

## JOURNAL NO. 102

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Tuesday and Wednesday , October 7 and 8, 1986

### CALL TO ORDER

At 9:57 a.m., on October 7, 1986, 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. Vicente B. Foz, to wit:

Lord

We have not forgotten

The common thread that binds the words

The object of the unwritten intent of the

unspoken goal

The happiness and prosperity of our people —

Teachers, students, youth, women, family,

Workers, farmers, fishermen, businessmen,

professionals,

The poor, the weak, the unemployed

And generations yet unborn —

We have remembered them all in writing a

fundamental law.

Lord, we pray that You, under Whose light we

have drafted it, will bless it

An our people, whose interest has inspired us

to write it, will ratify it

And let our nation onward, forward.

Amen.

## ROLL CALL

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

Bacani, T. C. Nollado, J. N.  
Benzon, J. F. S Padilla, A. B  
Bennagen, P. L Muñoz Palma, C  
Bernas, J. G. Rama, N. G  
Rosario Braid, F Regalado, F. D  
Calderon, J. D De los Reyes, R. F  
De Castro, C. M Rodrigo, F. A  
Colayco, J. C. Romulo, R. J  
Concepcion, R. R Sarmiento, R V  
Foz, V. B. Suarez, J. E  
Guingona, S. V.C Sumulong, L. M  
Jamir, A. M. K. Treñas, E. B  
Monsod, C. S. Uka, L. L  
Nieva, M. T. F

With 28 Members present, the Chair declared the presence of a quorum

The following Members appeared after the Roll Call:

A.M.

Abubakar Y. R. Lerum, E. R.  
Alonto, A. D. Natividad, T. C  
Aquino, F. S. Ople, B. F.  
Azcuna, A. S. Quesada, M. L. M  
Davide, H. G. Tan, C.  
Garcia, E. G. Tingson, G. J.  
Gascon, J. L. M. C. Villacorta, W. V.  
Laurel, J. B.

P.M.

Maambong, R. E Villegas, B. M.

Tadeo, J. S. L.

Mr. Rosales was sick.

### **READING AND APPROVAL OF THE JOURNAL**

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

### **REFERENCE OF BUSINESS**

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

### **REFERRAL TO COMMITTEES OF COMMUNICATIONS**

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

Communication No. 1058 — Constitutional Commission of 1986

Communication from Mr. Benjamin Ibrahim, President, Tausog, Samal, Yakan, Metro Manila Moslem Association, 151 Edward Ty Bldg., Quezon Avenue, Quezon City, pointing out twenty-one (21) disadvantages of removing the U.S. military bases in the Philippines, urging the Constitutional Commission to work for the retention of said bases even beyond 1991

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

Communication No. 1059 — Constitutional Commission of 1986

Letter from Mr. Antonio L. Garcia, Jr. of Matina Aplaya, Davao City, opposing any constitutional provision that would allow the teaching of religion in the public schools

### **TO THE COMMITTEE ON HUMAN RESOURCES**

Communication No. 1060 — Constitutional Commission of 1986

Telegram from one President Aberilla of Region XII Union of Cooperatives, expressing thanks to the Constitutional Commission for recognizing the role of cooperatives in national development

### **TO THE ARCHIVES**

Two communications urging the Constitutional Commission to incorporate in the Constitution the provision that the separation of Church and State shall be inviolable as embodied in the 1973 Constitution and as understood historically and jurisprudentially in the Philippines, to wit:

Communication No. 1061 — Constitutional Commission of 1986

1) Goliath Abetria and forty-four other members of the Philippine-Asian Missions, Inc., Bulan, Sorsogon

Communication No. 1062 — Constitutional Commission of 1986

2) Baltazar M. Pepico and ninety-eight (98) others, Pentecostal Assembly of God, Inc., Daro, Dumaguete City

Seven telegrams and two letters, all opposing the inclusion of population provision in the new constitution, to wit:

Communication No. 1063 — Constitutional Commission of 1986

1) Fr. Conrado Balagapo Eastern Samar Diocese Family Life Borongan, Eastern Samar

Communication No. 1064 — Constitutional Commission of 1986

2) Family Life of Jolo

Communication No. 1065 — Constitutional Commission of 1986

3) Sr. Paciana Gandia of Lipa City

Communication No. 1066 — Constitutional Commission of 1986

3) Sr. Paciana Gandia of Lipa City

Communication No. 1066 — Constitutional Commission of 1986

4) Sr. Pilar Go of Tagbilaran City

Communication No. 1067 — Constitutional Commission of 1986

5) Family Life Ministry

Archdiocese of Cotabato

Cotabato City

Communication No. 1068 — Constitutional Commission of 1986

6) Concerned Citizens of Jolo

Communication No. 1069 — Constitutional Commission of 1986

7) The Carmelite Sisters of Charity Jolo, Sulu

Communication No. 1070 — Constitutional Commission of 1986

8) Family Life Workers

Dipolog City

Communication No. 1071 — Constitutional Commission of 1986

9) Sis. Lydia L. Mendoza

17-C Mabait St. Teacher's

Village Quezon City

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

### **MANIFESTATION OF MR. GUINGONA**

Mr. Guingona informed the Body that the Sponsorship Committee had requested the Secretariat's Computer Section to print about 50 copies of the Preamble and the Articles of the draft Constitution which have already been reviewed by the Committee on Style and the Sponsorship Committee. He stated that some time during the

day the Preamble and a number of articles beginning with the Article on National Territory and, possibly, up to the Article on the Executive would be distributed to the Members for review.

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

On motion of Mr. Rama, there being no objection, the Body resumed consideration, on Second Reading, of the Proposed Resolution No. 540 (Committee Report No. 38), entitled:

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

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

Mr. Rama stated that the parliamentary status would be the continuation of the period of amendments, specifically on Section 8 relative to the Presidential Commission on Good Government (PCGG).

#### INTERPELLATION OF MR. BERNAS

Mr. Bernas inquired whether it is the intent of the amendment to extend the powers of the PCGG or to extend the powers of the President which otherwise would not exist.

At this juncture, Mr. Romulo suggested that Mr. Bernas and the Committee give their respective views pending the arrival of Mr. Villacorta, proponent of the amendment.

Replying to Mr. Bernas' query, Mr. Suarez stated that it is the stand of the Committee to extend the power and authority of the PCGG to issue writs of sequestration and freeze orders which have been authorized under Proclamation No. 3 in relation to Executive Order Nos. 1, 2 and 14.

On whether this would also include the Memorandum of the President authorizing the PCGG, to vote sequestered shares, Mr. Suarez stated that such authority would be covered by Executive Order No. 14.

Mr. Bernas noted that under Section 2(a) of Executive Order No. 1, sequestration includes the takeover or sequestration of all business enterprises, noting that sequestration and takeover are synonymous, in reply to which Mr. Suarez pointed out that under the rules and regulations promulgated by the PCGG, sequestration is defined as taking into custody or placing under the Commission's control or possession any asset or property, as well as relevant records, papers and documents in order to prevent their concealment, destruction, impairment or dissipation pending determination of whether or not such asset or property is ill-gotten wealth under Executive Order Nos. 1 and 2.

Mr. Bernas read Section 4(a) of Executive Order No. 1, to wit:

"No civil action shall lie against the Commission or any member thereof for anything done or omitted in the discharge of the task contemplated by this Order."

Relative thereto, he inquired whether it is also the intention of the proposed transitory provision to perpetuate the immunity of the PCGG, in reply to which Mr. Suarez stated that the immunity for the members of the PCGG is not within the contemplation of this proposal and that what is being proposed is the continuation of the authority to issue writs of sequestration as an exception to Section 3 of the Bill of Rights.

On Section 4(b) of Executive Order No. 1 which reads "No member or staff of the Commission shall be required to testify or produce evidence in any judicial, legislative or administrative proceeding concerning matters within its official cognizance", Mr. Bernas inquired whether it is the intent of the proposed transitory provision to constitutionalize said Section 4(b) which, in effect, would make the Commission and its staff an island unto itself,

in reply to which Mr. Suarez stated that such is not the contemplation of the proposal submitted by the Committee.

Relative to Section 2 of Executive Order No. 14 which provides that the PCGG shall file all such cases, whether civil or criminal, with the Sandiganbayan which shall have the exclusive and original jurisdiction thereof, on Mr. Bernas' query whether the Committee knows of any case that had been filed before the Sandiganbayan since the activities of the PCGG started, Mr. Suarez stated that to the Committee's knowledge, the PCGG, from time to time, has been filing cases with the Solicitor General's Office but not with the Sandiganbayan.

On whether the Committee could speculate as to why no case has been filed before the Sandiganbayan, Mr. Suarez stated that based on published reports, the Solicitor-General or the PCGG has rather been hesitant to file the appropriate cases before the Sandiganbayan against, among others, President and Mrs. Marcos and General Ver for fear that the filing of the case may be used by the respondents as a reason for demanding their return to the country.

On Section 4 of Executive Order No. 14 which reads: "No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records on the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to prosecution," in reply to Mr. Bernas query whether this would be an exception to the rule against self-incrimination, Mr Suarez stated that such is the thrust of the provision, which is why the Committee limited its proposal to allowing the PCGG to continue issuing writs of sequestration and freeze orders. He affirmed that the proposed transitory provision does not seek extension of the effectivity of Executive Order Nos. 1, 2 and 14 but limits it to the powers of sequestration.

On whether the Committee agrees with Mr. Romulo's explanation that the writ of sequestration is not a search and seizure order, Mr Suarez opined that Mr. Romulo did not categorically say so granting that it partakes of the nature of a search warrant or a warrant of seizure, it would be an exception to Section 3 of the Bill of Rights. He also affirmed that the proposed transitory provision would be an exception to the requirements for the issuance of search and seizure warrants under the Bill of Rights.

On whether the Committee concurs with Mr. Romulo's arguments that everything that has been done so far was in accordance with traditional law, Mr. Suarez explained that under the Bill of Rights of the 1935 Constitution, only the judicial officers are authorized to issue warrants of seizure but the 1973 Constitution allows responsible public officials to issue not only warrants of arrest but also warrants of seizure. He opined that in this light, a writ of sequestration would no longer be an extraordinary remedy considering that the Freedom Constitution adopted the Bill of Rights of the 1973 Constitution.

On the effect if the Constitution were to be silent on the question of sequestration, Mr. Suarez stated that the PCGG could continue issuing writs of sequestration pursuant to the Freedom Constitution but that the situation would change dramatically after the ratification of the new Constitution. He affirmed that the writ of sequestration is equivalent to a search and seizure order which, to be valid, must satisfy the requirements of the Bill of Rights.

On whether it is the intent of the proposed amendment to exempt the PCGG from the requirements on search and seizure, Mr. Suarez stated that that in substantially the thrust of the proposal although it should only be for a limited period. He affirmed that it is the official interpretation of the Committee that this is really an exception to the Bill of Rights.

### INTERPELLATION OF MR. NOLLEDO

In reply to Mr. Nollado's inquiries, Mr. Suarez affirmed that Executive Order Nos. 1, 2 and 14 and the implementing rules have the force of law.

Relative to the approved Section 3 of the Transitory Provision, Mr. Suarez affirmed that Executive Order Nos. 1, 2 and 14 as well as the implementing rules issued by the PCGG would fall under said provision and would remain valid and effective until amended, repealed or revoked subject only to the condition that they shall not be inconsistent with the proposed Constitution although the situation in question is not being referred to in the proposal of the Committee.

Mr. Nollado contended that the immunity granted to the PCGG is not inconsistent with the Provisions of the Constitution although the right against self-incrimination is a controversial question.

Replying thereto, Mr. Suarez adverted to his answer to Mr. Bernas' query, where he pointed out that these situations are not within the contemplation of the proposed Section considering that the thrust is only limited to extending the authority of the PCGG to continue issuing writs of sequestration and freeze orders.

Mr. Nollado opined that although the Committee's proposed Section does not include said situations, they are necessarily included under Section 3 of the Transitory Provision.

### REMARKS OF MR. PADILLA

At this juncture, Mr. Padilla pointed out that the original draft of the Committee referred to the writ of sequestration, freeze, and search and seizure order, while the new proposal excluded search and seizure. He opined that search and seizure must comply with the provision of the Bill of Rights which requires judicial determination and prohibits a general search and seizure because the things and the place to be seized or searched must be specific.

He added that a sequestration or freeze order is only a preservative or a conservative act to prevent the transfer or alienation of the assets which are suspected to be unlawfully acquired or ill-gotten. He opined that a sequestration order does not authorize the takeover of private business and should not even interfere with the management, control or operation of an ongoing private enterprise.

He stressed that if there is no provision in the Transitory Provisions on the continuance of the power to issue sequestration or freeze orders, there would be no such power after the ratification of the new Constitution.

Additionally, Mr. Padilla pointed out that in accordance with Mr. Concepcion's observation the Body must include a provision that within a certain period, for instance, six months, after the issuance of the sequestration or freeze order the PCGG must or shall file a judicial action either in the Sandiganbayan or in any appropriate court.

### REMARKS OF MR. ROMULO

Mr. Romulo, explaining the position of the sponsors vis-a-vis the Committee's position, stated the following: 1) that a writ of sequestration and freeze order is legal under Proclamation No. 3, Executive Order Nos. 1, 2, 13, 14 and 14-A, and Presidential Memorandum dated June 26, 1986 and not under laws existing prior to Proclamation No. 3; 2) that the writ of sequestration would not necessarily collide with the Bill of Rights because it does not partake of the writ of search and seizure. He opined that even if the sequestration order is tantamount to a writ of search and seizure it can still be reconciled with the Bill of Rights because there is jurisprudence to the effect that the postponement of a judicial inquiry is not a denial of due process if opportunity is given for the ultimate judicial determination of liability. However, he stressed that despite this, there is a need for a transitory provision

because of a desire not to take a chance by depending on the vagaries of judicial interpretation considering the national interest involved. He pointed out that the people who have the \$10 billion have had 20 years to hide the ill-gotten wealth and are past masters in hiding their wealth, hence the PCGG must be able to act quickly to prevent its dissipation and transfer before it is too late, otherwise they may take advantage of the gap in the law and render the efforts of the government to recover the same useless.

Mr. Romulo pointed out the difficulty of depending on the writ of attachment. He expressed the fear of leaving the government helpless, unless given the extraordinary power sought for in the proposal which, however, could be accompanied with safeguards without delimiting the writ of sequestration as to render it useless.

In reply to Mr. Bernas' query whether Mr. Romulo agrees with the Committee's position that if there is no transitory provision granting the PCGG the power to continue issuing sequestration orders such power as granted under Executive Orders Nos. 1, 2 and 14 would automatically disappear, the latter replied that such power may disappear because there would be doubt as to its continued existence in view of the national interest involved.

