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Wednesday, September 17, 1986

CALL TO ORDER

At 10:01 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. Wilfrido V. Villacorta, to wit:

Almighty God, our only Master and Savior, early this year we implored You to give us Your help in overthrowing the dictatorship. In return, You gave us a miracle. This time we are once more asking Your help in realizing a pro-God, pro-people and pro-Filipino Constitution. We beg You to give us another miracle. In this supplication we shall recite the same prayer that we sang throughout the campaign and the revolution.

Mga kasama ko sa Constitutional Commission, ating awitin ang Ama Namin.

Thereupon, everybody sang the Ama Namin.

ROLL CALL

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

Bacani, T. C.

Muñoz Palma, C.

Bennagen, P. L.

Quesada, M. L. M.

Rosario Braid, F.

Rama, N. G.

De Castro, C. M.

Regalado, F. D.

Colayco, J. C.

Rigos, C. A.
Concepcion R. R.
Rodrigo, F. A
Davide, H. G.
Romulo, R. J.
Gascon, J. L. M. C.
Suarez, J. E.
Guingona, S. V. C.
Sumulong, L. M.
Jamir, A. M. K.
Tan, C.
Monsod, C. S.
Tingson, G. J.
Natividad, T. C.
Treñas, E. B.
Nieva, M. T. F.
Uka, L. L.
Nolledo, J. N.
Villacorta, W. V.
Padilla, A. B.
Villegas, B. M.
Bacani, T. C.
Muñoz Palma, C.
Bennagen, P. L.
Quesada, M. L. M.
Rosario Braid, F.
Rama, N. G.
De Castro, C. M.
Regalado, F. D.
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Concepcion R. R.

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Davide, H. G.

Romulo, R. J.

Gascon, J. L. M. C.

Suarez, J. E.

Guingona, S. V. C.

Sumulong, L. M.

Jamir, A. M. K.

Tan, C.

Monsod, C. S.

Tingson, G. J.

Natividad, T. C.

Treñas, E. B.

Nieva, M. T. F.

Uka, L. L.

Nolledo, J. N.

Villacorta, W. V.

Padilla, A. B.

Villegas, B. M.

With 30 Members present, the Chair declared the presence of a quorum.

The following Members appeared after the Roll Call:

A. M.

Abubakar, Y. R.

Calderon, J. C.

Alonto, A. D.

Garcia, E. G.

Aquino, F. S.

Maambong, R. E.

Azcuna, A. S.

Ople, B. F.

Bengzon, J. F. S.

Sarmiento, R. V.

Bernas, J. G.

Tadeo, J. S. L.

Abubakar, Y. R.

Calderon, J. C.

Alonto, A. D.

Garcia, E. G.

Aquino, F. S.

Maambong, R. E.

Azcuna, A. S.

Ople, B. F.

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Abubakar, Y. R.

Calderon, J. C.

Alonto, A. D.

Garcia, E. G.

Aquino, F. S.

Maambong, R. E.

Azcuna, A. S.

Ople, B. F.

Bengzon, J. F. S.

Sarmiento, R. V.

Bernas, J. G.

Tadeo, J. S. L.

P. M.

Foz, V. B.

Lerum, E. R.

P. M.

Mr. Rosales was sick.

Mr. de los Reyes was on official mission.

READING AND APPROVAL OF THE JOURNAL

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

REFERENCE OF BUSINESS

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

REFERRAL TO COMMITTEES OF 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. 920 — Constitutional Commission of 1986

Letter from Ms. Ma. Persevera Razon, College of Social Sciences and Philosophy, University of the Philippines, Diliman, Quezon City, expressing belief that the U.S. bases issue is a major item that should be included in the deliberations of the Constitutional Commission, at the same time pointing out the disadvantages of retaining the U.S. military bases in the Philippines.

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

Communication No. 921 — Constitutional Commission of 1986

Letter from Mr. Vicente Sumbillo, Sr., President, Small Landowners' Association, Dumingag, Zamboanga del Sur, submitting a petition signed by fourteen officers of said association, seeking exemption from the application of "Operation Land Transfer" of small landowners having only one to twenty-four hectares and that the Certificates of Land Transfer issued to tenant-farmers working on landholdings of not more than twenty-four hectares be cancelled and returned to the landowners

TO THE COMMITTEE ON SOCIAL JUSTICE

Communication No. 922 — Constitutional Commission of 1986

Letter from Mr. David F. Philipp, President of the Management Trend Company, 18321 Ventura Blvd., Suite 740 Tarzana, California, submitting a statement — "The Essence of the Constitution, The Rule of Law and Code of Conduct Between Human Beings" — which contains the universal law of acceptable human conduct and behavior in the exercise of the right to life, liberty and the pursuit of happiness.

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

UNFINISHED BUSINESS: COMMITTEE REPORT NO. 36 ON PROPOSED RESOLUTION NO. 537 ON THE ARTICLE ON DECLARATION OF PRINCIPLES

On motion of Mr. Rama, there being no objection, the Body resumed consideration, on Second Reading, of Proposed Resolution No. 537 (Committee Report No. 36) on the Article on Declaration of Principles, entitled:

Resolution to incorporate in the Constitution an Article on the Declaration of Principles.

Thereupon, the Chair recognized the Chairman and Members of the Committee on Preamble, National Territory and Declaration of Principles.

The Chair stated that the Body was still in the period of interpellations and debate.

INTERPELLATION OF MR. NATIVIDAD

On Section 9, in reply to Mr. Natividad's queries, Mr. Villegas explained that the second sentence thereof which reads, "The State shall equally protect the life of the mother and the life of the unborn from the moment of conception", affirms the commitment of the State to protect the life of the fetus from the beginning of conception; that the provision would bar the enactment of laws legalizing abortion; and that any direct killing of the unborn from the moment of conception would go against the Constitution and any future attempt by Congress to make it legal would be unconstitutional.

On whether there is any legal significance in writing the right to life of the mother in the same sentence as the right to life of the unborn, Mr. Villegas stated that the sentence is really a pro-life provision which emphasizes the protection of the life of the mother and that of the unborn.

On the possibility that this provision would prevent the doctors from terminating pregnancy to save the life of the mother for fear of violating this provision and of being charged with a criminal offense under the Penal Code, Mr. Villegas stated that situations which call for medical operation on the mother would not be considered violation of the proposed provision because there is no deliberate intention to kill the unborn. He said that this would be covered by the pertinent moral code or the principle of double effect, the fact being that a medical operation has to be performed to save the mother but unintentionally sacrificing the life of the unborn. He stressed that abortion, on the other hand, takes place when there is a direct attempt on the life of

the unborn for reasons like it was conceived as a result of rape, incest, or because of the hypothesis that the fetus would come out deformed, all of which do not morally justify killing the unborn.

Mr. Natividad inquired whether terminating the pregnancy when the mother's life is endangered, as an exception to the rule, would not open the floodgates to the insidious practice of criminal abortion in the country. Mr. Villegas replied that there would be no direct killing of the baby if the intention is to operate to save the mother; however, the cases he had adverted to are instances on which the Commission has to work or where the law has to be perfected. Mr. Natividad noted that his question really involves a question of evidence. He observed that it is hard to secure conviction in cases of abortion because usually the woman, her husband or boyfriend who are all co-principals are unwilling to testify. He pointed out that there are loopholes which make the campaign against criminal abortion difficult. He stressed that under the law, even the doctors may be held criminally liable for accidental abortion.

Specifically, on situations where husband and wife come to know that the fetus will be born a deformed child, Mr. Villegas stated that in this case there is no moral justification for killing the unborn and it would not be right to assume that only those who can find pleasure in life should be allowed to live. He stressed that to allow such killing would open the floodgates not only to abortion but also to euthanasia. Mr. Villegas affirmed that the same view would hold in the case of multiple rape where the woman could not accept the prospect of having a child with an unknown father. He stressed that one could not rectify a wrong by another wrong. He also stated that, in fact, there are so many institutions and charitable groups which make life as pleasant as possible for victims of rape and with which unwanted babies may be left for adoption.

On whether test-tube babies would also be protected by the provision, Mr. Villegas stated that this is a new phenomenon, the moral and legal implications of which have not yet been worked out. He opined, however, that test-tube babies should also be protected.

At this juncture, Mr. Bacani, commenting on the matter of unwanted babies, adverted to a study which showed that unwanted pregnancies brought forth wanted babies. He asserted that there were in fact more unwanted

pregnancies that brought forth wanted babies than wanted pregnancies of marriages which turned sour.

On Section 4, Mr. Natividad stated that over time it is possible that nuclear weapons might become more common for self-defense, in which event, he inquired whether it is proper that the Constitution deny the nation the use of such a weapon to defend itself by postulating now that no nuclear weapons shall ever be deposited, stockpiled or used in the country, thereby depriving the next generation of a weapon for self-defense in the future.

In reply, Mr. Tingson opined that the Constitution is flexible enough in the sense that if circumstances would change, the people and the Legislature would likely respond through the amendment process, to which Mr. Natividad agreed by stating that the Constitution should be subject to amendments because no one could forecast the future.

Relative to the motion to delete Section 3 of the Committee Report, Mr. Natividad expressed the view that such a proposal would remove the very provision that would forbid foreign military bases in the country, but for almost a century, these bases have been part of the nation. He stated that past leaders from the time of President Quezon had exerted every effort to tackle this problem and yet these bases were never removed. He opined that these leaders acted in good faith and that there would be no harm if this foreign military bases issue is thrown to the people for their decision after a period of time when the issue shall have been thoroughly studied. He expressed confidence that the President would study the matter and submit it to the people.

Replying thereto, Mr. de Castro admitted that he is one of the proponents of the deletion of Section 3. He clarified that the deletion would give the people the opportunity to determine for themselves what is good for them regarding foreign military bases and the issue on the nuclear-free zone. He adverted to his sponsorship speech, in which he recommended the creation of a committee composed of knowledgeable persons to conduct extensive studies and in form the people on the issues involved so that they make a definite stand consistent with their security and well-being. He reiterated that the intent is to consult the people on what they want incorporated before the treaty is entered into and ratified by both countries.

Commenting on Mr. Natividad's statement on the question of nuclear weapons, Mr. Garcia pointed out that the escalation of nuclear weapons has reached a level of madness, in the sense that in terms of total nuclear warheads, tactical and strategic, there are about 55,000 of these weapons which is equivalent to 16 billion tons of TNT. He stressed the need to stop this nuclear madness by solving the problems of the world in some other fashion. He stated that the presence of foreign military bases which are known to have nuclear weapons makes the country part of this entire nuclear system.

