deletion of the words "by special charter".

On Mr. Suarez' contention that government-owned corporations must be created by special charters, Mr. Maambong stated that it was for this reason that he proposed the deletion of the words "special charter", as a surplusage.

Mr. Davide objected to the proposed deletion of the "special charter" clause on the ground that the authorities and the question presented by Mr. Maambong would refer to corporations owned or controlled by the government pursuant to an existing provision of the 1973 Constitution. He pointed out that all existing government-owned or controlled corporations, except privately-owned corporations that were taken over by the government, were

organized under special laws. On the matter of private corporations which was taken over by the government, Mr. Davide maintained that this would not pose a problem because under the Transitory Provisions of the Constitution, it is provided that privately-owned corporations subsequently taken over by the government may be reorganized under a special charter.

On Mr. Monsod's query, Mr. Davide affirmed that this Section would not preclude the possibility of a government-owned or controlled corporation from being established under the Corporation Code provided they are not performing government functions.

INQUIRY OF MR. FOZ

Mr. Foz pointed out that there has been a proliferation of government corporations created either by special law or by special charter and confusion has arisen as to whether all of these or some of these are indeed government corporations or whether they are private corporations. He opined that if the Commission could clear up this confusion, it would save Congress and administrative agencies, as well, a lot of trouble later on.

Replying thereto, Mr. Monsod stated that this confusion would be eliminated considering that under the Article on the Constitutional Commissions, it is provided that the Civil Service includes only government-owned or controlled corporations with special charters. Mr. Monsod stated that because the government would not be prevented from organizing government-owned or controlled corporations under the General Corporation Code, the creation of certain corporations might be justified on the ground of common good, even if such corporations do not have governmental functions.

On whether corporations which are organized by the government under the General Corporation Law may be subject to the provisions of the Labor Code, Mr. Monsod affirmed that they may be treated like private corporations under the Labor Code and, therefore, a distinction is made in the provisions on the Civil Service to avoid confusion.

Thereafter, Mr. Maambong inquired on the necessity of special charters considering that government-owned or controlled corporations may be created by general law, in reply to which Mr. Villegas explained that the government should be allowed to organize corporations under the general law only in exceptional cases. He stated that ordinarily they should be organized under special charters.

Thereupon, Mr. Bengzon moved for a vote on Section 11.

Mr. Maambong, however, suggested that the Body first vote on whether or not to delete the words "by special charters".

Submitted to a vote, and with 11 Members voting in favor, and 21 against, the proposed amendment of Mr. Maambong was lost.

RESTATEMENT AND APPROVAL OF SECTION 11,

AS AMENDED

Mr. Villegas restated Section 11, as amended, to wit:

SECTION 11. THE CONGRESS SHALL NOT, EXCEPT BY GENERAL LAW, PROVIDE FOR THE FORMATION, ORGANIZATION, OR REGULATION OF PRIVATE CORPORATIONS. GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS MAY BE CREATED OR ESTABLISHED BY A SPECIAL CHARTER IN THE INTEREST OF THE COMMON GOOD AND

SUBJECT TO THE TEST OF ECONOMIC VIABILITY.

Submitted to a vote, and with 32 Members voting in favor and none against, the Body approved Section 11, as amended.

ANNOUNCEMENT OF MR. TINGSON

Mr. Tingson announced that the planned Puerto Azul excursion had been postponed until further notice.

ADJOURNMENT OF SESSION

Thereafter, on motion of Mr. Tingson, there being no objection, the Chair declared the session adjourned until nine o'clock in the morning of the following day.

It was 6:32 p.m.

I hereby certify to the correctness of the foregoing.

(SGD.) FLERIDA RUTH P. ROMERO

Secretary-General

ATTESTED:

(SGD.) CECILIA MUÑOZ PALMA

President

Approved on August 23, 1986

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.