On the observation that in case of doubt the presumption would be for the validity of Executive Order Nos. 1, 2, and 14, Mr. Romulo stated that as pointed out by Mr. Nollado, the presumption would still be for the validity of the Executive Orders until reversed or amended by Congress. He stressed, however, that the sponsors would not want to take a chance because, although the sponsors have trust in the Supreme Court, reasonable men can disagree.

### **MOTION OF MR. BERNAS**

Thereafter, Mr. Bernas moved for the deletion of Section 8 on the ground that it is neither necessary nor unnecessary and, if necessary it is oppressive. He pointed out that the PCGG's power to sequester is only necessary, as explained by Mr. Romulo, as a safety measure against the Supreme Court declaring it invalid. He stated that if it is necessary as explained by the Committee because it runs against the Bill of Rights, then such a situation should be avoided by simply remaining silent on the matter because, anyway, Executive Order Nos. 1, 2 and 14 would still be presumed to be valid and would not be deemed automatically erased by the silence in the Constitution. He stressed that the Supreme Court is the proper forum to argue the validity or invalidity of the Executive Orders. He opined that the monetary value involved is immaterial because there are values in the Constitution which are beyond monetary estimation and that, as an act of confidence in the new Supreme Court, the Body should leave the matter of validity or invalidity of the Executive Orders to judicial investigation.

### **OBJECTION OF MR. NOLLEDO**

Mr. Nollado manifested his objection to the deletion of Section 8 and his disagreement with the Committee's position that sequestration is synonymous with seizure. He agreed with Mr. Romulo that the two are entirely different from each other. He pointed out that according to Black's Law Dictionary seizure refers to the forcible taking of possession while sequestration refers to deposit for preservation purposes. He noted that the National Internal Revenue Code also allows the BIR Commissioner to impose a constructive restraint upon the personal properties of a delinquent taxpayer without necessarily following the provisions on search and seizure. He stated that the Committee Report also sought not only to continue the PCGG's power to issue sequestration orders but also to search and seize properties.

Mr. Nollado pointed out that under the 1973 Constitution it is not only a judge who is authorized to issue a seizure order but also a responsible officer. He stated, however, that under the 1986 Constitution, the words "responsible officer" were deleted, in view of which, there may be an inconsistency and a possible impairment of rights by the PCGG should it later issue a seizure order in the light of the new provision of the Bill of Rights. He stressed that

for this reason he disagrees with the opinion of Mr. Bernas when he said that there is no need for said provision in the Transitory Provisions. He maintained the need for such provision to obviate the issue that the seizure order of the PCGG would violate the new Bill of Rights.

Mr. Nollado also supported Mr. Romulo's stand that the PCGG should be allowed to move quickly to recover the ill-gotten wealth based on the theory that the acts of the PCGG are dictated by the police power of the State. He cited the fact that in the exercise of police power, the State is able to regulate the distribution of bibles in the street without infringing on the freedom of religion guaranteed by the Bill of Rights, or to abate private and public nuisances without impinging on property rights. He opined that because of the extraordinary situation — the plunder of the national treasury — the police power of the State must come in. He maintained that Proclamation No. 3 which authorized the President to issue the Executive Order creating such bodies like the PCGG to recover the ill-gotten wealth should be upheld.

#### **REMARKS OF MR. BENGZON**

Mr. Bengzon stated that the writ of sequestration is necessary in the light of present legal practices which allow a lawyer to thwart the effectiveness of a writ of preliminary attachment. He pointed out that should the Body approve Mr. Bernas' motion and allow the litigation of cases, the country may end up losing the ill-gotten wealth sought to be recovered from Mr. Marcos and his cronies. He added that those whose properties are being sequestered could still question and contest the reasons under which the writs of sequestration are issued and therefore they are not completely without remedy.

#### **REMARKS OF MR. PADILLA**

Mr. Padilla stated that the PCGG was created by the President under the provisions of the Freedom Constitution, Proclamation No. 3, and that thereafter the President issued several Executive Orders specifying the powers of the Commission.

He pointed out that the new Constitution would supersede all the other Constitutions. He registered objection to the motion to delete the proposal on the ground that without a transitory provision recognizing the power of sequestration and freeze order the PCGG may not be able to continue in its mission to recover ill-gotten wealth and pursue their preservation pending judicial actions for the forfeiture of such ill-gotten wealth.

#### **REMARKS OF MR. RAMA**

Thereafter, Mr. Rama, adverting to Mr. Bernas' argument that the Body should not place a price tag on the Bill of Rights, contended that the country is experiencing an extraordinary situation and with limited time to recover the wealth plundered from the National Treasury. He pointed out that this ill-gotten wealth may be worth several billions of dollars, the recovery of which may mean the salvation of the country. He opined that if exemption from the Bill of Rights means the economic redemption of the country, then it is a price worth paying for.

#### **REMARKS OF MR. RODRIGO**

Mr. Rodrigo stated that legal and moral justice demands that the money plundered from the Filipino people be returned to them. He stressed that a President who, together with his cronies, violates flagrantly the Bill of Rights and seeks refuge therein would be setting a bad precedent for future Presidents as they may be tempted to do the same.

### REMARKS OF MR. COLAYCO

Mr. Colayco pointed out that the only issue is the procedure of the PCGG which had admittedly violated rights of persons and entities as against the right of the country to recover the huge amount of money and property plundered by the past regime. He agreed with the views expressed relative to the deplorable corruption of many judges, stating that it would justify liquidations and summary executions due to the slow procedural process. He stated, however, that there are still many court employees who perform their duties within the legal framework, safeguarding the interests of the government.

He admitted that without the radical steps taken by the PCGG, the money and riches that were plundered could escape the lawful remedies necessary to recover them, but to justify said steps would also mean justifying the killings and disappearances done against the law.

### REMARKS OF MR. TINGSON

Mr. Tingson stated that he spent about three semesters at the Loyola University in Chicago studying political science under the Jesuits and that he learned that all laws are based on moral law and that the law of man should not transgress it, being embedded in the Holy Scriptures.

Adverting to the much-applauded speech of President Muñoz Palma in Iloilo City, he stated that the call for a pro-people, pro-Filipino and pro-God Constitution is a call on behalf of the people's clamor to have the stolen billions of dollars returned to them. He stated that as the Holy Scriptures had stated that "he who steals must be punished", moral law itself justifies the clamor of the people.

He stated that during the conference of evangelists around the world in Amsterdam, he was interviewed by newsmen from Germany, England, Hungary and the Union of Soviet Socialist Republics who expressed support for President Corazon Aquino's move to have the stolen people's money returned to them.

He stressed that the PCGG should be supported.

Finally, he praised Mr. Concepcion's prayer which was delivered two days before.

### REMARKS OF MR. OPLE

Mr. Ople stated that he is in favor of Mr. Bernas' amendment by deletion and that he, likewise, submitted three proposed amendments in the event that Mr. Bernas' amendment would not be approved, so that an alternative proposal more compatible with the Bill of Rights and due process could be approved.

Commenting on Mr. Romulo's remarks during the previous session, he stated that he was disappointed to hear him say that the courts would have a little margin of freedom to uphold the Bill of Rights in case of a clash between said provisions and the writ of sequestration. He underscored that in the Bill of Rights, being the heart of the Constitution, no reservation in heart or in mind should be made that any portion thereof would be vitiated no matter how grand the moral objective would be. He agreed with Mr. Bernas' observation that writing the Bill of rights and in the same breath vitiating some of its provisions would be a case of double standard.

Adverting to the execution of 2,000 heretics by Miguel de Torquemada in Spain during the 15th century and Machiavelli's *The Prince*, he stated that politics require compromise to ensure survival. He stated that no one dissents from the view that the country is entitled to recover its stolen possessions but that it has to be seen in the context of the Bill of Rights otherwise there would be a detraction from the majesty and nobility of the Constitution.

### **REJOINDER OF MR. ROMULO**

Mr. Romulo stated that no provision in the Bill of Rights is absolute as it always admits of exceptions for national interests.

### **REMARKS OF MR. BERNAS**

Mr. Bernas reiterated that the effect of the proposed deletion would not be in the dismantling of the PCGG but keeping the practices and the laws supporting it, on a statutory level. He stressed that its retention would elevate its practices to a constitutional level. He stated that having it on a statutory level would allow the Supreme Court to challenge the laws and practices supporting the PCGG if they are "politically moral".

He, therefore, appealed to the Body not to bind the hands of the Justices by supporting his motion to delete.

### **INQUIRY OF MS. AQUINO**

In reply to Ms. Aquino's query whether the motion to delete, would, in effect, delete the immunity clause accorded to the PCGG, Mr. Bernas answered in the negative, stating that Executive Order No. 1 would have to show that it is contrary to the Bill of Rights for it to be abolished. He affirmed that the motion to delete would merely affect Section 3 of the Bill of Rights since the Committee does not intend to canonize or beatify the PCGG.

### **REMARKS OF MR. GUINGONA**

Mr. Guingona expressed agreement with Mr. Bernas' remark that the hands of the Justices should not be bound in determining the issue on the PCGG. He stated that it is precisely for this reason that the provision on the writ of sequestration is provided because between statutory law and the Bill of Rights, the former shall have to yield to the latter.

### **RESULT OF THE VOTING**

Thereupon, submitted to a vote, and with 6 Members voting in favor, 29 against and 1 abstention, the motion to delete Section 8 was lost.

### **AMENDMENTS ON SECTION 8**

Mr. Rama manifested that the Body was ready for amendments on Section 8.

### **SUSPENSION OF SESSION**

At this juncture, upon the request of Mr. Villacorta, the Chair suspended the session.

It was 11:26 a.m.

### **RESUMPTION OF SESSION**

At 12:05 p.m., the session was resumed.

### REFORMULATION OF MR. VILLACORTA'S AMENDMENT

Mr. Suarez read the reformulation of Mr. Villacorta's proposed amendment, incorporating therein Messrs. Padilla's and Concepcion's proposals, to wit:

ANY SEQUESTRATION OR FREEZE ORDER ISSUED OR WHICH MAY BE ISSUED IN RELATION TO THE RECOVERY OF ILL-GOTTEN WEALTH SHALL CONTINUE TO BE OPERATIVE FOR EIGHTEEN MONTHS AFTER THE RATIFICATION OF THE NEW CONSTITUTION. CONGRESS, IN THE NATIONAL INTEREST, AS CERTIFIED BY THE PRESIDENT, MAY EXTEND SAID PERIOD. THE CORRESPONDING JUDICIAL ACTIONS SHALL BE FILED WITHIN SIX MONTHS AFTER THE ISSUANCE OF THE SEQUESTRATION OR FREEZE ORDER. SAID ORDER AND A LIST OF THE SEQUESTERED PROPERTIES SHALL BE FORTHWITH REGISTERED WITH THE PROPER COURTS.

Mr. Suarez stated that copies of this proposal are being distributed to the Members. He then asked for the recognition of Mr. Villacorta to explain the change from "one year from the date of convening of Congress" to "eighteen months after the ratification of the new Constitution."

### REMARKS OF MR. VILLACORTA

Mr. Villacorta, explaining the change of the period from "after the convening of the First Congress" to "eighteen months after the ratification of this Constitution", stated that if this takes effect immediately after the ratification of the Constitution, then the six-month period would have been lost. It is for this reason, he stated, that the period was extended to 18 months after the ratification of the Constitution in order to be consistent with the intent of the amendment. He then read the reformulated amendment, to wit:

ANY SEQUESTRATION OR FREEZE ORDER ISSUED OR WHICH MAY BE ISSUED IN RELATION TO THE RECOVERY OF ILL-GOTTEN WEALTH SHALL CONTINUE TO BE OPERATIVE FOR EIGHTEEN MONTHS AFTER THE RATIFICATION OF THIS CONSTITUTION. PROVIDED THAT CONGRESS, IN THE NATIONAL INTEREST, AS CERTIFIED BY THE PRESIDENT, MAY EXTEND SAID PERIOD. THE CORRESPONDING JUDICIAL ACTION SHALL BE FILED WITHIN SIX MONTHS AFTER THE ISSUANCE OF THE SEQUESTRATION OR FREEZE ORDER. SAID ORDER AND A LIST OF THE SEQUESTERED PROPERTIES SHALL BE FORTHWITH REGISTERED WITH THE PROPER COURTS.

### SUGGESTION OF MR. SUAREZ

Mr. Suarez noted that the word "forthwith might be construed as after the expiration of the six-month period referred to in Mr. Padilla's proposal. For this reason, he suggested that the last sentence be placed ahead of the preceding sentence.

Mr. Villacorta accepted Mr. Suarez' suggestion.

### INQUIRIES OF MR. AZCUNA

On Mr. Azcuna's inquiry as to what would happen to those sequestration orders that were issued prior to the ratification of the Constitution which may have been done five or four months earlier such that they would have only two months left to file them in court for judicial action, Mr. Padilla explained that the period is counted from the ratification of the Constitution because this is a constitutional provision, and the effectivity and the period are not really legislative but constitutional. With regard to the six-month period, he explained that this would mean that when a sequestration or freeze order is issued, there is probable cause or evidence that the assets frozen are ill-gotten wealth, such that the PCGG would have to file the corresponding judicial action within six months after

the issuance of the order.

As regards those orders issued for more than six months already, on whether they have to be filed immediately after the ratification of the Constitution, Mr. Padilla opined that there would be no risk if the PCGG would only freeze but does not do anything about it. He stressed that the purpose of this provision is to require the PCGG, in consonance with due process and with the requirements of notice and hearing, to file the proper action within six months after issuing the sequestration or freeze order. With respect to those issued last month, he opined that they have six months to bring the action in order to prevent any anomalous situation.

On the contention that the six-month period may have already expired by the time the Constitution takes effect, Mr. Padilla stated that this would mean that the PCGG should act even before the ratification of the Constitution.

On whether he would agree to an amendment Providing six months after the issuance of the sequestration or freeze order or the ratification of this Constitutions whichever is later, Mr. Padilla stressed that the purpose of this provision is to make them act. He observed the fact that Switzerland have already filed actions, and lamented that in the Philippines, no single action has ever been filed.

On whether this would compel them to file within six months after the ratification all sequestrations made prior thereto, Mr. Padilla expressed the view that it may be too late, pointing out the fact that these freeze orders have in a way imperilled the normal operations of business enterprises because of excessive interference with management. He reiterated that the purpose of this six-month period is to make them act even before the ratification of the Constitution. He pointed out that Mr. Concepcion even wanted an immediate action because it is not enough that the PCGG issues a freeze order and then disturb the normal operations of a private business enterprise without following it up with an action within six months. He stressed that this six-month period is independent of the ratification of the Constitution.