Mr. Garcia stressed that even the U.S. Catholic Bishops, in their pastoral letter drafted in May 1983, condemned the arms race as one of the greatest curses on human race and he quoted the conclusion of this pastoral letter, to wit:

"The whole world must summon the moral courage and the technical means to say no to nuclear conflict; no to weapons of destruction; no to an arms race which robs the poor and the vulnerable; and no to the moral danger of a nuclear age which places before mankind indefensible choices of constant terror or surrender. Peace-making is not an optional commitment but a requirement of our faith."

Mr. Garcia pointed out the fact that there are many areas in the world, like Latin America and South Pacific, which have declared themselves as nuclear-free zones. This issue on nuclear-free zone, he stated, was also embodied in Article XXXIII of the final document of the United Nations First Special Session on Disarmament in June, 1979, to wit:

"The establishment of nuclear weapons-free zones must ensure that the zones are genuinely free from nuclear

weapons and respect for such zones by nuclear weapons-states constitutes an important disarmament measure."

Mr. Garcia stated that the advocacy of a nuclear weapons-free Philippines, through the Constitution, is a statement of the Filipino people's rejection of nuclear war and nuclear weapons and this, he further stated, is a step towards the demilitarization of Southeast Asia and the Pacific. He stressed that this would be a contribution towards global nuclear disarmament and it would reduce the threat to security and survival of the Filipino people and the entire world. He underscored the need for the country to dissociate itself from this nuclear escalation because while some could use the nuclear threat, there are other ways which the country could resort to as part of its retaliatory efforts. He stated that if Section 1 of the Article on the Declaration of Principles provides that the country renounces war as an instrument of national policy, with more reason that the country should, likewise, renounce nuclear weapons as a means by which a nation may deal with other nations.

Mr. Garcia pointed out the fact that in the Philippines, there are already ten nuclear-free zones declared by at least ten cities and provinces comprising 3.6 million people and this, he stated, is an indication that there is a growing realization in the country that never again must these nuclear weapons be employed as they were employed in the past.

Reacting thereto, Mr. Natividad agreed with Mr. Garcia's remarks on the horrors of nuclear war in which the country should not take part. He pointed out, however, that the country at present could not participate in this kind of war because it has never invented its own nuclear weapon considering that the Filipino nation is much concerned with its economic survival. He cautioned though of providing in the Constitution a provision on nuclear weapons-free Philippines because this might foreclose the government from attempting to develop its own nuclear weapons for defense use. He warned that there would come a time when the nation would blame this Constitutional Commission for preventing the government from developing its own nuclear weapon, leaving the country defenseless.

Mr. Garcia took exception to the statement that the country would be prepared for a nuclear war if it has its own nuclear weapon. He stressed that in a nuclear war, there are no winners and there are no survivors. He opined that the only way for the world to survive is for all nations to declare that they do not believe in nuclear madness.

With respect to the suggestion to leave this issue on foreign bases for the political leadership to decide, Mr. Garcia stated that these bases which have been in the country for almost a century are the result of colonial imposition during the war and, therefore, null and void from the very beginning. He pointed out that should there be an attempt to enter into renegotiation, the Constitution should have a categorical statement that what is being negotiated has been declared null and void on the ground that this is a colonial imposition. Mr. Garcia noted that the Constitutional Commission seemed to have lost its political will and he reminded the Body that the entire nation expects a Constitution which is truly sovereign in character. He stated that while the Body could make a mistake in its decision on the form of government, it should not make a mistake on this question of sovereignty and survival.

Reacting thereto, Mr. Natividad stated that it is too late to make a declaration that the Military Bases Agreement is null and void, taking into account the millions of dollars given to the Philippines for the use of the bases aside from the fact that thousands are employed in these bases. In this regard, he questioned the propriety of a declaration by the Constitutional Commission that the agreement is null and void.

In reply, Mr. Garcia stated that the de facto situation is that these bases are occupied, the agreement has been made despite its flaws from the very beginning, and it is for this reason that the Commission should make a strong declaration about this historical aberration. Mr. Garcia clarified that the proposal does not seek the immediate dismantling of these bases because they are allowed to stay until the agreement expires in 1991. He maintained

that if ever there would be a new treaty, it should be submitted to the people for approval in a plebiscite.

Mr. Natividad maintained that if this provision is deleted, then there would be nothing to present to the people, to which Mr. Nollado replied that the issue is on the existing RP-US Military Bases Agreement.

Mr. Natividad questioned the statement that this agreement is null and void despite the fact that it has been amended four times.

Commenting on the alleged financial significance of the RP-US Military Bases Agreement, Mr. Nollado maintained that this agreement is null and void and, therefore, it could not be ratified and the government is not estopped by the illegal acts of its officers. On the suggestion to return the money which the country received from the United States, Mr. Nollado pointed out the fact that the United States used these bases and it greatly benefited from them. He stressed that there is no obligation to return on the ground that such an obligation does not exist if it is claimed that the contract is null and void. He maintained that there are concrete arguments against the validity

of the agreement and no one could deny that these bases greatly benefited the United States because it serves to protect their interest. He pointed out that if the argument of Mr. Natividad is followed, then any foreign government could come and bring in dollars in exchange of surrender of its sovereignty.

Mr. Natividad denied having said such a statement.

Mr. Nollado stressed that the sovereignty of the country could not be measured in terms of money alone and that the dignity of the country should be maintained not through mercenary reasons.

PARLIAMENTARY INQUIRY OF MR. OPLE

On Mr. Ople's inquiry whether mercenary reasons would refer to any remarks made by Mr. Natividad, Mr. Nollado replied in the negative and opined that it would not be proper to say what will happen to the money received by the country from the United States if the agreement is declared null and void. Mr. Ople stated that he was just interested in the civility of the proceedings.

REMARKS OF MR. PADILLA

Commenting on Mr. Nollado's remarks, Mr. Padilla stated that under the Civil Code, contracts may be valid, unenforceable, rescissible, voidable or void. Even if a contract is rescissible or voidable, it is not the right of either party to declare such contract rescissible or voidable, much less void. On the assumption, however, that there is a legal ground for nullity, he stated that the basic rule is mutual restitution. He further stated that a contract is only void or inexistent under specific grounds and definitely either party to a contract or agreement could not a priori and much less on its own judgment declare a contract voidable, much less void. He noted that those who opined that it is void, assumed erroneously that the contract is void, but he pointed out that this could not be done unilaterally by any person, not even by a contracting party.

Reacting thereto, Mr. Nollado stated that there is such a thing as in pari delicto no noritur axio when both parties are guilty, but on the issue of military bases, public policy demands that the country unilaterally state, based on facts, that the RP-US Military Bases Agreement is null and void.

Mr. Padilla stated that Mr. Nollado cannot unilaterally rule that said agreement is void based on the rule of in pari delicto, by virtue of which neither party can bring an action, to which Mr. Nollado replied that the situation was brought about by government officials who acted beyond their authority when they entered into the treaty and, because of this fault, there is a need to return the money allegedly received by the Philippines from the United States.

REMARKS OF MS. AQUINO

On the issue of right to life of the unborn, Ms. Aquino stated that she was alarmed by the absolutist claim to morality in defense of human life. She pointed out that the question as to the beginning of life is still unsettled and the Constitutional Commission should not preempt any conclusion thereon. She disclosed the pressing questions like whether biological existence or potentiality for life would be synonymous with human personality, or whether viability is synonymous with life.

She underscored that there are at least a dozen theories that attempt to address the question, among them, the Thomistic concept of hylomorphism which posits the complementarity of matter and form, but prior to life, the body requires a certain measure of organization and form that makes it capable of receiving the soul. She explained that the theory operates on the premise that the fundamental criteria of human life: and human personality are consciousness and self-reflection.

She stated that another theory asserts that human life begins two to three weeks after conception.

Furthermore, she underscored that Article 40 of the Civil Code states that personality is determined by birth, and Article 41 thereof further states that personality is determined by live birth, which provisions could be the most practical approach to the question because it lays the individual biological criterion for any conclusion, with emphasis on the physical separation of the fetus from the mother and other requirements of viability.

She stressed that the question is so transcendental that the Commission should not attempt to make any conclusion considering the Members' limited knowledge and expertise.

In reply, Mr. Villegas pointed out that precisely because of the nature of the question it is necessary to formulate transcendental principles thereon. He stated that in line with the medical scientists' affirmation that human life begins at conception, the Committee proposed the provision on the right to life of the unborn, and not the question of human personality which determines other rights, like the right to property.

He opined that the argument of Ms. Aquino on viability as the criterion of human life would open the door to all types of abortion.

INQUIRY OF MR. OPLE

At this juncture, in reply to Mr. Ople's query, Ms. Aquino affirmed that she observed a curve in the discussion because morality had been used as a defense for human life. She opined that morality could not be questioned anymore, and, therefore, it could foreclose a thorough, scholastic or academic debate on human life.

On whether the fetus in the mother's womb has a human personality, Ms. Aquino stated that no conclusion has been reached on the matter. She stated that the only settled jurisprudence are found in Articles 40 and 41 of the Civil Code which state that human personality begins at birth.

On whether it was her stand that moral, political and human rights would only apply to persons upon birth, Ms. Aquino pointed out that it is precisely what the debates have been trying to settle but that there is still no settled answer to such question.

Mr. Ople stated that precisely the purpose of the debate is to find answers to such questions and that he tried to be the devil's advocate in order to bring out both sides.

REPLY OF MR. BACANI

Mr. Bacani took exception to the argument that viability is proof of human personality, stating that if this were true, people would have different levels of human personality according to the countries in which they are born. He pointed out that in the United States, as early as 1973, they could make a 5-month old baby survive, others 25 weeks, 24 weeks, and even a 21 week-old baby. He stated that since the Filipinos cannot carry out such medical tests successfully, the argument would assume that Filipinos are inferior, which is not true.

He disclosed that in the First International Conference on Abortion in Washington, D.C. in 1967, a group of scientists asserted that from the union of sperm and egg to the birth of the infant, there is human life. He also pointed out that the Father of Fetology affirmed that from the very beginning, there are already definite signs of life in the fetus. Moreover, he disagreed that consciousness is a requirement of human personality, because if it is, then people who are unconscious do not have human personality, which argument is contrary to the position of St. Thomas Aquinas.

Ms. Aquino, however, clarified that she did not say that consciousness or individuality is a requirement of human personality but that they are among the many theories that attempt to define human personality. She explained that what she was trying to point out was that

constitutionalizing the protection of the right to life of the unborn would do injustice to law and settled jurisprudence. She underscored that law does not deal with speculation but with reality.

Mr. Bacani stated that personally he believes that the provision does not depend much on the right to life, which right is more proper to family rights.

On Ms. Aquino's statement that law should not speculate, Mr. Bacani stated that when a person doubts, he must be on the safe side, so that he will not bury a man when he is not sure whether or not that man is still alive, and that a hunter will not shoot a moving object in the thickets unless he is sure that it is an animal.

INQUIRY OF MR. RIGOS

In reply to Mr. Rigos' query on whether it would be safe to provide for the right to life of the unborn so that Congress would be prevented from legalizing abortion, Mr. Bacani stated that such constitutional provision could help Congress in enacting laws. He stated, however, that the provision on the right to life of the unborn, without prejudice to the protection of the mother's life, is very positive and necessary.

On Mr. Rigos' suggestion that it would be safe to state the "protection of the right of the unborn" without specifying the "moment of conception", Mr. Villegas explained that the provision is also intended to prevent any possibility of legalizing abortion at any stage, because then it would be a basic law which will guide Congress in enacting laws and the Supreme Court in interpreting laws on abortion.

He pointed out that the decision of the U.S. Supreme Court allowing abortion under certain conditions would open the floodgates to abortion cases, but with this constitutional safeguard, Congress and the courts would not be able to cite the decision of the U.S. Supreme Court.

On Mr. Rigos' query whether the idea is to put in the Constitution all the matters which the Body does not want Congress to legalize, Mr. Villegas explained that the Committee Report merely speaks of the beginning of all rights.

REJOINDER OF MS. AQUINO

Thereafter, reacting to Mr. Bacani's explanation, Ms. Aquino pointed out that all that she was trying to argue was the question as to what point in the development of the fetus is the material body capable of receiving the soul, in line with St. Thomas' concept of hylomorphism.

She underscored the still unsettled jurisprudence on the question of life from the moment of conception, because of which, another question may be posed as to whether the baby of a victim of rape is entitled to State protection by prohibiting abortion.

REMARKS OF MRS. QUESADA

Mrs. Quesada pointed out that as a mother and nurse, she knows the risks of pregnancy. She observed that the provision on the protection of the right to life of the unborn prejudices the rights to life of the mother. She explained that it is not only physical suffering that a pregnant woman experiences but also the emotional, psychological, and social burdens, especially by victims of rape. He added that the provision seems to protect the right to life of the mother only in cases of ectopic pregnancy when her life is obviously in danger.

She stressed that protection should be accorded both the mother and the child in all phases of life, because the State might be protecting the life of the unborn yet subjecting the born child to inhumane conditions, diseases, malnutrition, poverty and, maybe, death. She stated that corollary to such protection of life of the unborn must be the provision of a healthy society and education, especially on family life, otherwise, women will decide according to the realities of their situation without thinking that abortion is immoral.

Mr. Ople recalled that the American Supreme Court, in the case of *Rowe vs. Wade*, decided in favor of a shop girl who was a victim of gang rape. He then inquired whether the Committee still believes that the mother, in this case, should not be autonomous and should be subject to a constitutional restraint on her right to live her own life or should the Constitution interpose itself between this mother, and thousands like her, to deny her of the right to a life of peace and serenity and her own pursuit of happiness through a constitutional provision that prevents her from rectifying a socially imposed wrong that had been committed against her.

In reply thereto, Mr. Villegas stressed that a wrong cannot be rectified by another wrong; and a good end never justifies an immoral means. He pointed out that it is precisely because of this argument about compassion to the woman, that the U.S. Supreme Court decision resulted in two million abortions every year in the United States and this is exactly the trap that the Committee wants to avoid. He added that there are other ways of taking care of a multiple rape victim other than taking the life of an innocent child who has nothing to do with the crime of people who victimized his mother. He added that a rape victim could be given guidance and counselling, or be brought to a new environment or be assisted by religious groups such as the Order of the Good Shepherds. He emphasized that all possible humane ways of helping the rape victims must be exhausted.

In reply to Mrs. Quesada's contention that this denies the mother the due process of law, Mr. Villegas stated that there is definitely no right to murder and therefore the mother has no right to abort her child.

Mrs. Quesada stated that while she is not for abortion, she has taken into consideration the psychological, mental and social dimensions of a rape victim and not merely the physical threat for her survival.

Responding thereto, Mr. Villegas stated that there are many psychological solutions that could be used and it is just a matter of looking for alternative solutions.

Mr. Abubakar suggested that the Body leave the matter of protecting the life of the fetus to the Legislature instead

of constitutionalizing the provision because nobody knows for certain future scientific and technological advances.

(At this juncture, the Presiding Officer relinquished the Chair to the Honorable Regalado E. Maambong).

INTERPELLATION OF MR. REGALADO

Thereupon, Mr. Regalado prefaced his query by quoting an article published in the September 15, 1986 issue of the Manila Journal, to wit:

"Pushing the controversial section is Constitutional Commission Member Bernardo Villegas, a lay Catholic leader. He said that under the present Revised Penal Code, killing the fetus after seven months is penalized as a crime, which is called abortion, but killing the fetus before seven months is not considered the same as killing human life after seven months."

He pointed out that there is nothing under Articles 256 to 259 of the Revised Penal Code which provides that abortion is possible only if the fetus had an intrauterine life of more than seven months. He added that the only mention of seven months in the country's laws is in Articles 40 and 41 of the New Civil Code which refer to the acquisition of civil personality and not to the protection of the fetus. He stressed that a fetus, regardless of its intrauterine life, if expelled illegally by the act of the mother or any other third person, would always be considered as abortion under Articles 256 and 259 of the Revised Penal Code.

Mr. Regalado continued that the same newspaper article also stated, to wit:

"Finally, abortifacient means of contraception will automatically be rendered illegal and their use criminal. The IUD, the morning-after pill and hormonal injections are some examples of abortifacient contraceptives. They are not, strictly speaking, contraceptives since they act after fertilization shall have occurred."

He stated that according to medical jurisprudence and medical books, these intrauterine devices (IUDs) are actually contraceptives and not abortifacient. He then requested Mr. Villegas to clarify the legal and medical aspects of the above-mentioned newspaper article.

Responding thereto, Mr. Villegas stated that as regards the provisions in the Revised Penal Code, he completely concurs with the opinion of Mr. Padilla, which opinion may have been extrapolated wrongly by the journalist. He added that as regards the issue of contraceptives, it would be better left to Congress and to the courts as to whether these are abortifacients or not. He pointed out that there have been articles by medical experts which express the opinion that intrauterine devices and some types of hormonal injections are actually abortifacients. He opined, however, that it is actually for the law implementing agencies and the courts to decide from the facts presented, whether or not this opinion should be followed.

Mr. Villegas agreed with Mr. Regalado's observation that the courts would have to decide, on a case-to-case basis, which among the different types of intrauterine devices would be considered as contraceptives and which are to be classified as abortifacients and should therefore be prohibited.

In reply to Mr. Gascon's query on the meaning of the phrase "from the moment of conception", Mr. Villegas explained that this occurs when the ovum is fertilized by the sperm.

Mr. Gascon pointed out that based on the answer, Congress should not be given the right to determine whether certain intrauterine devices are in fact contraceptives or are actually abortifacients. He explained that a contraceptive prevents the sperm from fertilizing an ovum while an abortifacient prevents a fertilized ovum from reaching or taking root in the uterus.

Mr. Villegas agreed with Mr. Gascon's observation that whether or not an intrauterine device is an abortifacient is a question of fact and, if so, that it could be ruled as unconstitutional under the provision.

Thereafter, Mr. Gascon solicited Mr. Villegas' opinion with regard to Section 13 of the Article on General Provisions in the draft Constitution which states that:

"It shall be the responsibility of the State to adopt population policies most conducive to the national welfare. It shall, however, be the right and duty of parents to determine the number of their children and, in the exercise of this right and duty, they shall not be compelled to use means of birth limitation that shall be against their informed conscience and religious convictions."

Replying thereto, Mr. Villegas stated that he and some Members would propose the deletion of said section at the proper time because the Body cannot give to the State the role of God as far as the determination of the optimum level of population is concerned. He added that according to Minister Mita Pardo de Tavera of the Ministry of Social Services and Development, much money had been spent by the previous administration for family planning, but the results were disastrous. He added that economists have also shown that the best solution to mass poverty is economic development and social justice and not population control. He opined that it would be counterproductive to retain the provision since even Mr. Reagan had repudiated population control.

POINT OF INFORMATION OF MR. BENGZON

At this juncture, Mr. Bengzon, on behalf of the Steering Committee, manifested that he would like to place on record the action taken on Proposed Resolution No. 545, relative to the

deferment of the voting on the bases and neutrality issues until after President Aquino's visit to the United States.

He stated that in the caucus of the Commission the previous afternoon, the Steering Committee had waived its right and jurisdiction over Proposed Resolution No. 545 by unanimous consent and that said Resolution was not approved when a vote was called on the matter.

In reply to the Chair's query whether the records of caucuses would also form part of the Commission's proceedings, Mr. Bengzon answered in the affirmative, but he stated that such records would not appear in the Journal, in view of which, he was making the manifestation.

At this juncture, Mrs. Quesada objected to the aforementioned procedure because, in the past, results of caucuses did not preclude further discussions in the plenary sessions.

Mr. Bengzon explained that in the previous day's caucus when the Steering Committee waived its jurisdiction in favor of the Body as a whole, it was agreed that if the Resolution were accepted, it would be thrown for discussion in plenary session but, if defeated, the matter would be considered closed. He stated that he was only explaining what transpired for purposes of completing the Journal insofar as the referral of Resolution No. 545 to the Steering Committee is concerned.

In reply to Mrs. Quesada's query, he stated that there was no change in the procedure agreed upon, although the Body has the option of reopening the issue and discussing it on the floor.

In reply to the Chair's query, Mrs. Quesada clarified that she was raising the inquiry to determine whether the action taken would set a precedent for future caucuses.

INTERPELLATION OF MR. BENGZON

In reply to Mr. Bengzon's query whether Congress would be precluded from passing a law legalizing abortion in certain instances, Mr. Villegas stated that the provision would only allow those situations where the principle of double effect applies, either to save the life of the mother or of the child. He confirmed that Congress would not be allowed to pass a law qualifying the circumstances such as when the mental well-being of a pregnant woman is at issue as raised by Mrs. Quesada, because it would be killing the fetus directly, and that the preservation of mental health shall be taken care of by the appropriate agencies of the government. He also confirmed that the authorization to Congress would only be for medical reasons.

At this juncture, Mr. Bengzon appealed that the Members refrain from further debate on the question as to when life begins considering that the Civil Code as well as the Revised Penal Code already recognizes the fact that a fetus has life.