### INQUIRY OF MR. BENGZON

On Mr. Bengzon's inquiry, Mr. Padilla affirmed that under the provision, the PCGG has only two months left within which to file the case if a sequestration order was issued four months ago.

On whether he took into account the voluminous documents and complications in the determination of the evidence before the necessary information or complaint is filed with the Sandiganbayan which may require a longer period, Mr. Padilla cited the BASECO case which was converted into a private corporation, 80% of which is owned by two corporations and the remaining 20% owned by individual stockholders. He informed that the Solicitor-General admitted before the Supreme Court that there have been so many interlocking documents where the name of Benjamin Romualdez does not appear and the shares which were impounded in Hawaii by the U.S. Customs were all indorsed in blank. It is for this reason, he stated, that there is some difficulty in untangling these interlocking documents and corporations which were employed by the past regime, through the help of lawyers, accountants and auditors. He stressed that this is a situation where the freeze order was issued sometime in October, in which cases, while the PCCG has six months to file the action, the complaint could be filed immediately without prejudice to further investigation and amendment of the complaint in accordance with whatever new evidence may be discovered later. He stated that the purpose of this provision is not to allow the PCGG from just issuing these freeze orders when those orders are presumably issued under some probable cause and then no action is taken. He pointed out the criticisms hurled against the PCGG for failing to file single action with the Sandiganbayan.

### **INQUIRIES OF MR. NATIVIDAD**

On the claim of the PCGG that they do not issue sequestration orders without first establishing a prima facie case, Mr. Padilla stated that that is a presumption otherwise it may only be harassment or embarrassment.

Mr. Natividad pointed out that if such is the claim of the PCGG, there is no stopping them from filing the case because under the laws on procedure, a prima facie evidence is all that is necessary to file a case in court. He questioned the necessity of granting them a six-month period within which to file the case when they claim that before they issue a sequestration order, they have already established not only probable cause but prima facie evidence.

Replying thereto, Mr. Padilla stated that this is precisely the reason why the six-month period for the filing of the proper judicial action after the sequestration or freeze order is more than reasonable.

Mr. Natividad opined that the six-month period is more than what is granted to fiscals and investigators, to which Mr. Padilla replied that in criminal cases, when a person is arrested, the fiscal is required to file the corresponding information within certain hours under Article 125 of the Revised Penal Code.

### **INQUIRIES OF MR. REGALADO**

On the assumption that this Constitution takes effect in January, on whether this would also apply to the sequestration or freeze orders which may have been issued after the six-month period has already elapsed Mr. Padilla affirmed by stating that the six-month period should be counted from the date of the issuance of a specific sequestration or freeze order which is presumed to have been based on some probable cause.

On Mr. Regalado's observation that even if the six-month period has not yet become effective, the PCGG must already beat the possibility that this would be effective, for instance, in December 1986 or January 1987, Mr. Padilla pointed out that even under the Freedom Constitution and the Executive Orders, the idea is that after the issuance of the freeze order, an action would have to be filed. He opined that one could not expect the PCGG to issue the sequestration or freeze orders without basis such that if they have a basis, the corresponding action should be filed. He stated that under Section 1 of Republic Act 1379 regarding the Anti-Graft Law for the recovery of unlawfully acquired properties or assets which are manifestly out of proportion, there should be a presumption that they are fraudulent while under Section 2 thereof, the Solicitor-General shall file the corresponding petition.

In reply to Mr. Regalado's query as to what would be the legal effect of failure to file the corresponding action within the six-month period, Mr. Padilla stated that it is up for the courts to decide.

### **MR. AZCUNA'S PROPOSED AMENDMENT TO THE AMENDMENT**

Thereupon, Mr. Azcuna proposed to amend the second paragraph of Mr. Villacorta's proposal to read: THE CORRESPONDING JUDICIAL ACTION SHALL BE FILED WITHIN SIX MONTHS AFTER THE RATIFICATION OF THIS CONSTITUTION OR THE ISSUANCE OF THE ORDER. He explained that "order" refers to the sequestration or freeze order and it is understood that whichever is later in point of time, will govern.

Mr. Padilla did not accept the proposal.

### INTERPELLATION OF MR. BENGZON

In reply to Mr. Bengzon's query on the meaning of the phrase "after the issuance of the order", Mr. Azcuna explained that it refers to new orders that would be issued after the ratification of the Constitution.

### REMARKS OF MR. PADILLA

Mr. Padilla opined that the Body should distinguish between the 18 months after the ratification of the Constitution which allows the PCGG to continue performing its functions from the filing of the corresponding actions which should not depend upon the notification of the Constitution. He stressed that the purpose of the provision is to expedite the filing of the corresponding judicial actions by the PCGG and at the same time give the parties adversely affected an opportunity to have due process in court with notice and hearing. However, he pointed out that making it six months after the ratification might mean that the PCGG will not file any action until a year or more.

Replying thereto, Mr. Bengzon stated that there is no question as to the 18-month-period which refers only to the right of PCGG within which to issue sequestration orders. He stated that what is being discussed is the period within which the PCGG should file the case in court from the time it issues the sequestration orders. He added that Mr. Azcuna's proposal is to mandate the PCGG to file the case in court within 6 months to begin from the ratification of the Constitution.

At this juncture, Mr. Guingona observed that before the ratification of the Constitution, there will be no legal basis to compel the PCGG to file an action in court within 6 months.

Thereafter, Mr. Azcuna proposed to reword his proposal so that the same would read: THE CORRESPONDING JUDICIAL ACTION SHALL BE FILED WITHIN SIX MONTHS FROM THE RATIFICATION OF THIS CONSTITUTION OR THE ISSUANCE OF THE ORDER, WHICHEVER IS LATER.

Thereupon, Mr. Davide proposed to amend the amendment so that it would read as follows: FOR SEQUESTRATION OR FREEZE ORDERS ISSUED BEFORE THE RATIFICATION OF THIS CONSTITUTION, THE CORRESPONDING JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN ONE MONTH FOLLOWING SUCH RATIFICATION. FOR THOSE ISSUED THERE AFTER, THE JUDICIAL ACTION SHALL BE FILED WITHIN ONE MONTH AFTER THE ISSUANCE THEREOF.

Mr. Azcuna stated that he would accept three months, to which Mr. Davide agreed.

However, Mr. Romulo, on behalf of Mr. Villacorta, insisted on six months because the original case filed with the PCGG has 28 respondents with a lawyer each who wants to present his own evidence during the preliminary investigation. He added that some have even filed petitions for certiorari in the Supreme Court which contributed to the delay and the inability of the Solicitor-General to file the case with the Sandiganbayan. He added that he would agree with the proposal if it would provide a uniform period of six months.

Mr. Davide agreed so that the second sentence of the second paragraph of Mr. Villacorta's proposal, as reformulated, would read as follows: FOR SEQUESTRATION OR FREEZE ORDERS ISSUED BEFORE THE RATIFICATION OF THIS CONSTITUTION, THE CORRESPONDING JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN SIX MONTHS FOLLOWING SUCH RATIFICATION. FOR THOSE ISSUED THEREAFTER, THE JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN SIX MONTHS AFTER THE ISSUANCE THEREOF.

Mr. Azcuna accepted the proposal.

Mr. Villacorta, likewise, accepted the proposal.

At this juncture, Mr. Padilla proposed to substitute "properties" in the first sentence of the second paragraph with SEQUESTERED OR FROZEN ASSETS.

Thereupon, Mr. Davide proposed to substitute the proposal with the following: SUCH ORDER AND A LIST OF THE PROPERTIES SUBJECT THEREOF SHALL BE REGISTERED.

### **SUSPENSION OF SESSION**

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

It was 12:41 p.m.

### **RESUMPTION OF SESSION**

At 12:47 p.m., the session was resumed and thereupon, Mr. Rama requested for another suspension until two thirty in the afternoon.

### **SUSPENSION OF SESSION**

The Chair suspended the session.

It was 12:47 p.m.

### **RESUMPTION OF SESSION**

At 2:58 p.m., the session was resumed with Mr. Treñas presiding.

Upon resumption of session, Mr. Bengzon requested Mr. Suarez to read the reformulated section.

### **RESTATEMENT OF THE REFORMULATED SECTION**

Mr. Suarez read the reformulated section as follows:

THE AUTHORITY TO ISSUE SEQUESTRATION OR FREEZE ORDER IN RELATION TO THE RECOVERY OF ILL-GOTTEN WEALTH SHALL CONTINUE TO BE OPERATIVE EIGHTEEN MONTHS AFTER THE RATIFICATION OF THIS CONSTITUTION. CONGRESS, IN THE NATIONAL INTEREST, AS CERTIFIED BY THE PRESIDENT, MAY EXTEND SAID PERIOD. SUCH ORDER SHALL BE ISSUED ONLY UPON SHOWING OF A PRIMA FACIE CASE.

THE ORDER AND THE LIST OF THE SEQUESTERED OR FROZEN PROPERTIES SHALL BE FORTHWITH REGISTERED WITH THE PROPER COURTS FOR SEQUESTRATION OR FREEZE ORDERS ISSUED BEFORE THE RATIFICATION OF THIS CONSTITUTION, THE CORRESPONDING JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN SIX MONTHS FROM THE RATIFICATION OF THE CONSTITUTION FOR THOSE ISSUED AFTER SUCH RATIFICATION, THE JUDICIAL ACTION OF PROCEEDING SHALL BE FILED WITHIN SIX MONTHS FROM THE ISSUANCE THEREOF.

THE SEQUESTRATION OR FREEZE ORDER SHALL BE AUTOMATICALLY LIFTED IF THE JUDICIAL ACTION OR PROCEEDING IS NOT FILED AS HEREIN PROVIDED, UNLESS PREVENTED BY EXTRAORDINARY CIRCUMSTANCES.

He stated that the amendments of Messrs. Davide, Ople, Concepcion, Padilla, Azcuna, Regalado and Colayco were considered in the reformulation.

### **INQUIRY OF MR. SARMIENTO**

In reply to Mr. Sarmiento's query, Mr. Suarez affirmed that the word "registered" contemplates a situation in which the Rules of Court requires the preparation of a list or inventory of the materials seized to be submitted to the court after search and seizure has been conducted. Mr. Suarez explained that the registration of the order and the list of sequestered properties has the following purposes: 1) it would serve as the basis for the subsequent filing of the complaint; 2) the proper court would be in a position to consider all of the properties in custodia legis; 3) it would enable the parties to seek judicial relief at the earliest time possible; and 4) the list already registered with the court cannot be tampered with.

### **SUGGESTION OF MR. RIGOS**

In reply to Mr. Rigos' query whether "such order" refers to the "orders" in the first sentence, Mr. Suarez stated that it refers to the sequestration or freeze order.

Mr. Rigos observed that the trend of thought is broken by the second sentence, in view of which he suggested a semicolon (;) in lieu of a period (.) after "Constitution" to form only one sentence, and to reinstate PROVIDED THAT before "Congress".

Mr. Suarez accepted the suggestion.

### **INQUIRIES OF MR. ROMULO**

In reply to Mr. Romulo's query whether the registration of the sequestration or freeze order would imply that the PCGG would be deprived of its jurisdiction, Mr. Suarez answered in the negative.

He also affirmed that the PCGG may continue with the preliminary investigation of the case which succeeds the issuance of a sequestration order.

On whether Mr. Regalado's amendment would not prejudice the PCGG'S right to reinstitute the case should new evidence for sequestration be found, Mr. Suarez stated that it would not preclude such right on the basis of new evidence.

### **PROPOSED AMENDMENT OF MR. DAVIDE**

Mr. Davide proposed on the first sentence of the first paragraph to substitute "continue to be" with REMAIN and to insert FOR NOT MORE THAN between "operative" and "eighteen", to give flexibility to the provision since the President may reduce the period before the convening of Congress, which the Committee accepted.

Commenting thereon, Mr. Rigos stated that the original wording is better than stating the period of not more than eighteen months and giving Congress the power to extend the period, should it be for national interest and certified by the President.

Mr. Davide stated that it would not deprive Congress the right to extend the period because it is precisely the proviso which is covered by the second sentence.

### PROPOSED MODIFICATION OF MR. BERNAS

Mr. Bernas proposed to delete the sentence starting with "Congress", stating that "eighteen months" would mean practically two years wherein the government may be allowed to disregard the search and seizure clause.

Mr. Suarez stated that the issue had created a lot of agitations and that he would rather leave it to the Body to decide.

Mr. Rama then manifested the Body's readiness to vote on Mr. Bernas' proposal by deletion.

### INQUIRIES OF MR. COLAYCO

In reply to Mr. Colayco's query whether the rules or guidelines in the Transitory Provisions would prevent the Supreme Court from continuing any further proceedings on the pending petitions before it, considering that said cases may be transferred to the Sandiganbayan or the regular courts, Mr. Suarez stated that the PCGG is given six months after the ratification of the Constitution within which to file the judicial action or proceeding.

On the assumption that anyone or all of the petitions now pending before the Supreme Court involves a question of whether the PCGG should file the proceedings for sequestration before the Sandiganbayan or the regular courts, Mr. Suarez stated that precisely there is also a provision regarding sequestration orders issued before the ratification of the Constitution, giving the PCGG six months after ratification to file the judicial action. He also stated that, with respect to Supreme Court cases filed by aggrieved parties against the PCGG, they would be affected by the determination of whether or not the writ of sequestration or freeze order had been issued on the basis of a prima facie evidence.

On whether the approval of the provision would stop the Supreme Court from taking jurisdiction over the cases in the event it finds and rules that the procedure followed by the PCGG is really a violation of the Constitution, Mr. Suarez opined that the Supreme Court could proceed independently on the operativeness of the provision.

On the supposition that the Supreme Court directs the PCGG to course all its sequestration orders through the courts, Mr. Suarez stressed that the authority of the PCGG to continue issuing sequestration and freeze orders would be for a period of 18 months; however, the provision would not affect the pending cases, except that the PCGG' is obliged within the required period of 6 months after ratification of the Constitution to go to court to ventilate the rights of the government.

Additionally, Mr. Bengzon stated that such ruling of the Supreme Court cannot be considered a precedent should the people ratify the Constitution so that all cases after ratification of this Constitution must follow the provision. He pointed out that, insofar as previous cases in which sequestration orders were issued are concerned, the PCGG is bound by the ruling of the Supreme Court unless there is a newly discovered evidence, in which case, a new sequestration order could be issued under the provision of the Constitution.