INTERPELLATION OF MRS. QUESADA

In reply to Mrs. Quesada's query on the specific instances of State support for the mother and child, Mr. Villegas adverted to the provisions on health and working conditions for pregnant woman, and on health of the child.

On whether such provisions would include centers for victims of rape, Mr. Villegas stated that there are charitable organizations, some of which are run by religious orders, which take care of pregnant women with unwanted babies and which help them transcend their psychological anguish with the least harm possible. He also confirmed the intention to strengthen the maternal and child health services throughout the country.

INTERPELLATION OF MR. REGALADO

(Continuation)

Adverting to Mr. Rigos' observation in the previous session, Mr. Regalado pointed out that the provisions in the Declaration of Principles are duplications of some articles on Social Justice; and National Economy and Patrimony. He stated, however, that the Committee cannot be faulted for such duplications because it worked along the same time frame given to other Committees.

On whether the Committee would reformulate the provisions, Mrs. Rosario Braid stated that amendments to reword some of the provisions would be considered at the proper time. However, Mr. Regalado observed that the initiative should come from the Members themselves.

On the Military Bases Agreement, Mr. Regalado stated that he was intrigued by the terminologies and the technical terms used particularly on the contention that the Military Bases Agreement is null and void ab initio.

Tracing the history of the Military Bases Agreement, Mr. Regalado stated that by virtue of the Tydings-McDuffie Law of 1933, the Executive leadership negotiated with the Americans on the establishment of military bases, originally, for refueling purposes. He recalled that the negotiation was initially made by President Osmeña with the President of the United States but that it was President Roxas who eventually signed for the Philippines. He stated that despite the Joint Resolution passed by Congress authorizing the negotiations, the same was submitted to the Senate for ratification which resulted in an 18-3 vote, in favor of ratification of the agreement.

On whether the Filipino people were duly represented in the negotiations, Mr. Garcia explained that it was initially an Executive Agreement which was passed on to Congress which honored the same by value of Resolution No. 4 approved on July 28, 1945. He stated, however, that the whole process was upon the initiative of the United States Congress.

Mr. Regalado stated that insofar as the United States is concerned, the Agreement is merely an Executive agreement because of its nonratification by the United States Senate, while the Philippines considers it a treaty.

Mr. Garcia pointed out that the Agreement is null and void ab initio because Section 3 of Ordinance No. 1 which was appended to the 1935 Constitution, stated that no military bases shall be established except reservations or refueling stations. He stressed that this was a violation in itself, adding that the privilege was only for a duration of two years after the grant of independence and that any amendment thereto should have been presented to the people for ratification which was never done. He said that this is expressly required in the 1935 Constitution and although minor changes in the Constitution were made in 1939 and a plebiscite was called for that purpose, the matter of the bases was never presented to the people.

On whether the Philippine Government was in a position to make a unilateral denunciation or abrogation of the treaty, Mr. Garcia stated that the Philippine Government could have done so. Unfortunately, he said, history shows that the Philippines was not able to withstand the pressures it was subjected to on account of its long colonial history and economic weakness, among other reasons.

On the statement that the Military Bases Agreement was a de facto agreement, Mr. Garcia stated that the bases exist de facto but the Agreement is null and void ab initio. He stressed that if any new treaty would be entered into, the same should be under the terms and conditions similar to those entered into by the United States with Britain, Spain, Turkey, and Greece. He stated that in the case of the Philippines, it was more of a colonial imposition.

Mr. Garcia confirmed the fact that independence was achieved by the Philippines in 1946 and that the Agreement was signed and ratified in 1947. He pointed out that the matter should have been submitted to the people in a plebiscite, something which was not done and an error which could not be rectified by any government.

On whether de facto treaties or executive agreements have precedents in international law, Mr. Nollado stated that while it is unfortunate for the country to be in such situation, the absence of any precedent should not prevent the Philippines from nullifying the Agreement.

Mr. Regalado pointed out that an agreement which is null and void ab initio need not be abrogated or renegotiated because there is no agreement to speak of.

Reacting thereto, Mr. Nollado argued that even assuming from the legal standpoint that the agreement is null and void, in reality, the bases exist by virtue of a treaty.

As to why the treaty is called null and void ab initio, Mr. Nollado explained that circumstances call for the recognition of the existence of the Agreement which, however, is null and void. He disagreed that the Agreement could be regarded as merely voidable, since "voidable" implies a valid agreement which is subject to annulment by a competent court.

Mr. Regalado stated that he is bothered by the tyranny of terminologies and that it is better not to include the issue on the bases in the Constitution since there is nothing to nullify or renegotiate, to which Mr. Nollado replied that the remedy would be to adopt neutrality considering the reality that the bases indeed exist in the country.

Mr. Regalado pointed out that the problem is how to categorize the agreement since the Committee's stand is that it is null and void ab initio.

Mr. Garcia clarified that: (1) the RP-US Bases Agreement is a violation of the 1935 Constitution and it must be clearly stated; (2) the United States perceives the Agreement as an executive agreement, not a treaty, for which reason it does not pay rent but gives aid or assistance; (3) the Committee's position is that there exists a de facto

situation and although the Agreement is null and void ab initio, it should be allowed to expire in 1991 after which time, should there be a new treaty, it must be under different conditions. This treaty, he further stated, must be concurred by the Philippine Senate, ratified by the people in a plebiscite called for the purpose, and also ratified by the Senate or Congress of the United States. He stressed that this will be a new treaty, as the old one will simply lapse.

On Mr. Regalado's remark that the Body is not discussing a future treaty but the existing RP-US Bases Agreement, Mr. Garcia reiterated the Committee's stand that the Agreement should not be renewed but allowed to lapse in 1991. By way of a rejoinder, Mr. Regalado queried as to what treaty shall expire in 1991 if it is considered nonexistent from the very beginning.

Mr. Garcia stated that the Agreement, from the Committee's point of view, is null and void. He adverted to a similar situation in Guantanamo, Cuba and pointed out that although the sovereign government of Cuba was not willing to have foreign bases therein, the other party insisted on the validity of the agreement on the ground that the term was indefinite, so the bases have remained.

Thereupon, Mr. Regalado inquired whether the Commission is willing to accept, as a concept of public international law, that there is such thing as a de facto international agreement.

Mr. Garcia opined that this was brought about by force of circumstances, that the U.S. bases were already in the Philippines, the colonial history of the Philippines and its inability to correct a historical error due to its economic, political and military weakness. Additionally, he stated that the only solution, should the government so desire, would be to bring the matter to the International Court of Justice at The Hague.

SUSPENSION OF SESSION

On motion of Mr. Rama, there being no objection, the Chair suspended the session until two-thirty in the afternoon.

It was 12:34 p.m.

RESUMPTION OF SESSION

At 3:02 p.m., the session was resumed.

INTERPELLATION OF MR. BACANI

Mr. Bacani inquired whether Section 1 is a declaration of principle that rejects communism for the Filipino people, to which Mr. Nollado replied that "democratic state" is not as understood in the lingo of the socialist or communist countries, and that republicanism rejects communism. He affirmed that a combination of the two amounts to a declaration of communism for the Filipino people.

On vitiating circumstances which may render the treaty or executive agreement null and void ab initio, Mr. Nollado pointed out that from a legal point of view, vitiating circumstances would refer to the circumstances under which the treaty was entered into, in addition to which there has been a violation of the Constitution.

Adverting to certain surveys conducted all over the country which showed a unanimous desire for retention of the bases, Mr. Bacani inquired whether there could not be a consent from the silent majority which seemed to have acquiesced to the treaty or executive agreement. Mr. Nollado stated that with respect to the Committee's consultations, the people were in favor of retaining the bases up to 1991. He stated that even before the Committee voted on this question, he was in favor of the retention of the American bases, but his researches

convinced him that something is wrong with retention of the bases, therefore, he followed the will of the majority that the bases may be retained only up to 1991.

Mr. Bacani maintained that the people seemed to have acquiesced to the retention of the bases and that there was no strong demonstration of the will of the majority against allowing foreign bases beyond 1991, to which Mr. Nollado replied that for acquiescence to be valid, all the facts must have been laid down and all arguments understood by the people and, until then, one cannot conclude that there was consent on the part of the people.

Mr. Bacani observed that there seemed to be a change in the Committee's position when Mr. Garcia stated that he was for allowing the treaty or executive agreement to lapse, after which, a new agreement would be entered into which will be submitted for ratification by the people. In reply, Mr. Garcia stated that the position of the Committee is for the Constitution to respect the Military Bases Agreement until 1991. He stated that if and when there is going to be a new treaty on foreign military bases, it must be under certain conditions including a referendum to get the approval of the entire Filipino nation.

At this juncture, Mr. de Castro manifested that he wants to make it of record that not all members of the Committee favored Sections 3 and 4.

In reply to further inquiries of Mr. Bacani, Mr. Garcia agreed that Section 3 suggests a constitutional termination of all foreign bases after 1991 and that upon its expiry in 1991, should the Philippine Government decide to enter into new negotiations, the terms thereof could then be discussed, particularly its submission to the Filipino people for ratification.

At this juncture, Mr. Bacani reiterated that the position of the Committee contradicts the position it had taken in the previous session.

Mr. Nollado then invited attention to Mr. Bernas' proposed amendment allowing the Philippine Government to enter into a treaty with any foreign power for the maintenance of military bases in the country, subject to certain conditions, which the Committee would entertain at the proper time.

Mr. Bacani manifested support for Section 4 and stated that for ethical and religious reasons, he would second the arguments in support thereof.

Mr. Bacani then quoted the statement of the Second Vatican Council, to wit:

"Rather than eliminate the causes of war, the arms race serves only to aggravate the situation. As long as extravagant sums of money are poured into the development of new weapons, it is impossible to devote adequate aid in tackling the mystery which prevails at present in the world. Instead of eradicating international conflict once and for all, the contagion is spreading to other parts of the world.

"New approaches based on reformed attitudes will have to be chosen in order to remove the stumbling block to free the earth from its present anxieties and give back to the world a genuine peace. Therefore, we declare once again, that arms race is one of the greatest curses on the human race and the harm it inflicts on the poor is more than what can be endured. There is every reason to fear that if it continues, it will bring forth those little disasters which are already in preparation."

Mr. Bacani reiterated his support for Section 4, as explained by Mr. Azcuna. He likewise affirmed that he was echoing the reasons of the Bishops' Conference of the United States relative thereto.

On Section 5, Mr. Nollado agreed that, as proponent of the provision, it includes the concept of guaranteeing full respect for human rights at any stage of a person's development.

On Section 7, Mr. Nollado expressed willingness to consider an amendment to change the words, "socio-political and economic system" to "a dynamic social order".

On Section 9, Mr. Villegas stated that the intention is to make sure that no pro-abortion laws would ever be passed by Congress or any pro-abortion decision rendered by the Supreme Court. Mr. Villegas likewise agreed that the provision intends to make abortion the ultimate evil that should be completely curbed. He affirmed that the provision does not intend to adopt viability as the rule in determining the existence of human life.

At this juncture, Mr. Bacani quoted a portion of the book of Dr. Lily, the father of fetology, to wit:

"Seven days after fertilization, the young individual in command of his environment and destiny, with a tenacious purpose, implants in the spongy lining and, with a display of physiological power, suppresses his mother's menstrual period. This is his home for the next 270 days and; to make it habitable, the embryo develops a placenta and a protective capsule of fluid for himself. We know that he moves with delightful easy grace in his buoyant world, thus fetal comfort determines fetal position. He is response to pain, touch, cold, sound and light. He drinks his amniotic fluid more if it is artificially sweetened, less if it is given an unpleasant taste. He gets hiccups and sucks his thumbs. He wakes and sleeps. He gets bored with repetitive signals but can be taught to be alert by a first signal or a different one. And finally, he determines his birth day, for unquestionably the onset of labor is a unilateral decision of the fetus. This then is the fetus we know . . . this is the fetus we look after in modern obstetrics; the same body we are caring for before and after birth who before birth can be killed and in diagnosis and treatment just like any other patient."

Thereupon, in reply to Mr. Bacani's query, Mr. Villegas affirmed that the foregoing quotation is a Catholic position, though not exclusive.

Mr. Villegas stated that in his sponsorship speech, he made it clear that even before the coming of Christianity in the country, the people had already considered the baby in the womb of the mother as a human being by the use of the word "dalang-tao", an opinion which is shared by Muslims. He further stated that even non-Christian doctors confirm the fact that human life begins at conception, which Mr. Bacani confirmed by stating that all Orthodox Jews and even Islam, Buddhism and Hinduism reject abortion. Mr. Bacani, likewise, mentioned several big names among Protestants who adhere to the same opinion.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, the Chair acknowledged the presence inside the Session Hall of high school students from the Western Philippine Colleges.

MANIFESTATION OF MR. ABUBAKAR

Mr. Abubakar sought to interpellate Mr. Villegas to which Mr. Rama replied that there are still seven Members waiting to interpellate the Committee.

REMARKS OF MR. UKA

Mr. Uka stated that as a Muslim, he is against abortion in any form because this is against the law of God as expressed in the Talmud, the Holy Bible and the Holy Q'uran. He maintained that the fertilized ovum or the conceived child is already a human being created through the power of God and to kill him is pure and simple murder because this is against one of the commandments of God which says, "Thou shalt not kill", a law which everyone, whether Jew, Christian or Muslim, should follow. He reiterated that children should not be killed through abortion especially in the Philippines which is predominantly Christian with a sizeable number of Filipino

Muslims.

INQUIRY OF THE CHAIR

On the Chair's query whether Mr. Abubakar was scheduled to interpellate the Committee, Mr. Rama stated that Ms. Tan would be the next to interpellate, after which Mr. Abubakar could be recognized.

INTERPELLATION OF MS. TAN

Ms. Tan stated that she is against abortion in all stages of pregnancy. She cautioned the men in the Commission to go slow in making the Constitution especially on vital, personal and extremely delicate matters of which men do not have personal experience. She stated that women have suffered enough from laws because men would never comprehend the extreme mental and psychological anguish which women suffered, in the sense that they bear the burden of guilt caused by this inability to obey the laws. She opined that laws are for everyone and that men have no right to consciously or subconsciously write laws which would add more burden to women.

Reacting thereto, Mr. Villegas stressed that these laws are not being made by men for women. He pointed out that the core of this issue is that there is already another human being in the womb of the mother and this is what the law seeks to protect. He stressed that this is a law which would precisely protect the life of an innocent human being who just happens to be captive in the womb of the mother.

Ms. Tan reiterated that she is against abortion and she just wanted to caution the men in the Commission to go slow in writing into the Constitution the right to life, to which Mr. Villegas replied that if one is against abortion, necessarily he would be against the possibility of it being legalized. He pointed out, however, that an appeal to compassion or feminist views could likely open up to the possibility of two million abortions in the country as what happened in the United States.

Ms. Tan stressed that she was just expressing human views and not feminist views.

REMARKS OF MR. ABUBAKAR'

Mr. Abubakar stated that the proviso never appeared in any of the past constitutions or even in the constitutions of other countries, regardless of whether a country is predominantly Christian, Muslim or of different faiths. He noted that this proviso has provoked different views from the Members, which indicates a House divided. In view thereof, he suggested that this proviso be included in the Constitution but that it be left to the Legislature to decide. He stated that this proviso in the Constitution may provoke division because it touches on religion and on the intelligence of each Member. He pointed out that even if this proviso is placed in the Constitution, the people, collectively or individually, would still adhere to what they believe is right for them. He questioned the propriety of the proviso stating that the Commission doubts its wisdom and practicality.

INTERPELLATION OF MR. VILLACORTA

On whether Section 9 of the Committee Report contemplates roving teams sponsored by the State to monitor the activities of women to make sure that they do not abort the fetus within their bodies, Mr. Villegas stressed that this is not a matter of monitoring which might be an intrusion into the privacy of women.

On Mr. Villacorta's observation that given this mandate, it is incumbent upon the State to organize monitoring teams or task forces to ensure such protection, Mr. Villegas stated that that would already be included in the implementation which is not the intent of the proviso.

On Mr. Villacorta's suggestion that a phrase he added to make sure that extreme implementation of the duty to protect the life of the unborn would not happen, Mr. Villegas stated that it may not be necessary because it is incumbent on Congress and other branches of the government to be prudent in the implementation.

Mr. Villacorta pointed out that recent political experience proved that the government could be imprudent and extremist in applying the force of law. He stated that while he has nothing against protecting the life of the unborn, he is worried about the possible extreme application of this provision once the State is given the mandate.

In reply, Mr. Villegas assured that there are other provisions of the Constitution like the Bill of Rights which provide enough safeguards as far as Mr. Villacorta's fears are concerned.

Mr. Villacorta agreed that there are indeed other provisions in the Constitution which mandate the State to protect the lives of its citizens such that there are law enforcement agencies that implement said provision. It is for this reason, he stated, that it is only logical that certain monitoring groups would have to be formed in order to ensure that the life of the unborn is protected. He stated that at the proper time, he would propose some amendments to Section 9.

Relative to Section 10, lines 13 to 15 on the protection of children, Mr. Villacorta stated that he, together with some Members, filed Resolution No. 355 which seeks to provide for equal rights of women and the protection of the rights of women, children and the family. He pointed out, however, that although their proposals to give women equal rights in all fields of life as well as the right of the family to develop its capabilities were incorporated in the Committee Report, their proposal that "marriage must be founded on free consent and equality of both spouses" is not included in the same report. He then inquired whether this proposal is included within the ambit of Section 11 considering that this provision has something to do with the role and participation of women in nation-building and the right of women to equal protection.

In reply, Mrs. Rosario Braid informed Mr. Villacorta that the Resolution adverted to refers to the Article on the Family. She stated that the Committee would be willing to consider an amendment along that line at the proper time.

On Mr. Villacorta's observation that the principle that "marriage is founded on free consent and equality of both spouses" is not included in the sense of Section 11 such that there is a need of an amendment, Mrs. Rosario Braid stated that the phrase "equal protection" is very general and such an amendment would be most welcome in the Article on the Family.

On Mr. Nollado's inquiry as to the meaning of equality of both spouses" considering that under the marriage law, marriage must be voluntary and free, Mr. Villacorta explained that this would simply mean that in a marital relationship, both the husband and the wife have equal rights in the sense that it is not a superior-subordinate relationship.

Mr. Nollado stated that there is a provision in the Civil Code which provides that the father and the mother jointly exercise parental authority over their children and in case of conflict, the rule is that the decision of the father shall prevail. He then inquired whether Mr. Villacorta would agree that such a provision should not be constitutionalized.

Reacting thereto, Mr. Villacorta opined that if this Civil Code provision would be retained, it would go against the principle that women enjoy equal rights with men in all spheres of economic, political, civil, social and cultural life including family life.

In reply, Mr. Nollado opined that Section 11 covers this principle of equality, although on the matter of consent,

he stated that this should not be placed in the Constitution because all marriage laws in civilized countries require consent before marriage is celebrated.

Mr. Villacorta stated that what the proponents of Resolution No. 355 meant by "equality of both spouses" is not just the consent but the maintenance of equal status between the two partners throughout their marital life. He opined that the provision in the Civil Code, which Mr. Nollado quoted, which gives the father precedence over the mother in parental authority in case of conflict, would go against Section 11.

In reply thereto, Mr. Nollado explained that the spirit of Resolution No. 355 with respect to equality has already been embodied in the phrase "social and cultural life". However, he stated that the rule that the decision of the father would prevail in case of conflict was designed to preserve harmony in the family, because if either party is allowed to go to the court, there might be friction within the family.

Mr. Villacorta opined that a case involving a conflict between two human beings should not be based or decided on the basis of gender or hierarchy. He expressed the view that in case of conflict between the husband and the wife, the same shall be decided on the merits of the case — on who committed the wrongdoing. He then inquired whether the intent of Section 11 is to repeal said provision of the Civil Code and other marriage laws that are discriminatory to women.

Mr. Nollado stated that personally, he would agree to such interpretation.

Ms. Aquino explained that the intention of Section 11 is to provide for a self-implementing provision that would repeal all discriminatory and anti-feminist laws in the Civil Code and the Revised Penal Code. She cited as examples of discrimination in the Civil Code and the Revised Penal Code the imbalance in parental authority, discretion in the matter of family rights and the imbalance in the management of the conjugal partnership of gains. On the matter of political rights by way of linguistic limitation or by habitual assumption that the female gender is already included in the reference to a "he", Ms. Aquino stated that it could not be disputed that the major fields of politics, economy, culture and social sciences are firmly controlled by men. It is for this reason, she stated, that upon the approval of this provision, all these laws shall be considered repealed. She stressed that this is not asking for absolute equality or sameness considering that even the law recognizes that sex provides a justifiable and valid classification in the context of the equal protection of the law clause. She pointed out that the Members of the Commission should depart from the notion that women are helpless and should be protected. She opined that such protection had become a cage in which the rights of women are restricted by social systems and anti-feminist laws that provide for their subordination to men. She stated that even the right of a wife to choose her profession or to engage in business is subject to her husband's approval, and that even in conjugal partnership where each should get equal shares, the right to manage the conjugal property is vested on the husband while the wife always gets the household assignments. She stated that it is this myth that is being perpetuated by laws.