On whether the Commission could make a ruling on cases which are already pending before the Supreme Court, Mr. Romulo stated that this is not meddling but defining the authority of the PCGG. He stated that the hypothetical case mentioned by Mr. Colayco would never happen under the 1973 Constitution because the Bill of Rights of the 1973 Constitution which is confirmed by the Freedom Constitution allows nonjudicial officers to issue search warrants.

At this juncture, Mr. Rama called for the previous question.

### **RESTATEMENT OF MR. BERNAS' MOTION**

Mr. Suarez restated Mr. Bernas' motion to delete lines 4 to 6, to wit:

"Provided that Congress, in the national interest, as certified by the President, may extend said period."

Submitted to a vote, and with 5 Members voting in favor, 23 against, and 4 abstentions, the motion was lost.

### **PROPOSED AMENDMENT OF MR. BERNAS**

Thereafter, Mr. Bernas proposed an amendment by addition, to read:

ALL IMMUNITIES GRANTED IN CONNECTION WITH THE POWER TO ISSUE SEQUESTRATION OR FREEZE ORDERS ARE HEREBY REPEALED.

Mr. Bernas explained that his proposal specifically refers to immunity from civil action and immunity from being required to testify or produce evidence, both of which are contained in Section 4 of Executive Order No. 1. He maintained that the immunity extended by Section 4(a) would run counter to the principle of accountability of public officers; and the immunity from testifying or from producing evidence as provided for in Section 4(b) would in effect be an obstruction to justice.

### **INQUIRY OF MR. DAVIDE**

In reply to Mr Davide's query, Mr. Bernas affirmed that the immunity provision in the proclamation creating the PCGC would be inconsistent with the principle on accountability of public officers as mandated in the proposed new Constitution.

On whether the proposal would be fully covered by the general repealing clause in the Transitory Provisions, if indeed the immunity provision would be inconsistent with the accountability of public officers provision, Mr. Bernas opined that the proposal would not leave any doubt.

On whether it would not suffice that such interpretation would be placed in this particular provision on immunity if indeed it would be inconsistent with the mandate on accountability of public officers, Mr. Bernas stated that it would not be strong enough because records do not become part of the law but only part of the interpretation of the law and, therefore, of secondary value.

### **INQUIRY OF MR. SUAREZ**

In reply to Mr. Suarez' queries, Mr. Bernas stated that the term "immunities" would refer to the provisions of Executive Order No. 1 issued on February 28, 1986, particularly Section 4(a) which refers to civil immunity from suit and Section 4(b) which refers to immunity from testifying and producing evidence.

With respect to other immunities enjoyed by the PCGG or any of its officials, Mr. Bernas stated that he was not referring to immunity which may be granted to those who may testify but to the immunity provision found in Sections 4(a) and 4(b).

### **REMARKS OF MR. SARMIENTO**

Speaking against the proposed amendment, Mr. Sarmiento stated that he supported the Committee's amendment because of his desire, more than anything else, to recover the Marcoses' and their cronies' ill-gotten wealth. He pointed out that the proposed amendment would paralyze, if not completely immobilize, the PCGG'S operations against ill-gotten wealth because suits would be filed against the PCGG, thereby eroding its mission. He

contended that, in actual practice, the ardor of one pursuing a case is undermined the moment a countercharge is filed against him and, therefore, the proposed amendment for the removal of that immunity clause would be an Achilles' heel that could be exploited by the enemies of the PCGG.

Reacting thereto, Mr. Bernas stated that his proposal for the repeal of immunities is really an answer to the clamor against the abuses which may or may not be true. He maintained that if the abuses are found baseless, the PCGG should have nothing to fear, but if found true, the PCGG should be made to answer for it.

### **REMARKS OF MR. REGALADO**

In opposing the amendment of Mr. Bernas Mr. Regalado noted that under Section 4(a) of Executive Order No. 1, if a Member of the PCGG performs any act prejudicial to or resulting in damages to another, but not in the discharge of the task, he would not enjoy that immunity.

On pragmatic grounds, Mr. Regalado, stated that it is very easy to prepare a civil complaint, but it would be different if a criminal case would be involved because before the information could be filed, it would have to go through the process of preliminary investigation and the determination as to whether it should really be filed; but not in a civil case, because anybody, who would like to harass the Members of the PCGG who are only acting in the discharge of their duties, could prepare a hundred complaints in just one day since there is no preliminary requirement before filing the case in court. He opined that with the proposal, the PCGG would be facing civil cases to the detriment of the performance of their duties. He contended that the scope of the immunity is limited only to acts committed by them in the actual discharge of their duties and the moment they stray from the straight and narrow path, they are civilly and criminally liable.

### **INQUIRY OF MR. MAAMBONG**

In reply to Mr. Maambong's queries, Mr. Bernas affirmed that his proposal seeks to eliminate the immunities provided for in Executive Order Nos. 1 and 14. Mr. Bernas added that with respect to Section 4(a) of Executive Order No. 1 atrocious acts committed by the PCGG are not covered by immunity.

### **REMARKS OF MS. AQUINO**

Replying to the arguments of Messrs. Sarmiento and Regalado in support of the motion for the inclusion of the provision, Ms. Aquino stated that in addition to its broad and extraordinary powers, the PCGG also enjoys immunity from civil suits arising from the discharge of its responsibilities and, according to Section 4(b), it may refuse to testify or introduce evidence in all legislative, judicial and administrative agencies which may properly fall under its official cognizance. She contended that it is precisely action for damages and not immunity from criminal acts.

### **RESTATEMENT OF AND VOTING ON MR. BERNAS' AMENDMENT**

Mr. Bernas restated his amendment to the amendment, to wit: ALL IMMUNITIES GRANTED IN CONNECTION WITH THE POWER TO ISSUE SEQUESTRATION OR FREEZE ORDERS ARE HEREBY REPEALED.

Submitted to a vote, and with 11 Members voting in favor, 26 Members voting against and no abstention, the amendment was lost.

### **RESTATEMENT AND APPROVAL OF THE FIRST PARAGRAPH**

Mr. Suarez read the first paragraph of the Committee amendment, to wit:

ANY AUTHORITY TO ISSUE SEQUESTRATION OR FREEZE ORDER IN RELATION TO THE RECOVERY OF ILL-GOTTEN WEALTH SHALL REMAIN TO BE OPERATIVE EIGHTEEN MONTHS AFTER THE RATIFICATION OF THIS CONSTITUTION; PROVIDED THAT CONGRESS, IN THE NATIONAL INTEREST, AS CERTIFIED BY THE PRESIDENT, MAY EXTEND SAID PERIOD. SUCH ORDER SHALL BE ISSUED ONLY UPON A SHOWING OF A PRIMA FACIE CASE.

On Ms. Aquino's query, Mr. Suarez explained that the words "any authority" would refer categorically to the authority of the PCGG to issue sequestration or freeze orders.

Submitted to a vote, and with 34 Members voting in favor, 4 Members voting against and one abstention, the first paragraph of the Committee's amendment was approved by the Body.

### **MANIFESTATION OF MR. OPLE**

Mr. Ople manifested for the record that the last sentence of the paragraph just approved was coauthored by Messrs. Regalado and de los Reyes.

### **PROPOSED AMENDMENT OF MR. PADILLA**

On the same Section, second paragraph, Mr. Padilla proposed to change the word "six" to TWO, explaining that this has reference to sequestration or freeze orders issued before the ratification of the new Constitution. He stated that his original proposal was for the judicial action to be filed within six months after the issuance of the order but Messrs. Azcuna and Davide made a distinction between writs issued before and those issued after the ratification of the Constitution. He recalled that the PCGG was created by virtue of Proclamation No. 3 dated March 1986 and it has been issuing sequestration or seizure orders after March. He pointed out that on the assumption that there was an order issued last September and the ratification of the Constitution would be in January 1987, then there would be more than six months for the PCGG to file a judicial action. He stated that if the six-month period as originally proposed would be maintained, then the writs issued after the creation of the PCGG would still have more than six months after the ratification and that would mean that in some instances, it would be more than one year. He opined that his proposal to reduce the six-month period to two months would be more logical and consistent, taking into account the intention of the creation of the PCGG which is not merely to issue sequestration or freeze order but to file judicial action.

### **POINT OF ORDER OF MR. BENGZON**

At this juncture, Mr. Bengzon recalled that Mr. Azcuna proposed a three-month, period while Mr. Davide proposed a one-month period, which proposals were not acted upon by the Body. On the contrary, he stated that the six-month period had already been voted upon when the Body voted this particular sentence. He further stated that the parliamentary status is that the Body is being asked to vote on the entire paragraph with the previous amendments already incorporated therein. He opined that Mr. Padilla's proposal is out of order.

Reacting thereto, Mr. Padilla noted that Mr. Bengzon's comments did not dispute the fact that he earlier manifested support of the amendment. He stated that he could not recall the Body voting on the proposal considering that the session was interrupted several times in view of the many proposals presented, with the proponents asked to confer with the Committee. He maintained that it is not correct to say that this matter has been foreclosed and that he was out of order.

Mr. Bengzon stated that he was anchoring his argument on the fact that the Body after a lengthy deliberation on the matter, had already voted for a six-month period. He maintained that the whole issue was already foreclosed.

Replying thereto, Mr. Padilla believed that the six-month period was his original proposal but there was a distinction made between writs issued before and after the ratification. He asked that his proposal be submitted to a vote because there had never been any voting made.

### **SUSPENSION OF SESSION**

At this juncture, the session was suspended.

It was 4:16 p.m.

### **RESUMPTION OF SESSION**

At 4:16 p.m., the session was resumed.

### **WITHDRAWAL OF THE POINT OF ORDER**

Upon resumption of session, Mr. Bengzon withdrew his point of order and asked that the Body vote on the proposal.

(Editors Note: Missing portion in the original)

this privilege and this immunity that has emboldened some of the agents of the PCGG to commit wholesale violation of the Bill of Rights and to flagrantly violate some of the court orders which, she averred, is a sign of an immunity clause that is at war with the Constitution and with the idea of the government of laws and not of men. She stressed that it is anathema to the requirements of due process because, in the final analysis, it leaves without any remedy a person who has been aggrieved by the violations of the rights committed by PCGG agents, either in the form of blatantly illegal acts or in the form of mismanagement of their sequestered properties.

Ms. Aquino further stated that the immunity clause subverts judicial power in the sense that it cripples and puts a restraint on the judiciary in gathering evidence against persons who present cases to adjudicate the right of ownership of the sequestered properties, thus, denying the owner of the sequestered property to confront a witness.

Finally, Ms. Aquino stated that the immunity clause runs against the equal protection clause, because it would put the accused in a sequestration proceeding in a classification that is above and beyond those who are similarly situated in cases that have been filed in accordance with the Anti-Graft and Corrupt Practices Act. She recalled that during his time, Mr. Marcos bamboozled the population into ratifying a provision which will give him and his minions immunity from all suits arising from their acts and orders which, she opined, is present again because the immunity would serve as a shield for reviews.

### **INQUIRY OF MR. SARMIENTO**

Adverting to Executive Order No. 8 creating the Presidential Committee on Human Rights (PCHR), Mr. Sarmiento stated that Section 6 thereof provides that presidential immunity shall extend to the members and staff of the PCHR when acting within their duties, functions, powers and authority; and Section 5(b) which provides that the PCHR shall have the power to grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority. He pointed out that the PCGG is not the only entity which has these

immunity powers but the PCHR as well.

Responding thereto, Ms. Aquino stated that she was aware that the PCHR enjoys such privilege, however, it is only the PCGG that is blighted with confessed and admitted commissions of certain violations. She contended that even the Solicitor-General himself, in the case of BASECO, admitted that there are some agents; who could be brought to court for certain liabilities and accountability according to law. She stressed that, happily, the PCHR is not in any position to misappropriate the properties of sequestered firms nor is it in a position to malverse properties and funds because, after all, the PCHR deals in a field of reality that is totally different from the concerns of the PCGG.

On whether there is a decision that would show that the PCGG is indeed guilty of wholesale violation of human rights except for the remarks of the Solicitor-General on irregularities or errors committed by the PCGG people, Ms. Aquino stated that it does not have to take a law or jurisprudence but only common sense to know that sequestered shares of stocks, once frozen or put under a writ of garnishment or attachment, do not necessarily include the right to exercise acts of dominion by way of voting; however, it is common practice that the PCGG, in almost all of the sequestered firms, uses the sequestered shares of stocks to consolidate the majority claim of the PCGG in terms of charting the corporate course of that sequestered firm. She stressed that it does not have to take a law to appreciate that kind of a distinction on matters of rights of ownership and acts of dominion as against the right pertaining to a person who has frozen or secured a writ of attachment on the shares.

Mr. Sarmiento, however, maintained that the PCGG is not guilty of wholesale violation of the Bill of Rights or flagrant violations of any human rights.

#### **REMARKS OF MR. GUINGONA**

Mr. Guingona supported the objections raised against the proposal in that it would render the agency ineffective and its ineffectiveness would redound to the disadvantage of the Filipino people because it would become a toothless agency. He also stated that the immunity clause has a limited scope and would refer only to acts which are performed in the discharge of the duties of the officers or agents concerned.

Finally, Mr. Guingona stated that the matter of immunity is not a novel provision since it is found not only in Constitutions but also in statutory laws.

#### **REMARKS OF MS. AQUINO**

Reacting on the remarks of Mr. Sarmiento, Ms. Aquino expressed the hope that the Commission would not be consumed by patriotic arguments of national interest by reason of economic justice and political expediency, which could take primacy over the requirements of the Bill of Rights. She pointed out that this is not only an argument that proceeds from plain and pure legalism, but that there are more transcendental considerations of stability and national unity which, she stressed, may lead to a destructive pattern of speculation, inquisition and cynicism, and become part of the national psyche, such that if self-corrective mechanisms would not be adopted, it would become destructive.

#### **INQUIRY OF MR. OPLE**

On Mr. Ople's query, Ms. Aquino affirmed that the immunity for the PCGG and its members is some kind of amendment to the Article on the Legislative because under one of those immunities enumerated, they could not be subject to legislative, administrative and judicial inquiry, in connection with the Question Hour where they could be questioned about their official actuations.

On whether she would confirm that by virtue of these immunities extended to the PCGG and its members, they would be exempt from the purview of the provision in the Article on the Legislative which makes all public officials accountable to the Legislative for their official acts during the Question Hour, Ms. Aquino stated that should the amendments be disapproved, that is the conclusion, which, in effect, becomes an amendment to the provision on the Question Hour in the Article on the Legislative.