Mr. Azcuna explained that the Committee Report intends to repeal such anti-feminist laws.

INQUIRY OF MR. OPLE

Mr. Ople observed that when laws, particularly the proposed Section 11, are trimmed to accommodate the rights of women, it is like a patient who is laid down in bed and whose limbs are chopped only because they are protruding. On the other hand, he inquired if the same treatment would be given to societies that are matriarchal, that in order to give equality to men, the Constitution should be modified, in reply to which Ms. Aquino stated that it would be the effect of her proposal. She underscored that what would be affected by such adjustments would be the discriminatory laws on concubinage and adultery, and laws which are prejudicial to equal family rights.

Mr. Azcuna explained, however, that it would not be necessary to cut whatever is protruding considering that Section 11 already provides that women shall have the right to equal protection but not necessarily equal rights, which only means that whatever rights are given to women would be equally protected. He stated that since men and women are different, they have to be treated differently but without violating the equal protection clause.

Ms. Aquino agreed that Section 11 would address the imbalances in law and jurisprudence, and in the conferment of civil rights to men and women, without saying that they have to be equal in all aspects of life. She affirmed that biological differences had to be accepted, like the responsibility of bearing children.

REMARKS OF MRS. ROSARIO BRAID

Mrs. Rosario Braid pointed out that the Philippines is behind in terms of women's rights, citing the Constitution of Poland which states that women have equal rights with men in all spheres of public, political, economic, social and cultural lives; the French Constitution which provides that "the law guarantees women's rights with men in all domains"; and similar provisions which appear in the Constitutions of the German Democratic Republic, Italy and Japan.

REMARKS OF MR. PADILLA

Mr. Padilla agreed with Mr. Azcuna that the Constitution or the law shall provide for equal protection of the rights of women. While he acknowledged the differences by nature between man and woman, as when only a woman can give birth to a child, there are some provisions which favor women as, for instance, in the Revised Penal Code, whereby disregard of the respect due the offended party by reason of his rank, age or sex, is an aggravating circumstance, if the offended party is a female, except in crimes against chastity. He also cited the case of husband and wife who enjoy equal rights when they are not separated.

He stressed that while the Civil Code generally provides that the husband is head of the family, this should not be taken as an affront on the rights of the wife, because as a matter of fact, most families prosper with the wife virtually the head or even the administrator of the family fortunes. He then quoted Senator Recto who said, "La mujer reina pero no gobierna" (The wife reigns but she does not govern.).

REMARKS OF THE CHAIR

At this juncture, the Chair stated that it was confused on the interpretation of Section 11 of the Committee Report, and suggested that Mr. Villacorta propound more questions to solicit a definite reply from the Committee without any contradictory opinion from its Members. Mr. Villacorta agreed with the Chair that the Committee should have only one stand, in reply to which Mr. Azcuna explained that Section 11 provides the right to equal protection, but does not mean uniformity in everything because the law should treat men and women differently.

Ms. Aquino stated that there was actually no contradiction between the statements of Mr. Azcuna and the explanation of the other members of the Committee.

Mr. Nollado reiterated that the right to equal protection does not mean that men and women have equal rights. He adverted to the provision in the Civil Code which grants the husband the right to manage conjugal property but the wife is not denied of her right to question his mismanagement of the property.

He pointed out, however, that the Revised Penal Code admits some prejudices against women as when it considers a man to have committed concubinage if he maintains a paramour in the conjugal dwelling or in a place other than the conjugal dwelling or has sexual intercourse with a woman other than his wife under scandalous circumstances, and a woman to have committed adultery if she has carnal knowledge or sexual intercourse with a

man other than her husband under any circumstance. He explained that when a man brings a woman to a hotel, he is not criminally liable for committing concubinage.

REMARKS OF MR. TADEO

Mr. Tadeo explained that Section 11 should be considered in the light of the creation of the woman, who was formed out of man's rib so that she would be equal with him, not inferior like a slave, and not superior to him, but a partner in economic, social and cultural endeavors.

INQUIRY OF MR. BENZON

On whether upon approval of Section 11, all laws contradictory thereto would be automatically repealed, Mr. Azcuna replied in the affirmative. He explained, however, that not all rights would be covered by Section 11, but only those that violate the equal protection clause. He also affirmed that Congress may revise or modify the laws that would be in conflict with the Constitution.

SUGGESTION OF MR. VILLACORTA

On Mr. Villacorta's suggestion that a more positive formulation be provided instead of the original Section 10 which reads: "Children shall have the right to proper care, nutrition, a relevant non-sexist and quality education, as well as protection from exploitation and mental and physical abuse," Mr. Azcuna stated that the proposal would be considered during the period of amendments.

FURTHER REMARKS OF MRS. QUESADA

At this juncture, on Section 11, Mrs. Quesada pointed out, that family life and home economics should be given place in the school curriculum in order that both men and women will learn household responsibilities, to which Mr. Nollado replied that such interpretation of Section 11 might be contrary to the customs and traditions of the Filipinos which are never dictated by the Constitution but evolve spontaneously.

INTERPELLATION OF MR. VILLACORTA

(Continuation)

On Mr. Villacorta's query whether Section 15 would include banning and rectifying erroneous allusions to ethnic minorities in books, museums and other records of government, Mrs. Rosario Braid explained that it is the intent of Section 15 to examine and rectify past records of inequities and discriminatory practices.

On Section 17, Mrs. Quesada affirmed that it would encourage the inclusion in school curricula of health consciousness as a goal of education.

On Section 21, Mr. Villacorta inquired if the information that the State shall provide would be aimed at enhancing social and political participation, to which Mrs. Rosario Braid replied that people would have social and political participation after having access to economic and cultural information.

On Mr. Villacorta's query as to how Section 23 could broaden opportunities to public office and prohibit political dynasties, Mr. Nollado explained that the provision could prevent the political situation obtaining in the country where incumbent government officials use their positions so that their children or relatives could succeed them, to the disadvantage of those who do not have control of government facilities.

Mr. Nollado opined that public office in the country has become something of an inheritance, making the

government monarchical in character and no longer constitutional. He added that Congress must determine under what circumstances political dynasties should be prohibited.

Mr. Nollado agreed with Mr. Villacorta's observation that political dynasty obtains when the father is the governor, the mother is the mayor and the son is a municipal council member.

On whether the case of President Aquino who ran for President vice her husband would be considered a situation which the Committee seeks to prohibit, Mr. Nollado stated that it is not because Mrs. Aquino did not succeed the husband but ran on her own. He stated that Congress may take into account the fact that the husband was not the incumbent who had control of government facilities which could give undue advantage to his wife. He added that the concept of political dynasty is not necessarily limited to a situation wherein the next of kin is an incumbent.

On Mr. Villacorta's query as to the reason why the Committee had decided to broaden the opportunities for public office when, in fact, there were already too many public positions, Mr. Nollado replied that the Committee had actually considered it in relation to elective public offices and political dynasty, although the same could also be applied to other public offices.

On Mr. Villacorta's apprehension that Section 24 on the grant of asylum to political refugees may open the floodgates to the influx of refugees and thereby deprive the local populace of housing opportunities, food and other resources, Mr. Nollado stated that Mr. Ople, who expressed a similar apprehension, suggested that the Committee adopt the phrase "under conditions laid down by law" to obviate such possibility. He noted, however, that the provision would generally cover only the leaders of liberation movements in foreign countries. He also stated that the grant of asylum to freedom fighters in other countries would only be temporary and that its purpose is to manifest to the whole world that a country which adheres to freedom also wants freedom to be enjoyed by those who seek the country's protection.

As to who would decide whether a person who seeks asylum is really defending human rights and fighting for the liberation of his mother country, Mr. Nollado explained that Congress shall lay down the conditions under which such determination may be made. He added that personally, he would recommend that Congress give administrative authorities the initial right to determine the status of aliens who seek asylum.

On Section 26, Mr. Villacorta suggested that its intent be clearly stated because the whole Constitution is aimed at establishing the mechanics for peaceful political change in case abuses are committed by the government.

Replying thereto, Mr. de Castro stated that as the proponent of the provision, he intended to highlight what the people did in EDSA to depose former President Marcos. He conceded that the provision may be used by the communists and other cause oriented groups as an excuse to take up arms against the government, therefore, he would be willing to consider any amendment or recommendation to improve it.

At this juncture, Mr. Ople informed that together with Messrs Maambong, Natividad and de los Reyes, he had filed a resolution proposing a provision recognizing the right of oppressed people to revolt. He pointed out that Section 26 was lifted entirely from the text of the U.S. Declaration of Independence, for which the Commission may be accused of the crime of plagiarism. He noted that when they filed the resolution, they did not contemplate specific challenges to the security and integrity of the State and groups that would bring them about in the future and that their intention was merely to establish the principle already embodied in Section 1 of the Committee draft. He stated that the general sense of Section 26 is that government authority emanates from the people and continues only with the consent of the people, and if this consent is withdrawn because of gross abuses, the people may remove the ruler without distorting their commitment to peace and to constitutional processes.

Reacting thereto, Mr. de Castro explained that he filed the resolution upon recommendation of the Armed Forces

of the Philippines but he did not know that it was partly lifted from the U.S. Declaration of Independence. He manifested that he too has apprehensions that the section may be used by cause-oriented groups, particularly the communists, to overthrow the government. He stated that he would propose its deletion if it is not improved during the period of amendments.

Mr. Azcuna stated that the Committee took into consideration the resolution filed by Messrs. Ople, Natividad, Maambong and de los Reyes but opted to adopt the proposal of Mr. de Castro. He informed that the Committee is studying the proposed alternative wording for Section 26, to wit:

The end of the institution, maintenance and administration of government is to secure the existence of the body politic, to protect it and to furnish the individuals who compose it with the power to enjoy in safety and tranquility the rights and blessings of life. And whenever these great objectives are not obtained, the people have a right to alter the government and to take measures necessary for their safety, prosperity and happiness.

Mr. Nollado, for the record, also read the resolution filed by Messrs. Ople, Natividad, Maambong and de los Reyes, to wit:

The people may, where all peaceful remedies have been exhausted, resort to the ultimate expression of their sovereign right to eliminate a tyranny and replace it with a democratic government.