On Mr. Ople's observation that in that respect, they have superior rights relative to other officials of the Government who may be invited or summoned by Congress during the Question Hour, Ms. Aquino stressed that the intent of the amendment is to make an explicit statute that would cover this situation and she opined that it is at best symptomatic assuming that the Question Hour would not yield to the immunity clause of Executive Orders Nos. 1, 2 and 14. She maintained that as long as an immunity clause exists, it is an incongruity to the Bill of Rights which amounts to the travesty of the concept of government of laws for, after all, no man, not even the President, can go above the law and the courts that uphold it.

Finally, Ms. Aquino affirmed that with the disapproval of the proposal, Congress may be deprived of valuable inputs into their studies and deliberations concerning measures to control graft and corruption in government.

### **INQUIRIES OF MR. MAAMBONG**

On Mr. Maambong's initial query, Ms. Aquino affirmed that when the PCGG voted sequestered shares of stock, it amounted to a violation of property rights on the ground that voting is an act of dominion and ownership.

On the memorandum issued by President Aquino authorizing the PCGG to vote shares of stock which it may have sequestered in corporations, Ms. Aquino stated that such memorandum does not necessarily give it legal infirmity in the sense that it is like any other executive act and at best, it gives a cloak of immunity to the act which is, in the first place, illegal in spite of the fact that the present government is revolutionary.

On whether she would still maintain that the memorandum is not legal and binding even if it is issued by the revolutionary government, Ms. Aquino replied in the affirmative, stating that proceeding from the argument of the fruits of the poisoned tree, if the tree is poisoned from the beginning, it can only bear poisoned fruit and therefore, it could not legitimize an act which in the beginning has been seriously flawed.

### **REMARKS OF MR. COLAYCO**

Mr. Colayco stated that the practicality of enforcing the law by any public official correctly even if the immunity from prosecution or responsibility is removed, is something that all public officials have to face. He stressed that the existence of this immunity is the cause of the abuse that have been attributed to the agents of the PCGG. He cited the case of sheriffs who are doing the same thing that the agents of the PCGG are performing and if they are given the same immunity, one could just imagine the abuses that they would commit. He stressed that this is the responsibility that every official must answer, this sword of Damocles that would keep him always responsible and careful about the performance of his duties. He believed that if this immunity clause granted by the Executive Order to the PCGG and its agents is removed, then there would be less abuse on the part of these agents.

### **REMARKS OF MR. VILLACORTA**

Mr. Villacorta disagreed with Ms. Aquino that the immunities and powers of the PCGG add to the cynicism, pointing out that on the contrary, the cynicism of the people would further be reinforced if this government is unable to punish the plunderers with the aid of an indifferent and overly legalistic Constitutional Commission. He stressed that the Commission should give the people reason to be optimistic, particularly about the dictum that

"crime does not pay." He pointed out that if the Body wants to bring justice to the brazen pillage of the country and to recover the billions of dollars plundered by the dictator so that it could be used to help the nation back to its feet, then it should not make it difficult for the government to bring the culprits to justice and to recover the wealth that has been grabbed from the people. He asked why the Body is so worried about the property rights of the dictator and his cronies.

Finally, Mr. Villacorta stated that everyone had seen how Mr. Marcos had made a mockery of the investigation as reflected in a news report entitled "Mr. Marcos Scoffs at PCGG Investigation". In this regard, he asked whether the Body would want Mr. Marcos to go scot-free. He further inquired why the Body is so apprehensive about the few abuses which are more the exceptions rather than the rule.

### **REMARKS OF MR. PADILLA**

Mr. Padilla stated that the immunity referred to under the Executive Order is immunity from civil

(Editors Note: Missing portion in the original)

### **MANIFESTATION OF MR. DE CASTRO**

Mr. de Castro confirmed for the record that the Body had not voted on the six-month period and therefore, Mr. Padilla was in order.

### **PROPOSED AMENDMENT OF MR. PADILLA**

Mr. Padilla proposed the rewording of the second sentence so that it would read: THE ORDER AND THE LIST OF THE SEQUESTERED OR FROZEN PROPERTIES SHALL BE FORTHWITH REGISTERED WITH THE PROPER COURTS. FOR SEQUESTRATION OR FREEZE ORDERS ISSUED BEFORE THE RATIFICATION OF THIS CONSTITUTION, THE CORRESPONDING JUDICIAL ACTION OR PROCEEDINGS SHALL BE FILED WITHIN TWO MONTHS.

### **INQUIRIES OF MR. RODRIGO**

In reply to Mr. Rodrigo's query, Mr. Padilla affirmed that his amendment does not include the third sentence.

On whether the proposal would not discriminate those sequestration or freeze orders issued one month before the ratification in the sense that the PCGG would only be given less than six months, Mr. Padilla explained that the proposal has reference principally to the filing of the corresponding action or complaint and not to the issuance of the sequestration or freeze order. He stated that there had been many writs that were issued after March, 1986 and assuming that the Constitution would be ratified in January, 1987 and the PCGG is given another six months, there would be instances where no action would be taken for one year or more which is precisely the complaint that not even a single action has been filed by the PCGG in the proper courts. He further explained that if the Constitution is ratified in January and the PCGG does not have sufficient evidence for a prima facie or probable cause, then it should not issue sequestration orders during the month of December because it has only two months after January. He opined that the real problem is with regard to so many orders that have been issued after March, 1986 and a six-month period would likely encourage inaction to the prejudice of some ongoing private businesses.

### **VOTING ON MR. PADILLA'S PROPOSED AMENDMENT**

Submitted to a vote, and with 11 Members in favor, 24 against and no abstention, the proposed amendment of Mr. Padilla to reduce the six-month period to two months was not approved by the Body.

### **AMENDMENT OF MR. JAMIR**

As proposed by Mr. Jamir and accepted by the Committee, the Body approved the amendment to change the word "the" between the words "from" and "ratification" to ITS and to delete the rest of the sentence so that it would read: FOR SEQUESTRATION OR FREEZE ORDERS ISSUED BEFORE THE RATIFICATION OF THIS CONSTITUTION, THE CORRESPONDING JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN SIX MONTHS FROM ITS RATIFICATION.

### **APPROVAL OF THE SECOND PARAGRAPH**

The second paragraph was submitted to a vote, and with 23 Members voting in favor, 3 against and no abstention, the same was approved by the Body.

### **SUGGESTION OF MR. MAAMBONG**

On Mr. Maambong's suggestion that the six months be indicated in words and not in figures, Mr. Rama replied that the matter be left to the Committee on Style.

### **RESTATEMENT OF THE THIRD PARAGRAPH**

Mr. Suarez restated the third paragraph, to wit:

THE SEQUESTRATION ORDER SHALL BE AUTOMATICALLY LIFTED IF THE JUDICIAL ACTION OR PROCEEDING IS NOT FILED AS HEREIN PROVIDED, UNLESS PREVENTED BY EXTRAORDINARY CIRCUMSTANCES.

### **PROPOSED AMENDMENT OF MR. DAVIDE**

Mr. Davide proposed the following amendments:

1. On the first line, delete the words "shall be" and in lieu thereof substitute the words IS DEEMED;
2. On the second line, delete the word "the" before the word "judicial" and substitute with the word NO; and
3. On the same line, delete the word "not" before the word "filed" then delete the comma (,) and the words "unless prevented by extraordinary circumstances".

So that the third paragraph would read:

THE SEQUESTRATION OR FREEZE ORDER IS DEEMED AUTOMATICALLY LIFTED IF NO JUDICIAL ACTION OR PROCEEDING IS FILED AS HEREIN PROVIDED.

In reply to Mr. Romulo's query, Mr. Davide affirmed that under the proposal it would still be correct to say that it is without prejudice to filing a new sequestration order in the event that new evidence is discovered and a new order may be issued.

On Mr. Sarmiento's query as to the reason for the proposal to delete the phrase "extraordinary" circumstances", Mr. Davide explained that it is an escape clause to justify noncompliance with the mandatory character of the filing and since it would be left to the Supreme Court to define what "extraordinary" means, it is better to simply delete the phrase.

Mr. Sarmiento manifested support for the proposal.

Mr. Davide reiterated three minor amendments, namely: 1) the substitution of "shall be" with IS DEEMED; 2) the insertion of NO before "judicial" and the deletion of "the"; and 3) the deletion of "not" before "filed".

Mr. Suarez accepted the proposals.

In reply to Mr. Ople's query as to what would constitute an "extraordinary circumstance", Mr. Davide stated that the phrase is vague and too general which would be used as an escape clause by the authority issuing the sequestration or freeze order to justify his failure to comply with the mandatory requirement that a court proceeding or action must be commenced within 6 months following the issuance of such order, for which reason he sought its deletion.

On Mr. Ople's query whether there is still a need to provide exceptions based on extraordinary circumstances as the Body had already approved the six-month deadline, Mr. Davide replied in the negative.

On Mr. Guingona's contention that it would be better to allow the Supreme Court to use its discretion in determining what are "extraordinary circumstances", Mr. Davide pointed out that the matter is only a collateral issue.

At this juncture, Mr. Regalado stated that he and Mr. Colayco, who proposed the original formulation did not include the excepting clause being objected to. However, he explained that they agreed with the Committee's suggestion for its inclusion because future vagaries and changing circumstances may give justification for not adhering strictly to the calendar. He stated that even the laws recognize fortuitous events, force majeure, acts of God, and insuperable causes. He stressed that this would not become a convenient escape hatch because the party adversely affected and who seeks the benefit of the 6-month period, to bar further action against the PCGG, is not precluded from taking it up with the court and the question as to what constitutes extraordinary circumstances is a judicial matter which is not for the Body to determine, except to provide the guidelines insofar as the excepting clause is concerned.

Mr. Sarmiento disagreed with Mr. Regalado's statement because the phrase "extraordinary circumstance" is vague and could even include national security. He opined that the past regime used the same concept to justify its perpetuation in power and the PCGG could also use the same to justify its inaction or laziness.

Mr. Rama, likewise, opined that the phrase "unless prevented by extraordinary circumstances" is not necessary in view of the fact that the Body had already agreed that the PCGG could refile a case if it has some new evidences. He manifested his agreement to delete the phrase.

On this understanding, Mr. Romulo accepted the proposal.

Thereupon, Mr. Davide restated the proposed paragraph as amended, to wit: THE SEQUESTRATION OR FREEZE ORDER IS DEEMED AUTOMATICALLY LIFTED IF NO JUDICIAL ACTION OR PROCEEDING IS FILED AS HEREIN PROVIDED.

Submitted to a vote, and with 34 Members voting in favor, 1 against and 3 abstentions, the same was approved by the Body.

Thereafter, Mr. Suarez read the entire section, as amended, to wit:

SECTION 8. ANY AUTHORITY TO ISSUE SEQUESTRATION OR FREEZE ORDER IN RELATION TO THE RECOVERY OF ILL-GOTTEN WEALTH SHALL REMAIN TO BE OPERATIVE NOT MORE THAN EIGHTEEN MONTHS AFTER THE RATIFICATION OF THIS CONSTITUTION; PROVIDED THAT CONGRESS, IN THE NATIONAL INTEREST, AS CERTIFIED BY THE PRESIDENT, MAY EXTEND SUCH PERIOD. SUCH ORDER SHALL BE ISSUED ONLY UPON SHOWING OF A PRIMA FACIE CASE.

THE ORDER AND THE LIST OF THE SEQUESTERED OR FROZEN PROPERTIES SHALL BE FORTHWITH REGISTERED WITH THE PROPER COURTS. FOR SEQUESTRATION OR FREEZE ORDERS ISSUED BEFORE THE RATIFICATION OF THIS CONSTITUTION, THE CORRESPONDING JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN SIX MONTHS FROM ITS RATIFICATION, FOR THOSE ISSUED AFTER SUCH RATIFICATION, THE JUDICIAL ACTION OR PROCEEDING SHALL BE FILED WITHIN SIX MONTHS FROM THE ISSUANCE THEREOF.

THE SEQUESTRATION OR FREEZE ORDER IS DEEMED AUTOMATICALLY LIFTED IF NO JUDICIAL ACTION OR PROCEEDING IS FILED AS HEREIN PROVIDED.

Submitted to a vote, and with 34 Members voting in favor and 4 against, the same was approved by the Body.

Thereupon, Mr. Rama stated that the Body would proceed to the consideration of Section 7.

### **REMARKS OF MR. SUAREZ**

Mr. Suarez stated that the Committee proposes Section 7 to read: "The incumbent President and Vice-President shall hold office for a term of six years starting at noon of February 25, 1986 until noon of February 25, 1992."

He explained that the term is subject to synchronization of elections which, as proposed by the Committee on the Legislative, would have the Members of Congress take their oath of office on June 30, 1987 with their term ending on June 30, 1992. For the same purpose, he stated that the Committee on Transitory Provisions would suggest that the term of the President and the Vice-President also end at noon at noon of June 30, 1992.

### **REMARKS OF MR. TINGSON**

Mr. Tingson stated that Mrs. Corazon Aquino as the duly elected President should put to rest the debates on whether or not she should submit to a presidential election to be held with the national and local elections after the ratification of the new Constitution.

He pointed out that before the Batasang Pambansa was abolished, following the adoption of the Freedom Constitution, many Members of Parliament, most of whom were KBL members, wanted to declare Mrs. Aquino winner in the snap election despite the fact that they had previously declared Mr. Marcos as winner. He opined that had Mrs. Aquino allowed herself to be dragged into this wily scheme there would have been no more debates on her tenure of office. He said that if the victory of Mrs. Aquino was not legitimate, the KBL would legitimize it by mere proclamation. He maintained, however, that Mrs. Aquino's victory was legitimate and there is no further need to legitimize it.

Mr. Tingson added that the revolution installed Mrs. Aquino into office as President of the country because Mr. Marcos was determined to hold on to his power rightly or wrongly. He added that the purpose of the transitory provision is only to attach to the President the term of office according to the 1973 Constitution which was the basis of the February 7, 1986 snap election and to do other than this would not only be illegal but even destructive, illogical and unrealistic and would even provide the greatest destabilizing factor which could throw the country into political chaos, tragedy and perdition.

He opined that the people were right in electing President Aquino who proved to the whole world that she could lead the country towards true democracy, peace, justice and prosperity. He urged the Body to rally behind her and not embarrass her with an election she had already won. He stated that the Body should give her the opportunity to implement the provisions of the new Constitution and within six years the Filipino people would yet see the most glorious chapter of the country's history.

## REMARKS OF MR. DE LOS REYES

Mr. de los Reyes stated that his proposal would read as follows:

SECTION 7. THE INCUMBENT PRESIDENT AND VICE-PRESIDENT SHALL HOLD OFFICE FOR A TERM OF SIX YEARS STARTING AT NOON OF FEBRUARY 25, 1986 UNTIL NOON OF FEBRUARY 25, 1992 which can be changed TO UNTIL NOON ON JUNE 30, 1992 UNLESS A MAJORITY OF THE AFFIRMATIVE VOTES CAST IN THE PLEBISCITE IS FOR THE HOLDING OF AN ELECTION FOR PRESIDENT AND VICE-PRESIDENT SIMULTANEOUSLY WITH MEMBERS OF CONGRESS AFTER THE RATIFICATION OF THIS CONSTITUTION. SAID ISSUE SHALL BE SUBMITTED AS A SEPARATE QUESTION DURING THE RATIFICATION OF THIS CONSTITUTION. IN CASE AN ELECTION FOR SAID POSITIONS IS HELD ON THE AFOREMENTIONED DATES, THE TERM OF OFFICE OF THE NEWLY ELECTED PRESIDENT AND VICE-PRESIDENT SHALL COMMENCE AT NOON ON JUNE 30, 1987 AND SHALL EXPIRE ON JUNE 30, 1992.

Mr. de los Reyes gave assurance that his proposal is not motivated by any partisan consideration because, like all freedom-loving Filipinos, he would also like to see Mrs. Aquino succeed. He noted that the country is beset by crises which should transcend narrow political interest, and is struggling to be born again, eager to assert genuine sovereignty, eliminate injustices, unshackle itself from foreign domination and write a Constitution that would be liberating and egalitarian in impact.

Mr. de los Reyes opined that from the viewpoint of political science, a revolutionary government is usually manned by people supported by might or power to enforce its will and desires unlike constitutionally and legally elected officials whose official acts are drawn from the mandate of the people through elections. He opined that there is no doubt that the incumbent leadership subscribes to this concept and considers its government as revolutionary. He noted that Proclamation No. 3 states, among others, that the present government was installed through a direct exercise of the power of the Filipino people assisted by units of the new Armed Forces of the Philippines in defiance of the provisions of the 1973 Constitution. He stressed this clearly means that the incumbent President and Vice-President have abandoned their claims of victory in the election of February 7, 1986 and that in repudiating the 1973 Constitution under which the snap election was held, they had, in effect, maintained that they derived their mandate from the EDSA revolution and not from an election. He opined, that their mandate is coterminous with the revolutionary government and shall end upon termination of said revolutionary government with the ratification of the Constitution. He maintained that should the incumbent President and Vice-President wish to legitimately continue in office beyond the revolutionary period, they must seek a new mandate from the people under the new Constitution. However, he stressed that his proposal is simply to throw the issue directly to the people for their decision.

He stressed that a mechanism be devised to finally settle the issue on who really won the Presidential and Vice Presidential election on February 7, 1986 to put an end to all the loose and irresponsible remarks about the return of President Marcos or about coup d' etats.

He admitted that a referendum, while not as advantageous as an election, would strike a balance on the pros and cons of the issue, separating the merits of the draft Constitution from the purely political question on the terms of office of the incumbent President and Vice-President.

He stated that an overwhelming vote for the extension of office in favor of the incumbents would be an incontrovertible message throughout the nation and to the whole world that it would be futile to question the legitimacy of the Aquino government. On the other hand, he stated that requiring them to submit to an election under the New Constitution, would not, in the least, constitute an affront on their persons, "people power", or the

military, but would rather be an expression of the people's desire to exercise their fundamental right in a democracy and to vote for the candidates of their choice in a truly clean and fair election, thus wiping away the bitterness, doubts and confusions of the last snap elections.

He underscored that the issue on the ratification of the Constitution should be treated separately from the issue of whether the incumbent shall be granted a mandate up to 1992, since the question of ratification is nonpolitical and nonpartisan while the issue on the incumbents' term of office is highly emotional, partisan and political.

He stated that it would be a waste of labor, time, effort and government funds should the new Constitution be rejected by the people because of this provision. He stressed the fact that unless the two issues are separated, it would raise nagging doubts about the new Constitution since the framers thereof were appointed, and it would place President Aquino in an embarrassing and difficult situation as the Constitution may be interpreted to be self-serving.

He stated that the incumbents could not be considered elected under the 1973 Constitution because President Aquino repudiated it in Proclamation No. 3. Granting that no cloud of doubt or dispute is attached to the February elections, he opined that they are still morally obliged to run for election under the new Constitution to affirm their respective posts and to give the new Constitution the dignity and respect that it deserves.

With President Aquino's choice to govern under the concept of a revolutionary government, he stated that the incumbent President and Vice President would be under the moral persuasion to run for election under the new Constitution since the exercise of the powers is de facto in nature.

Quoting from the case of *Thorington vs. Smith*, he stated that the stability of the country demands that every vestige of the revolutionary transitional setup be overcome by a constitutional and permanent government which comes about only through the people's expression on whether the incumbent President or Vice President would have to run under the new Constitution.

He stated that the deposed President was accused of perpetuating himself in power through the Transitory Provisions of the 1973 Constitution for which he was punished by the people. He opined that as Members of the Constitutional Commission, they are empowered to avert the same mistake.

Adverting to the decision of the Supreme Court in the case of *Lawyers League for a Better Philippines vs. President Aquino*, he stated that an examination thereof would show that the Supreme Court's statement that the present government is de jure, is actually an obiter dictum since the question of legitimacy of the government is a political question which the people alone could decide. He stated that the Supreme Court never touched on the term of office of the incumbents because it knew that upon the ratification of the new Constitution, the revolutionary government, although considered de jure during the revolutionary period, would cease and that any product of a successful direct state action would entitle a government to claim de jure status, adverting to Dean Vicente Sinco's book on Philippine Political Law.

He stated that the Supreme Court was constrained to hold that the Aquino Government is de jure because otherwise, it would, in effect, be questioning its own legal existence as well as the validity of the appointments thereto, in accordance with the case of *Luther vs. Borden*.

He observed that the Members of the Commission worked with intellectual honesty and emotional sincerity and that the opposition would participate in the approval of the Constitution should the two issues be separated from each other, otherwise, it would be difficult for them to participate.

### INQUIRIES OF MR. NOLLEDO

In reply to Mr. Nollado's query on the meaning of the statement that by setting up a revolutionary government, the incumbent President and Vice President waived their right under the 1973 Constitution, Mr. de los Reyes stated that in effect, Corazon Aquino and Salvador Laurel claimed that they were cheated in the elections. He stated that instead of being proclaimed by the Batasang Pambansa or filing an electoral protest before the Presidential Electoral Tribunal, the Batasang Pambansa was dissolved and a revolutionary government was installed.

Mr. Nollado stated that there is a distinction between being elected to public office and the manner of election, and that "abandon" was mistakenly referred to as the manner of election under the 1973 Constitution.

He pointed out that there was no abandonment in this case because Corazon Aquino and Doy Laurel actually assumed the Presidency and Vice-Presidency respectively.

Reacting thereto, Mr. de los Reyes stated that the query dwells on hair-splitting technicalities which amounts to the same thing.

On whether the 1973 Constitution was still in existence at the time they were elected, Mr. de los Reyes affirmed the same. He also affirmed that they were elected on February 7, 1986 but they were not proclaimed. Instead, he stated that it was President Marcos and Mr. Tolentino who were proclaimed.

Commenting on the parallelism between President Marcos' use of the Constitution to perpetuate himself in power and President Aquino's use of the Freedom Constitution to continue in power, Mr. Nollado stated that there is a great difference between the two, since Marcos' term which was about to expire wrought the people's disenchantment with the regime, while President Aquino was duly elected in the February 7, 1986 election.

Replying thereto, Mr. de los Reyes stated that to the eyes of the ordinary people, it amounts to the same thing.

### REMARKS OF MR. RIGOS

In support of Section 7, Mr. Rigos cited the following reasons:

- 1) Mrs. Aquino and Mr. Laurel were the real winners in the February 7, 1986 national elections and that while it is true that they were not proclaimed by the Batasang Pambansa, the people repudiated their opponents' proclamation during the February 22 to 25 peaceful revolution;
- 2) The election of Mrs. Aquino and Mr. Laurel had been gloriously blessed by the people throughout the entire nation and the people's repudiation of Mr. Tolentino's oath-taking as acting President at the Manila Hotel sustained the authenticity of their victory in the February 7 presidential polls;
- 3) All nations in the world have clearly expressed their recognition of Mrs. Aquino's government which were pronounced during the U.S. State visit and during her speaking engagement before the United Nations;
- 4) The setting aside of the 1973 Constitution by the Aquino government does not in any way negate the true results of the February presidential elections since the 1973 Constitution was never formally ratified by the people, as pointed out by Mr. Concepcion. The proclamation of the Freedom Constitution and the establishment of the revolutionary government did not erase the results of the February elections thereby vesting Mrs. Aquino and Mr. Laurel a term of six years.
- 5) Mrs. Aquino and Mr. Laurel ran for President and Vice President, respectively, with a six-year term in mind, and that their coming to power through the — direct exercise of the power of the people was not of their own making. The emergence of the revolutionary government was the logical consequence of people power made

possible by the conspiracy of events.

Mr. Rigos stated that he was glad that Mr. Maambong, in his position paper distributed a few days ago, had given the assurance that this Commission could give the President and the Vice-President a fixed term of office and, thereafter, saluted him for confirming this inherent power of the Commission. He pointed out, however, that while Mr. Maambong is of the opinion that this Commission should not fix the term in view of its legality, he stated that he would allow Mrs. Aquino and Mr. Laurel to stay until June 30, 1992 instead of February 25, 1992 to synchronize the elections.

(At this juncture, the Presiding Officer relinquished the Chair to the Honorable Gregorio J. Tingson.)

### **REMARKS OF MR. MAAMBONG**

Mr. Maambong spoke against the proposal granting the incumbent President and Vice-President a 6-year term without the benefit of an election or a referendum. He stated that he is in favor of calling for national elections for President and Vice-President after the ratification of the Constitution.

Mr. Maambong begged the indulgence of the Chair to allow him ample time to finish his statement should he exceed his time limit.

At this juncture, Mr. Maambong requested that in consonance with parliamentary practice, the position paper adverted to by Mr. Rigos which he had prepared be inserted into the records so that he could merely refer to its contents in the process of his speech, which request was granted by the Chair.

Mr. Maambong argued that the issue at hand had been joined, the first pleading of which had been filed when Messrs. Ople, Natividad and himself presented before the Commission proposed Resolution No. 458, to wit:

Section \_\_\_\_\_ The term of the incumbent President and Vice-President shall be deemed to have begun on 25 February 1986 and shall end upon the call of elections.

Mr. Maambong, however, stated that said proposed Resolution was not accepted by the Committee and instead presented Section 7 which is incorporated in Committee Report No. 38, to wit:

The incumbent President and Vice-President shall hold office for a term of six years starting at noon of February 25, 1986 until noon of February 25, 1992, subject to synchronization of elections.

As a Member of the Committee, Mr. Maambong stated that he did not press the issue in the Committee so as not to delay the proceedings. He pointed it out, however, that the issue is of transcendental importance and ultimately it would be brought forward and subjected to a full-blown debate before the Constitutional Commission, the Members thereof being the final arbiter on the matter.

He stated that he had been given time in ventilating the issue during the public consultations in Cebu City, Dumaguete City, Ozamis City and other areas of the country. He also mentioned that in a recent UP Alumni Association Institute gathering in Cagayan de Oro City, the issue became a major point of discussion during the open forum. He also stated that he had discussed the issue in news interviews, speaking engagements and talk shows and, not satisfied with his oral arguments, he filed a memorandum on the term of office of the incumbent President and Vice-President, which had been distributed to the Members through the media, particularly through Mr. Foz, who was instrumental in publishing said position paper in the Manila Bulletin issue of October 2, 1986.

Mr. Maambong pointed out that Proclamation No. 3, otherwise known as the Freedom Constitution, states that this is a revolutionary transitional government and there is no other manner of transition from a revolutionary government to a constitutional democracy than by elections. He stated that the Freedom Constitution prescribes

for the drafting, adoption and ratification of a new Constitution and the holding of national and local elections.

Mr. Maambong quoted President Aquino in her speech before the Joint Session of the United States Congress, to wit:

"A zealously independent Constitutional Commission is completing its draft which will be submitted after this year to a popular referendum. When it is approved, there will be local and national elections. So, within a year from a peaceful but national upheaval that overturned a dictatorship, we shall have returned to full constitutional government."

Adverting to what Vice-President Laurel had stated in the issue of the Philippines Daily Express, dated September 22, 1980, Mr. Maambong stated that Mr. Laurel had indicated that President Aquino had agreed to hold local elections within sixty days after the plebiscite even if the draft Constitution is not ratified and that he and President Aquino are willing to submit themselves to another presidential elections if that is what the people want. He further stated that Mr. Laurel was also quoted to have said that the President agreed that early local elections is the best means of diffusing the current instability in local governments brought about by the appointment of unpopular officers-in-charge.

Mr. Maambong, likewise, quoted the statement of Natural Resources Minister Ernesto Maceda in the issue of the papers of September 19, to wit:

"President Aquino and Vice-President Laurel should submit themselves to a new election to settle once and for all the chime of the so called Marcos loyalists that they do not enjoy popular support, citing the recent survey which showed that Mrs. Aquino's popularity rating has gone up to 82% which means that only 18% of the voters won't vote for Cory if new elections were held now because of her undoubted sincerity and concluding that Mrs. Aquino and Mr. Laurel can bear any presidential ticket in an election."

He also adverted to the statement of Defense Minister Juan Ponce Enrile when he stated that the holding of presidential elections would solve the problems of leadership and national instability. Furthermore, he quoted the statement of Mr. Enrile when President Aquino abolished the 1973 Constitution and the Batasan, to wit:

"She started to govern the country by virtue of the February EDSA revolution, and changed the political structure thus creating in the minds of many people that the Philippines is not EDSA, and EDSA is not the Philippines."

Adverting, likewise, to the issue of Pahayagang Malaya, Mr. Maambong stated that Mr. Enrile was also quoted to have said that the holding of an early presidential election would greatly stabilize the country and thereafter declared that he would bet for such move if there is a clamor from the people. He also stated that Mr. Enrile traced the country's political instability to the abolition of both the 1973 Constitution and the Batasang Pambansa by the Aquino government after the February military rebellion which, he stated, is the cause of the seeming instability of the government.