Mr. Sarmiento sought clarification whether political asylum would be granted only to leaders of groups defending human rights or freedom fighters, to which Mr. Nollado replied that, personally, he believes that there should be no limit as long as reasonable conditions are provided for by law. He suggested that followers should also be included.

INTERPELLATION OF MR. GASCON

On Mr. Gascon's inquiry on the definition of "communism" and "socialism" in relation to "democratic state" in Section 1, Mr. Nollado explained that the latter term should not be understood in the context it is understood in socialist and communist countries, pointing out that the Russian Constitution also speaks of freedom of religion which in actual practice is not tolerated, and of democracy which is not the kind of democracy practiced in Western countries or in the Philippines.

Mr. Gascon stated that if ever there is dichotomy in ideologies, it is between communism and capitalism and not between communism and democracy or socialism and democracy because there is such a thing as democratic socialism. He added that democracy is basically the governance of the people, for the people and by the people whereas the socialists claim having democratic states because their governments promote the welfare of the majority which is the working class.

Reacting thereto, Mr. Nollado stated that the term "democratic state" does not rule out certain socialist concepts and was only placed in some provisions which the Commission adopted such as those on recall, initiative and consultation to allow the people's participation in government decision-making, including lawmaking.

Additionally, Mr. Garcia stated that if Section 1 would refer to a dichotomy, it should distinguish democracy from totalitarianism or authoritarianism where the majority is excluded from participation in government decision-making process.

Mr. Gascon concurred with Mr. Garcia's explanation. He stated that the term "democratic" in Section 1 is not really a response to socialism per se or communism per se but to totalitarianism in whatever form, to which Mr. Nollado agreed without binding the other Committee members.

Mr. Villegas stated that communism based on the Marxist-Leninist line is completely incompatible with democratic principles because it adheres to a dictatorship by the proletariat.

Mrs. Rosario Braid added that the Committee's concept of democracy is one that is popular and one which allows the people to participate in government decision-making.

Reacting to Mr. Villegas' remarks, Mr. Gascon expressed agreement that what is wrong with the Marxist-Leninist thought is the concept of a vanguard or a one-party system.

On whether the Philippines as a republican and democratic State would have an alternation of power through direct regular elections to choose the people's representatives, Mr. Nollado replied in the affirmative, further stating that the government should encourage the multi-party system. He also affirmed that the Communist — Party would be allowed to participate in the electoral process should it renounce violence, because the Bill of Rights provides that no person shall be detained merely by reason of political beliefs and aspirations provided that the objectives are pursued through peaceful means, making it likewise possible for the party to become the dominant political party should it be supported by the people.

On whether there would be contradiction should the Communist Party be elected 20 years from now, Mr. Nollado stated that it is a possibility but that the party must respect the Constitution or change it to align with the Constitution of Russia or that of the other communist countries, which he opined, would not take place within 20 or 50 years.

Mr. Garcia stated that democratic alternation of power is important because there would be free struggle of ideas in the parliamentary arena. He cited France, Spain, Italy and Austria as examples stating that the system worked properly despite participation by communist parties. He stressed that what matters is popular support and that what is abhorred is the establishment of a one-party system without any alternation.

Mr. Gascon expressed the hope that the "democratic State" would not exclude political parties with different economic visions as practised in Europe where even communist parties are popularly elected into power.

Adverting to his affirmative reply to Mr. Bacani's query on whether "democratic State" would mean rejection of communism, Mr. Nollado stated that his answer requires some qualification in the light of Mr. Gascon's statement that should the Communist Party of the Philippines lay down its arms, participate in the electoral process in a peaceful way and win the support of the people, it is possible for said party to run the affairs of the government with the expectations that it shall respect the Constitution.

Additionally, Mrs. Rosario Braid stated that once the Communist Party is legitimized, it would lose its old features, allowing it to compete in the parliamentary struggle and mellowing its temper as what had happened in Europe.

Mr. Gascon agreed with Mrs. Rosario Braid's observations stating that it would, likewise, provide the people with viable alternatives which they themselves shall decide.

Expressing support for Mr. Tadeo's view about "consultation", Mr. Gascon stated that the elected officials must conduct genuine consultations with the people.

On whether "democratic State" recognizes the people's twenty-year struggle against the elitist type of democracy for a genuine popular democracy rooted in the masses, Mr. Nollado stated that the Committee had contemplated such movement, for which reason participatory democracy is provided.

Mrs. Rosario Braid added that it would also open up more channels of communication, strengthen the people's consultative mechanism and ensure an actual dialogue and interaction.

Mr. Nollado confirmed that the provision is a repudiation of the formal elitist type of democracy.

On whether the phrase "they renounce war as an instrument of national policy" in Section 2 implies that the Philippines shall adopt a pacifist attitude in its foreign policy, Mr. Nollado answered in the affirmative stating that what the country renounces is aggressive war and not a defensive war.

Mr. Gascon stressed that pacifism renounces aggressive as well as defensive war, to which Mr. Nollado replied that self-defense is an instinctive right and is inherent in human nature, and even a pacifist would defend himself.

Mr. Azcuna explained that the concept was adopted from the Pact of Paris of 1926 and was incorporated in the 1935 Constitution. He stated that the same principle was elevated to the U.N. Charter, which ripened into a peremptory norm in international law, which no treaty may violate.

Mrs. Rosario Braid added that demilitarization is a step towards this stand, which the Committee supported.

On whether such a stand would imply the gradual dismantling of the Armed Forces, Mrs. Rosario Braid stated that Mr. de Castro was not around but that she spoke for those Members who share the idea of gradual demilitarization.

On whether it would imply that there shall be cuts in the military in the future, Mr. Azcuna stated that should there be a need to be ready, the country should develop a capability to defend itself through a Citizens Armed Forces as enunciated in the 1973 Constitution, taking into account the geo-political situations, as in Yugoslavia, Israel or Switzerland. He stressed that a provision should mandate the people to defend the State.

On whether the country shall encourage peace with other countries in the light of Section 3 which calls for the establishment of a zone of peace, freedom and neutrality, Mr. Azcuna stated by way of confirmation that Section 3 is an expression of love for peace and a determination to defend that peace if it is threatened.

On whether there is indeed a balance of power or terror which necessitates the retention of the bases, Mr. Garcia stated that the communist threat has always been used as a justification by those who advocate the retention of the bases. He stated that the issue should be reexamined taking into consideration the statistical count of all the military bases and installations of the United States as compared to those of the Soviet Union. He pointed out that the United States has 520 military installations, while the Soviet Union has only 2 dozens based on the statements of U.S. Defense Secretary Casper Weinberger, Admiral Robert Long and General Maxwell Taylor that the United States has an immense edge in terms of technology.

He opined that the dismantling of the U.S. bases will not create a vacuum which the Communists shall fill but that it would reduce military tensions and start the demilitarization process and the reduction of the level of nuclear arms in the area. He adverted to Mikhail Gorbachev's statement that the withdrawal of the United States military forces from the Philippines shall not be left unanswered and that the same should be explored as the Philippines' contribution to peace in the region. He stated that it is worthwhile challenging the Soviet's statement that nuclear-free zones shall be respected by them, citing New Zealand and the South Pacific Islands as examples.

Adverting to a document made public by the Director of the Arms Race and Nuclear Weapons Research Project of the Institute for Policy Studies, he disclosed that President Reagan authorized the deployment of 467 nuclear bombs in eight nations without informing them, the Philippines being the recipient of the largest number of nuclear bombs. He stressed that the Philippines should not risk its survival, safety and sovereignty in the context of the East-West conflicts and that even though it is a small nation, initiatives should be taken which could generate worldwide repercussions.

On whether the Soviets would remove their bases in Vietnam should the Americans dismantle their bases in the

country, Mr. Garcia opined that they would, adverting to Ms. Aquino's explanation on the movement towards a zone of peace, freedom and neutrality in the region. He stated that should the provision find its way into the Constitution, it would help future governments have a more imaginative, creative and aggressive foreign policy that will enable the attainment of genuine peace.

On whether the call for the removal of the American bases is also a call for other superpowers to dismantle their bases in the region, Mr. Garcia stated that that is his understanding and that it would generate consciousness within the region to think about national interests rather than aligning with one of the two superpowers.

REMINDER FROM THE CHAIR

At this juncture, the Chair invited attention to the fact that the discussions had already consumed 30 minutes. He requested the Committee members to limit their answers to the specific inquiries propounded.

INTERPELLATION OF MR. GASCON

(Continuation)

On whether diminution of sovereignty follows the commitment of neutrality, Mr. Azcuna answered in the negative stating that neutrality is sought to enhance the sovereignty of the state because it is a course of independence or self-reliance taken on a regional stance.

Mr. Azcuna confirmed the fact that the ASEAN members recognizes the neutralization of the region and that the declaration of a zone of peace, freedom and neutrality (ZOPFAN) was adopted by them. He stated that the Philippines would be the first country to adopt the policy in the Constitution as it was the first country to stage a peaceful revolution.

Adverting to the second paragraph of Article IX of the Japanese Constitution, he stated that Japan forsakes the maintenance of land, sea and armed forces as a war potential.

Mr. Gascon stated that ZOPFAN would not be attained authentically unless the non-ASEAN countries would adhere to it. He inquired on the possibility of working towards this end.

Mr. Garcia expressed the wish that the whole country could be involved in the entire debate and noted that although the 30 minutes allowed the Members may seem quite long, it really is a very short period considering the importance of the matter to the entire life of the nation.

Mr. Bengzon agreed that the 30-minute limit is a very short period and the Members should avoid repetition. Additionally, Mr. Villegas remarked that some points have been raised repeatedly by the Members who were not always present during the discussion and that this has consequently eaten up a lot of time.

Mr. Gascon observed that should the Philippines pursue ZOPFAN, it would be the first country to do so. He queried whether Mr. Azcuna is also aware that the members' recognition of the ASEAN Declaration on Neutralization of Southeast Asia was a significant trend towards establishing a nuclear-free zone in the region and that they also share the belief that policies on nuclear weapons-free zone and neutrality are desirable objectives.

Mr. Azcuna noted that ASEAN members have adopted a declaration to pursue ZOPFAN and that the point raised is that the Philippines would be the first country to put such a policy in its Constitution. He pointed out that the Philippines was also the first state to have had a peaceful revolution and that there would be nothing wrong with being first. He informed, moreover, that Article IX (second paragraph) of the Japanese Constitution provides that Japan forsakes the maintenance of land, sea and armed forces on a war potential which would be similar to the

statement that Japan is limited to peaceful purposes. He agreed with Mr. Gascon that the Philippines would not be alone in this commitment to ZOPFAN.