Finally, Mr. Maambong quoted the statements of former Opposition leader, Mr. Edmundo B. Cea, published in the Manila Times, dated June 20, 1986. wit:

"To completely wipe out the slightest stain that the Aquino government is revolutionary, it is imperative that all elective officials under the Constitution being drafted by the Constitutional Commission should receive the mandate of the people in an election. The proposal to ask the people in a referendum whether they want the President and the Vice-President to continue in office for a given number of years will not serve the purpose. It will be like the practice in communist states like Russia and China where only one slate of candidates is submitted to the people. The election for President and Vice-President should be open to all qualified candidates."

Mr. Maambong stated that, to the extent of being branded as a "balimbing", he would agree with Mr. Enrile that President Aquino is a very popular person and that she and Mr. Laurel are a team to beat in a presidential election. He stated that he even entertained serious doubts whether anyone in his right mind would run against them.

He then inquired on the rationale of depriving the President and the Vice-President of a chance to settle the legitimacy issue and show to the whole world that they won in an electoral battle. He suggested that the people should be allowed a chance to resolve this issue in a referendum as proposed in Resolution No. 111 authored by Mr. de los Reyes.

Mr. Maambong pointed out that, while it is within the power of the Constitutional Commission to give the incumbent President and Vice-President a fixed term of office, he is of the opinion that this Commission should not do so on moral grounds because the Members thereof are appointees of the President. He opined that while the Members have acted without any hint of intervention from the appointing authority and have been thoroughly independent in their actuations, giving a fixed term of office without the people's participation would place the Members in an accusing light of partiality and bias and it would exhaust all their energies to explain this to the people. He then expressed the fear that some sectors might use this as an argument against the ratification of the Constitution and that if this well-considered Constitution would fail ratification, all those tireless efforts, sleepless nights and sacrifices shall have been in vain.

Mr. Maambong concluded that over the years, he had gone to many places and had performed all sorts of jobs wherever the winds of fate would take him in a never-ending struggle to survive, but he had never been more proud than to serve in the Commission. He stated that even as he worked in the midst of disagreements on political issues, social theories or economic solutions, he could feel that the members were welded into a unifying and beautiful oneness in their love of country. He stated that it has been his pleasure to be associated with colleagues who have exhibited generous hearts, worthy and honorable spirits, high sense of responsibility ethical virtues and cultured intellects, ready at all times to seek the truth, and in no way ask with prejudice but only after a thorough reflection. In this regard, he refused to believe that the voice that sometimes rose to their highest pitch in incriminations against the previous administration could not, in a demonstration of goodwill and sobriety bind harmoniously in giving credence to his cause and that if ever there would be a vigorous objection, it could come only from a deep-seated conviction, consistent with laudable independence in a democratic environment.

With respect to the proclamation in the Batasan of the former President and Vice-President, Mr. Maambong stated that he would have argued that the country did have an election and that President Aquino and Vice-President Laurel won in that election, however, they were not proclaimed by the Batasang Pambansa because of the results canvassed on the basis of the certificates of canvass submitted by the Board of Canvassers of the provinces, cities and districts which were the product of rampant vote-buying, terrorism, cheating and other electoral frauds, thus resulting in a revolution by the people. He contented that this issue could be debated endlessly, but the fact remains that they were not proclaimed nor did they take their oath of office on the basis of the canvass results. He stated that he did not say that they did not win in that election but that they were not proclaimed under the provisions of the Constitution and the laws then in effect. And as an alternate member of the Board of Tellers, he stressed that, if there were frauds and irregularities in that elections, the Batasang Pambansa had nothing to do with them because its duties were limited to the canvassing of votes reflected in the certificates of canvass submitted before the Body, all of which were objected to by the representatives of both parties. He maintained that the Board of Tellers applied the provisions of the Constitution, the Omnibus Election Code, the Special Presidential and Vice-Presidential Law and the rules and regulations of the Commission on Elections in the performance of its functions as a canvassing unit.

Mr. Maambong opined that an electoral protest could have been filed before the Presidential Electoral Tribunal,

but the revolution occurred and clearly, the incumbent President and Vice-President took office not because of the results of the elections but because of the revolution which they themselves did not even plan; and for that immutable fact, a revolutionary government had to be declared in Proclamation No. 3.

As Members of the Constitutional Commission appointed from the opposition Partido Nacionalista ng Pilipinas, he stated that there is a possibility that they would be misunderstood in their stand. He then gave the assurance that they are not guided by political considerations in this issue or in other issues presented before the Commission, in fact, they have contributed their efforts, time and energy in a purely nonpartisan and objective manner befitting the framing of the fundamental law of the land.

Mr. Maambong also stated that they had expressed willingness to join Mr. de los Reyes in his resolution so that the incumbency of President Aquino and Vice-President Laurel would be given legitimacy through a referendum, because they felt very strongly that if this issue is resolved by the people themselves, it would contribute to a complete transition to constitutional democracy which is not only the desire of the Filipino people but also of the President herself.

On the query on the rationale for accepting their appointments to the Commission if they do not believe in the legitimacy of the Aquino government, Mr. Maambong stated that they believe in the legitimacy of the Aquino government in the context of its own declaration as a revolutionary and transitional government. He pointed out that it is a government in place and there is no point in questioning its existence as it has been accepted by the family of nations. He stated that President Aquino and Vice-President Laurel are highly credible and very popular with the people, but these do not make the government any less revolutionary. In this connection, he stressed that the Constitutional Commission should make good use of its authority to provide an opportunity for the incumbents to put to rest the legitimacy of their positions and that it would be a disfavor to them should the Commission simply fix their term of office, thereby making the Commission extremely vulnerable to attack on its much vaunted independence.

Finally, Mr. Maambong reiterated that only a national election or, at the very least, a referendum could strengthen the term of office of the incumbent President and Vice-President.

He then expressed confidence that the Members of the Commission, regardless of ideology and persuasions, would consider this matter seriously and objectively for the sake of the country and its people.

### **REMARKS OF MR. GUINGONA**

Mr. Guingona stated that he was supporting the proposal that the incumbent President and Vice-President shall hold office for a term of six years until 1992, the reason being that the incumbent

President and Vice-President had won in the snap election of February 7, 1986. He pointed out that no less than the Minister of National Defense was quoted as saying that he was opposing Mr. Marcos because he was convinced that Mrs. Aquino and Mr. Laurel had won the election, and the people who were called upon to help the military during the February Revolution responded for they evidently shared that view. He contended that even at present, majority of the people believed that Marcos lost and Mrs. Aquino won in that snap election. He thanked Mr. Maambong for citing the clear sentiment expressed by the people in more than 50 public hearings affirming the victory of President Aquino and Vice-President Laurel and that Mr. Marcos and Mr. Tolentino won only in the Batasang Pambansa and whose victory was a victory by asterisks.

Mr. Guingona stated that no one disputes the fact that the present government is a revolutionary government and it is unique in the sense that the change of government was; brought about by an election regularly called under an enforceable Constitution and by a peaceful revolution with hardly any bloodshed. He maintained that one should

not liken the present revolutionary government with that of President Aguinaldo or other revolutionary governments which were established through armed rebellion. He argued that this revolutionary government is functioning under a Constitution which has retained the inalienable rights of the people granted in the 1973 Constitution.

Mr. Guingona explained that Section 3, Article I of the Freedom Constitution superseded Article IX on the Prime Minister and the Cabinet; Article XVI on amendments; Article XVII on the Transitory Provisions while the Bill of Rights of the 1973 Constitution were not only retained but respected by the Aquino Government. He maintained that the present government, though revolutionary, is also a constitutional one.

He explained that Proclamation No. 3 speaks of transition to a new Constitution and the change was effected primarily to "completely reorganize the government and eradicate unjust and oppressive structures and all iniquitous vestiges of the previous regime" which change, he opined, should not affect the legitimate claim of the incumbent President and Vice-President to their respective positions. He stated that if in some future time, a new Constitution is formulated and ratified during the midterm of the then incumbent President and Vice-President, such ratification should not and would not affect their term of office. In this regard, he inquired as to why the change in the Constitution would affect the term of office of the incumbent President and Vice-President.

Replying to Mr. Maambong's claim that Proclamation No. 3 mandated the holding of nation elections, Mr. Guingona maintained that the Proclamation should be read in its entirety so that one would know that presidential and vice-presidential elections are not contemplated therein.

On Mr. de los Reyes' statement that the election of the President and Vice-President is a political question, Mr. Guingona agreed that it is indeed a political question which had been decided by the people in favor of the legitimate claim of the President and the Vice-President to their positions.

Mr. Guingona described the assertion of those who are saying that the President and the Vice President should submit themselves to an elections whether the Constitution is ratified or rejected, as a no-win situation. He maintained that there is no reason for President Aquino and vice-president Laurel to run for an election if the Constitution is ratified considering that they had been duly elected last February 1986 under the 1973 Constitution, be it considered a *de jure* or *de facto* Constitution. He stressed the fact that it was the Aquino government which initiated the drafting of a new Constitution.

On the claim that there are no statistics to support that President Aquino and Vice-President Laurel won the election, Mr. Guingona stated that such claim may be valid if one were to rely on the COMELEC electoral results which, he described, as fraudulent and dishonest. He cited the NAMFREL result as more credible, which result showed a clear trend that President Aquino won with 7,909,320 against 7,356,599 for Marcos while Vice-President Laurel won with 7,658,570 against 6,978,702 for Tolentino.

Mr. Guingona pointed out that the legitimacy of the Aquino Government is affirmed by the acclamation of the people not only during the peaceful revolution of February, but up to the present as well. He stated that this is further affirmed by the recognition and acceptance by the community of nations including the United States and Russia.

On the assertion that President Aquino should submit herself to an election in case the draft Constitution is not ratified, Mr. Guingona maintained that it is not President Aquino who drafted it but the Members of the Constitutional Commission, and should there be any blame, it should be the membership of the Commission. He stated that even if the Members were appointed by President Aquino, the fact is that all Members were appointed pursuant to the provision of Proclamation No. 9 and upon nomination of political parties or aggroupments of

parties. He further pointed out that President Aquino, in her speech before the Commission, promised that she would not in any way interfere with the work of the Commission, which promise, he stated, has been faithfully kept. In this regard, he asked how some people could blame her for the rejection of the draft Constitution and as a consequence require her to submit to an election.

Finally, Mr. Guingona opined that there is also the non-legalistic and pragmatic consideration that at a time when the nation is confronted with a serious insurgency problem, it may not be prudent to be changing government because the insurgents may take advantage of the campaign period to destabilize the government.

### REMARKS OF MR. BENZON

In his remarks, Mr. Benzon recalled that in November 1970, he was one of the delegates elected to the Constitutional Convention. He recounted that as the delegates started rewriting the fundamental law, a black knight in September 1972 rode into the lives of the Filipinos promising a new and better life under a new society, lulled a number of the delegates into cooperation thus completing the Constitution. As the years rolled on, and as human frailties tightened their grip on him, this knight, he stated, became truly black in mind and spirit and diluted the Constitution with his own formulated concoction which enshrined him into a definite direction of total dictatorship. He stated that the Philippines and its people were then made to swallow a way of life and a set of rules unacceptable to them. He pointed out that while some managed to spew it out, others unwillingly and helplessly swallowed it as they prayed for liberation. It was then he recalled, that a Constitution was imposed upon the people, interpreted at will by a dictator and his cohorts and willingly syncopated by a controlled Judiciary. Then came the decision to hold a snap election and he pointed out that the manner and procedure thereof were decided only by one man and the people had no choice. He stated that the Opposition at that time decided to participate and they won but that victory was not meant to be realized under the dictator's own rules which he himself violated to vitiate the people's will, and democracy was slaughtered once again.

Mr. Benzon stated that the death of truth gave birth to justice and the will of the entire nation infused life into democracy and resurrected it from the dead. He pointed out that people power, simultaneously demonstrated nationwide, showed the world that sheer determination, unselfish unity, a resolve to die for one's country and an absolute belief in Almighty God can capture back democracy and enshrine liberty and justice without violence and bloodshed. He stated that a clear and direct expression of the people's sovereign will installed President Aquino and Vice-President Laurel, which installation led to the promulgation of the Freedom Constitution and the issues, to wit: 1) Are President Aquino and Vice-President Laurel legitimate possessors of power? 2) Are they revolutionary officers and, therefore, must be subjected to a new mandate under the new electoral processes? (3) Is the Commission fixing a term for them? and 4) Would their inclusion in this Article destabilize the government?

On the first question as to whether they are the legitimate possessors of powers, Mr. Benzon maintained that they were the duly elected officials in the February election that no less than Defense Minister Enrile, in an unguarded and spontaneous declaration at the beginning of the revolution, stated that Corason Aquino and Salvador Laurel were the truly and duly elected President and Vice-President respectively, and they continue to be recognized by the family of nations as the legitimate officials of the Republic. He maintained that the Body need not belabor the veracity of this fact because everyone is privy to the massive frauds employed by the ruling party in violation of its own rules to thwart the true expression of the people's sovereign will.

On the question of whether they are revolutionary officers in a revolutionary government, Mr. Benzon stated that it is revolutionary in the sense that they were installed directly by the sovereign will of the people and that the Freedom Constitution repudiated the obnoxious provisions of the 1973 Constitution, portions of which were never

intended by the delegates who framed it but were formulated concoctions of the dictator to entrench and perpetuate himself in power.

Mr. Bengzon pointed out that the Constitution of 1973 was an imposition and the people had no choice. He stated that there was no way under which the people could operate and having won the elections under that Constitution did not mean its total acceptance. He stressed that winning despite all odds is an irreversible fact and that victory was promulgated by a revolution caused by the deliberate failure of the people's representatives to proclaim the truly victorious.

In this regard, Mr. Bengzon maintained that the draft provision does not legitimize President Aquino or give her a fix term but reiterates her legitimacy and eliminates any doubt as to her six-year term with a holdover until June, 1992 when the newly elected President shall then take over.

On the question on whether this would destabilize the government, disappoint the people and cause them to be listless and restless, Mr. Bengzon stated that while warnings have been aired that such consequences shall take place should the Commission insist on the draft provision, the contrary would be true because it would erase speculations from the minds of the innocent and dash evil thoughts from the minds of the wicked.

For those who urge the President to run for election to resolve the issue, Mr. Bengzon stated that the Body is dealing with a fundamental principle, a fact that hits at the very core of current history. He stressed that there is no room for compromise and there is no place for convenience.

Finally, Mr. Bengzon stated that the present government is revolutionary in origin as it was installed by a bloodless revolution, democratic in essence as the President was elected by the people and transitional in character in that the Freedom Constitution in force is temporary in nature. He then urged the Body to vote for the draft provision which is the center of the country's political survival.