Mr. Gascon remarked that he cannot perceive a genuine ZOPFAN without the participation of non-ASEAN countries such as Kampuchea, Laos, Vietnam, Taiwan and China and inquired whether there are possibilities of the Philippines working towards such a policy with these countries.

Mr. Azcuna explained that the idea of ZOPFAN is that there will be a treaty entered into by ASEAN countries, declaring the ASEAN region as a zone of peace, freedom and neutrality and that several Protocols — Protocol I, Protocol II, Protocol III — will be attached to the treaty. He noted that under Protocol I, the neighboring states of the ASEAN countries may subscribe and accede to the treaty; under Protocol II, superpowers will be asked to sign the Protocols in order to guarantee the region's peace, freedom and neutrality. He added that there are several types of participation where other states will be asked to abide by the treaty or protocols to strengthen ZOPFAN.

Thereafter, Mr. Gascon inquired from Mr. Nollado whether Article 56 of the Vienna Convention of the Law on Treaties expressly allows unilateral denunciation or termination at two instances: (1) when it is established that the parties intended to admit the possibility of denunciation or withdrawal; and (2) when the right of denunciation or withdrawal may be implied by the nature of the treaty. Mr. Nollado affirmed this to be correct. He also affirmed that a unilateral denunciation is a possibility especially when the treaty is considered null and void.

On Mr. Gascon's inquiry whether there could be a unilateral denunciation when the agreement does not contain any provision regarding denunciation or termination, as in the RP-US Military Bases Agreement, Mr. Nollado replied that It is a possibility under the principle of *rebus sic stantibus*.

INTERPELLATION OF MR. ABUBAKAR

Mr. Abubakar stated that historical narratives on matters of foreign relations and future perspectives have attested that treaties, agreements and adherence to a policy of peace are no guarantee that the country would not be involved in a war or conquered by a foreign power. He inquired whether the country's defense, security and prospects would rely merely on a treaty obligation with other nations which declare a policy of peace and neutrality.

Mr. Azcuna replied that it would not. He clarified that the idea of a neutral state or a zone of neutrality would not mean that the country would rely on guarantees of outside powers. He noted that the idea is for the country to defend itself as a country and as a member of the ASEAN region, that there should be a development of such capability. He stated that in the past there were neutral countries but no neutral groups of countries; that the idea now is for a bigger zone composed of several states which have forged themselves into a zone of peace, freedom and neutrality, thereby enhancing and combining their capabilities to defend their region in case of attack.

Mr. Abubakar maintained that even if there is a common adherence of these countries to policies of neutrality and nonintervention, they will not be able to defend the Philippines or any of the neighboring countries. Mr. Azcuna replied that it is not a 100% guarantee but stressed that there would be a synergy when the countries put their forces together to defend one another. He noted that the country should strive towards this as a goal, as a direction that should be reached so as to establish a zone which can be defended. He added that the goal is worth pursuing and that even the Declaration of Principles and State Policies seeks to provide directions and directs government to pursue certain goals.

Mr. Abubakar urged that the Filipinos put their trust in their own capabilities to defend themselves rather than rely on friends and neighbors. In this respect, he observed that whether the country adopts such a policy on peace and regional security, it should be strong enough to defend itself. He underscored the need for flexibility in foreign

policy that should be modified as events unfold. He opined that this matter on neutrality should not be inserted in the Constitution but should be left to the national leadership to decide.

Mr. Azcuna manifested the Committee's gratitude for the suggestions and observations of Mr. Abubakar and noted that these shall be taken into account during the period of amendments.

INTERPELLATION OF MR. GASCON

(Continuation)

On Section 6, Mr. Gascon asked what the phrase "objections of conscience" contemplates and what would be included therein. Mr. Azcuna clarified that "objections of conscience" are sincere beliefs based on religious or personal convictions that one should not kill or take away life under any circumstances which is used as a reason for not being conscripted into military service. He added that the law should give these individuals due regard and instead of being forced to combat duties they should be given substitute service or noncombatant duties; but there is no guarantee that they would not face combat duties as there are times when even noncombatants would have to take up arms when necessity demands.

Upon inquiry whether this would be limited to religious convictions, Mr. Azcuna explained that it would not because some have it as their personal convictions.

As to whether the provision speaks of times of war or times of peace, Mr. Azcuna replied that it may be in times of peace inasmuch as the State, during an emergency, can declare a state of war. He noted that even prior to the declaration, there may be a need to require citizens to render military or civil service.

Mr. Gascon informed that many students were against the National Service Law and compulsory military training which is a direct result of the National Defense Act or Commonwealth Act No. 1, a 50-year old law, inasmuch as there exists a huge armed forces and that the time put into military training could be better spent on more productive endeavors. He stated that students from high schools and colleges are asking that the law be reviewed and repealed.

Mr. Azcuna stated that the matter had not been raised in Committee deliberations. He acknowledged that he did participate in the move to repeal the National Service Law. He observed that what is objectionable is the decree and not CA No. 1 because there is need for military training to indoctrinate the students into one type of ideology or another. He added that such training, for instance, would be on how to assemble and disassemble guns and how to use weapons, which knowledge are needed to enable the people to defend themselves. He stressed that education or the formation of the student's character is the primary right of parents and of schools, in place of parents. He noted that there is the duty to defend the State and hence, there is a need to train citizens to be able to fulfill this duty. He added that there should be an appropriate law which should not violate the right of the school and of parents to the formation of character of the students.

Mr. Gascon stated that many of those who fought against the National Service Law are proposing an alternative bill to the National Defense Act. He asked whether the provision would stop the eventual passage of a new law repealing the National Defense Act and which would make military training optional and allow other types of services as additional components.

In reply, Mr. Azcuna stated that the provision would not preclude the upgrading of the National Defense Act which needs to be revised, although military training cannot be made on voluntary basis. He observed that only one country, the United Kingdom, has this type of training which has succeeded, owing to the British character. He noted that until the Filipinos have reached this level of consciousness and social awareness, the country would

still have a draft.

Mr. Gascon pointed out that he was referring to optional military training in schools, to which Mr. Azcuna replied that this can be governed by law. He pointed out that in Switzerland, students spend one year away from school and train with the army, after which they spend one month every year in the army to refresh. He noted that such an arrangement can be looked into as a model for revising the National Defense Act.

At this juncture, Mr. de Castro called attention to the Article on General Provisions which has a provision that all male citizens of military age shall be trained for a Citizen Armed Force. The reason for this, he explained, is that the country cannot afford to financially maintain a large armed forces. He noted that the concept was already contained in Commonwealth Act No. 1 and that the CAF is patterned after the Swiss Army which is made up of citizens.

On Section 6, Mr. de Castro pointed out that it is the duty of every citizen to defend his country and that the government can require him to render civil or military service.

Mr. de Castro explained that under Commonwealth Act No. 1, those who have reached the age of 20 receive training instruction for six months and that in college, a two-year basic military training is given. He said that should an individual want to rise to officer-level, he would have to undergo a four-year ROTC training.

Mr. Gascon noted that, hopefully, Congress shall make citizens' military training optional and provide other options.

To this, Mr. de Castro replied that the country cannot form a military force without military training and that should this be made optional, it would be possible that there would not be an armed force at all. He stressed that under the concept, every citizen must serve his country.

On Section 6, Mr. Gascon inquired whether the Committee would be willing to accept an amendment that would change "civil service" to "civic service" to imply various forms of civic service such as social work, volunteering in relief work, conservation of natural resources, and helping in the preservation of wildlife, in reply to which Mr. de Castro expressed willingness to consider an amendment at the proper time.

On the suggestion to make Section 8 a simple statement to the effect that the State shall intensify its efforts to promote social justice without necessarily linking it to the pursuit of national development objectives, Mrs. Rosario Braid expressed willingness to consider amendments at the proper time.

On Section 9, Mr. Azcuna agreed that institutionalizing the term "the life of the unborn from the moment of conception" would, in effect, unconstitutionally use the use of certain contraceptives which are already being encouraged at this point in time.

On how would this provision affect the existing population program being implemented by the Population Commission, and whether the approval of such Article on General Provisions on population would have to be deleted, Mr. Nollado stated that such deletion would not be necessary because family planning is consistent with the provision that there should be protection to the unborn and, therefore, adopting the second sentence of Section 9 would have family planning refer only to preventive pregnancy as stated by Mr. Azcuna

Additionally, Mrs. Rosario Braid stated that the Body will discuss the population policy program under the Article on General Provisions at the proper time. She invited attention to the fact that it is no longer population control but population policy which means that at a certain period in time when the population shall have stabilized, the country could have a policy towards increasing the target.

Reacting thereto, Mr. Gascon stated that this provision merely implies that there will be programs being

implemented now which will have to be stopped, but not necessarily the whole program itself.

On whether studies had been made with regard to abortion being directly proportional to the population rate of other countries, Mr. Azcuna stated that although studies had been made with respect to population policy, correlation coefficient had not been conclusive. Suffice it to say, however, that if a country falls below 2.2% in population growth, it is actually decreasing in number. He stressed that what is important in demography is the net reproduction growth rate or the number of girls born who will bear children.

On Section 10, Mr. Gascon observed that it failed to include the concept of youth representation which has been guaranteed to other sectors of society. Considering, however, the reality that the population is a very young population, he inquired whether it would be in order to include in the Article on the Declaration of Principles a provision on the guaranteeing representation for the youth.

In reply, Mr. Azcuna stated that the Committee would entertain an amendment along that line during the period of amendments.

On Mr. Nollado's inquiry whether Mr. Gascon would be satisfied with the statement that representation of the youth would already be deemed covered by or included in Section 10, specifically on the second paragraph which speaks of involvement in the affairs of the nation, Mr. Gascon stated that he would be satisfied as long as it is clear that the youth shall be adequately represented and consulted in the affairs of the nation. He suggested, however, that it be categorically stated.

Mr. Nollado assured that such concept is included in Section 10.

Mr. Azcuna stated that the Committee would welcome a proposed amendment.

Relative to Section 12, Mr. Gascon inquired whether the Committee, when it used the phrase "subject to the corresponding claim of capital", recognizes the basic statement that there is primacy of labor, Messrs. Azcuna and Nollado informed Mr. Gascon that the words referred to would be deleted.

TERMINATION OF THE PERIOD OF DEBATE

On motion of Mr. Rama, there being no objection, the Body closed the period of debate without prejudice to Mr. Ople's reservation to speak in the next session.

INQUIRY OF MR. GASCON

On Mr. Gascon's inquiry, the Chair affirmed that with the approval of the motion, it is only Mr. Ople who would be allowed to speak in the next session.

ADJOURNMENT OF SESSION

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

It was 6:34 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 September 18, 1986

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