### **REMARKS OF MR. NATIVIDAD**

Mr. Natividad stressed that remarks in opposition of the draft provision are not meant to cast aspersion on the President or the Vice-President. Adverting to Proclamation No. 3 which established the irrevocable position of the incumbent President and Vice-President, Mr. Natividad noted that such proclamation seems to imply that the source of their mandate is the February revolution and not the February election.

Mr. Natividad maintained that since the President and the Vice-President derive their mandate from the revolution, it follows that such mandate is coterminous with the revolutionary government which ends upon the ratification of the new Constitution, thus ending the mandate of the incumbent President and Vice-President to govern. He further maintained that upon the ratification of the Constitution, there would be a totally new government and if the incumbent President and Vice-President wish to continue in office, they should abide by the new Constitution by seeking such mandate in an election.

Mr. Natividad pointed out that Section 4 of the Article on the Executive provides for the Office of President and Vice-President and the manner of filling it up is by election and not by a plebiscite. He pointed out that if the national as well as the local officials shall be elected by direct vote of the people, then the draft provision is inconsistent with the moral posture of the new Constitution and that of the new government. He opined that the provision brings to mind a similar provision in the Pakistan Constitution, for which reason, Pakistan has never seen the light of day.

He stressed that endless demonstrations and rallies reflect the objections of the nation to the situation. He noted that it has been said that the endorsement of the incumbent President is vital to the ratification of the Constitution

and this perception, he opined, is that the incumbent President is popular, the reason being that she has not evinced of the usual grit power.

But, Mr. Natividad opined, Mrs. Aquino may not openly campaign for the ratification of the Constitution for "delicadeza" because its approval would, in effect, also means that she would continue in office and due to the high moral standard with which she started her administration she may consider this as self-serving.

He added that a separate question asking for her continuance in office should not be fielded because there is a possibility that more votes may be cast in favor of the Constitution rather than the affirmative votes for her continuance in office and if that would happen, then it is feared that her popularity would suffer although this would not result in anything catastrophic because the Constitution is not a political rival and it is nonpartisan. He opined that the new Constitution is more dynamic and responsive compared to the 1935 and 1973 Constitutions and for this reason the people would likely approve it, while the President who is a politician and has a built-in opposition would likely garner lesser votes.

He then appealed to the Body to allow a separate question asking the people whether they would like the President to continue in office as such.

### REMARKS OF MR. OPLE

Mr. Ople noted that whenever the Body is faced with difficulties, the Members always extend understanding and liberality to those who hold the minority view.

He opined that the Transitory Provisions which should merely be incidental to the Constitution are now looming as the foremost concern of many Filipinos because of the provision fixing the term of Mrs. Aquino and Mr. Laurel to six years and becoming the focal point of a major controversy that could even overshadow the debate on the merits of the draft Constitution itself.

Mr. Ople stated that Mrs. Aquino's Government is legitimate but she herself defined the character and limits of the legitimacy. He recalled that when she assumed power after the February Revolution she was faced with two choices, namely: 1) to govern under the 1973 Constitution under which the elections of February 7, 1986 took place and which conferred a six-year term for the President and the Vice-President subject to an official proclamation by the Batasang Pambansa; or 2) set aside the Constitution and establish a revolutionary provisional government with its own interim Constitution. He stated that she opted for the latter but adopted 14 of the 17 Articles of the 1973 Constitution and made them the frame-work of her Proclamation No. 3 which she called the Freedom Constitution.

Mr. Ople stated that Proclamation No. 3 established the revolutionary government, claiming as its source of authority not the results of the February elections but the direct mandate from the people through the revolution at EDSA. He pointed out that according to Justice Minister Gonzales this government is "revolutionary in origin, democratic in essence, and transitory in character."

He opined that this revolutionary government stipulated its own self-destruction under the Freedom Constitution by calling for a Constitutional Commission later implemented through Proclamation No. 9 and with deliberate haste the Commission was constituted on June 2, 1986. He added that as soon as the Commission was constituted, it cut its own umbilical cord from the appointing power according to Mr. Rodrigo; and freed itself from any prior restraints according to Mrs. Muñoz Palma.

Mr. Ople stated that this act of Mrs. Aquino is without precedent in the modern world because she assumed revolutionary powers and gathered into her hands virtually all the powers of the three branches of government but

she also immediately surrendered them back to the people through a new Constitution within one year. He stressed that the time frame was important because it justified the appointment of a constitutional Commission while an elected Constitutional Convention, if 1971 was a gauge, would take at least two years to finish a draft.

He pointed out that great authorities on constitutions, from Aristotle to Locke perceived a constitution as preceding the formation of a State, or at least laying down its constitutive principle. He added that it marks the inauguration or at least the renewal of a democratic policy, to the extent that if it is the result of a revolution, the leaders of that revolution should submit themselves to a popular mandate to be invested with constitutional regularity after the adoption of the Constitution.

Mr. Ople stressed that such regularity cannot be conferred by the Constitution itself; it is earned through a popular mandate. He added that Mrs. Aquino could have chosen to govern under the 1973 Constitution; she could have taken her oath unequivocally under that Constitution; she could have been proclaimed by the Batasang Pambansa; she could have taken the advice of most of her advisers like Mrs. Muñoz Palma and Mr. Enrile to preserve her claim to a full constitutional regularity from the start, including a six-year term granted by the 1973 Constitution to the duly elected and proclaimed President and Vice-President. He stated that the fact is, she did not do so. He stated that in Proclamation No. 3, she invoked the extraordinary people's action of February 22 to 25, 1986 as the source of her authority to govern. She said that the people's action at EDSA was carried out in defiance of the 1973 Constitution while Mr. Enrile whose defiance actually triggered that uprising never agreed with her and even asserted that at least the troops who mounted that revolt wanted to uphold rather than set aside the 1973 Constitution.

Mr. Ople added that recently at the Kapihan sa Maynila, Mr. Enrile stated that "the people at EDSA were not synonymous with the Filipino people" and since Mrs. Aquino decided to govern under revolutionary government she cannot now avoid the consequences of such a choice; she cannot claim an automatic six-year term under a Constitution which she has disregarded and although she claims that there are millions of Filipinos who believe that she won the elections there are million others who think otherwise. He opined that the Filipinos would never know who won the elections unless the ballot boxes are reopened under the scrutiny of a fully impartial tribunal. However, he opined that the fact that Mrs. Aquino, in her Freedom Constitution which defined- her revolutionary government, did not invoke the elections of February 7 as the source of her authority; that she was not proclaimed by the Batasang Pambansa without which the election is legally void; and by virtue of her declaration of a revolutionary government, she cannot now claim an automatic six-year term under a Constitution which she has abrogated.

He stated that the Body cannot assume the competence to grant Mrs. Aquino a six-year term as though it could substitute its will for the will of the people in a valid election. He added that it is not also within the Body's power to substitute its will to that of a Presidential Electoral Tribunal which under, the 1973 Constitution had sole power to adjudicate disputes with respect to Presidential elections. He stressed that the task of the Body is not to pass judgment on the elections of February 7, 1986 but to prescribe how the nation may choose its leaders in the interregnum between a revolutionary and a regular constitutional government. He added that the Constitution the Body is drafting provides for the election of Members of Congress and the local officials, yet it failed to provide for the election of the President and the Vice-President whose terms have to be coterminous with the revolutionary government that self-destructs once the new Constitution is ratified.

Mr. Ople also stated that a government spokesman recently said that if the new Constitution is not ratified then the country would revert to a revolutionary government under the aegis of Proclamation No. 3 without any term for the office of the President and the Vice-President which implies that they have no definite term now and the Body is called upon to provide it. He asked, however, how the mere appointees of the President could provide for it

when the people may judge it as an act of compromise of the Body's independence. He opined that the sanctity of the new Constitution, even assuming its ratification, would forever be marred by the doubts raised in Section 7, for the provision by itself could open the wounds and the traumas of a past conflict and threaten the very political stability which it sets to guarantee. He added that it is for this reason that he urges a presidential election upon the adoption of the new Constitution which may be simultaneous with the national election that the Body already approved for May 11, 1987.

Expressing deep appreciation for President Aquino's call to serve in the Constitutional Commission, he stated that the trust was repaid with the highly independent, responsible and indefatigable manner with which work was shared with the Commission.

Finally, he appealed to the Members to harken to the voices of their conscience in facing the question.

### **SUGGESTION OF MR. CALDERON**

At this juncture, Mr. Calderon suggested that the speakers limit their speeches to five or ten minutes each.

### **REMARKS OF MR. RAMA**

Mr. Rama commented that the major arguments of those who oppose the provision, even if legalistic, would have been invested with much impact and great persuasion, if the setting were ordinary.

He stated that legal distinction could be made between a constitutional government and a revolutionary system; between February 7, election day, and February 25, the day of the revolution, as a time frame for Cory Aquino's assumption of the presidential mantle.

He stated that those who passionately argue for the need of a new election and a new term for the President had based their arguments and underpinnings out of the ordinary. He noted that the provision speaks of an electoral cheating known throughout the whole world, of a peaceful revolution unmatched and unparalleled in the history of mankind and of Cory Aquino's proclamation as President by the nations of the world.

He stated that the final and conclusive proclamation of President Aquino is the verdict of the whole world that no nation would be willing to accept the deposed dictator and his wife even as refugees.

He observed that one of the incontrovertible facts of life in the world today is that President Aquino is the legitimate President of the Philippines and for the Filipinos to question it would be something that the world would not be able to understand.

He stressed that he would not want to be a party to the diminution of the Filipino people for which reason, he expressed support for the provision.

### **REMARKS OF MR. GARCIA**

Speaking in favor of the provision, Mr. Garcia stated that the Philippine political experience is unprecedented, unedited, though admittedly unfinished, yet, unique, legitimate and real.

He stated that Corazon Aquino was installed President by the sovereign will of the people, expressed through the electoral verdict of the February 7 elections, and confirmed in the popular revolution which defended the clear mandate that she had won.

He opined that the Philippine experience was not largely a snap revolution limited to the National Capital Region because the long struggle against injustice, foreign intervention and authoritarian rule began even before martial

law was imposed. He stated that the "parliament of the streets" during martial rule played a decisive role in encouraging the people to resist the dictatorship both in the cities and the countryside, culminating in the massive march to freedom after the assassination of Senator Benigno Aquino on the 21st day of August, 1983; that the popular revolution of February, 1986 was a unarmed resistance of the people in defense of their candidate's victory in an election where the people's vigilant participation opposed massive fraud and terrorism, in defiance of the dictatorship and in pursuit of the task of dismantling the authoritarian structures; and that the decisive factors in the popular revolution were the power of the people, the power of faith and the unwavering leadership of Corazon Aquino who led a non-violent protest campaign and resolutely resisted U.S. pressures for accommodation and compromise.

He pointed out that the two significant factors which sustained and strengthened the defense of the people's unarmed resistance were the post-election statements of the Catholic Bishops' Conference of the Philippines along with those of other faiths which affirmed the loss of any moral basis for the continued existence of the Marcos government; and the Reform Movement of the AFP which paralyzed the repressive forces of the regime.

He underscored that the popular revolution involved the seizure of state power by the people which was essentially a political act, extra-constitutional, but nevertheless, legitimate and real.

He concluded that the basis for the legitimacy of the present government is the sovereign will of the Filipino people, expressed in the most direct and unique manner.

#### **REMARKS OF MR. COLAYCO**

In support of Section 7, Mr. Colayco stated that everybody knows that President Aquino was elected and legitimately chosen President in the February 1986 elections and that said elections were rigged by Mr. Marcos as verified by representatives from all corners of the world. He stated that even Mr. Tolentino knew about this and that he was very embarrassed to go to Malacañang to take his oath.

He stressed that President Aquino was elected under the aegis of the 1973 Constitution and the fact that she established a revolutionary government would not make her election illegitimate and unconstitutional.

On the legitimacy of the Constitutional Commission, he stated that twelve out of the thirteen State Assemblies in the United States did not frame the Constitution by electing the delegates. The questions he noted, on whether the Constitutional Commission is in a position to legitimize the mandate of President Aquino goes back to the basic question of whether her election is legitimate or not.

He stressed that since conscience dictates that President Aquino was duly elected President of the Philippines, the duty to uphold it should be maintained.

#### **REMARKS OF MR. SARMIENTO**

Mr. Sarmiento noted that the arguments advanced in and out of the Constitutional Commission were that if the Body would give the incumbent fixed terms, the revolution would be constitutionalized without benefit of election; that it would be immoral for the Commission to define the same considering that the Members were merely appointed; that the Body's independence would suffer if it settles the term; that the legal, moral and practical step to require the incumbent President and Vice President to go through a new election; and that another presidential election is the best means of achieving the goal of restoring normalcy and stability in the country.

He stated that the primary and sacred task of a Constitutional Commission whether appointed or elected is to frame a document, without fear or favor, to stabilize and enhance the country's political, social and economic

order. He stressed that the Commission has the blanket authority and the plenary power to provide in the Constitution the structures, models and designs that would ensure the country's enduring peace and progress.

He opined that one formula, to accomplish lasting reforms and enduring stability in the country is to fix the term of the incumbent President and Vice-President. He maintained that the Constitution enshrines the people's hopes and fears, the hope that President Aquino should be given a six-year term in the Constitution so that she can finish her program of rebuilding the nation after years of systematic plunder and that no dictator would restore another despotic, iniquitous and unjust regime.

He stressed that the most moral, legal and practical action is to enshrine in the Constitution a provision fixing the term of the incumbent President and Vice-President, as it would recognize the sovereign will of the people.

### **REMARKS OF MR. DE CASTRO**

Speaking in favor of the provision, Mr. de Castro stated that during the February 7, 1986 elections, Corazon Aquino and Salvador Laurel were clearly elected by majority of the Filipino people, with the miracle at EDSA to prove it.

He informed that based on reliable sources, the KBL leadership offered Mrs. Aquino and Mr. Laurel the offices they were elected to as a condition for the retention of the Batasang Pambansa and that had she agreed, she and Mr. Laurel would have been proclaimed winners.

Adverting to the cases of Lawyers' League for a Better Philippines vs. President Corazon C. Aquino, et. al.; People's Crusade for Supremacy of the Constitution, et. al. vs. Mrs. Corazon Aquino, et. al., and Councilor Chifton U. Ganay versus Corazon Aquino, et. al., he stated that the Aquino Government is de jure in nature. He noted that the community of nations have recognized its legitimacy.

He stated that should another election be held, Mr. Marcos could run as a presidential candidate under Section 2 of the Article on the Executive, but he would not be allowed to come back to campaign.

On the other hand, he stated that should Mr. Marcos be allowed to return, another revolution might occur, noting that the AFP may still be divided because of some loyalists in its ranks, and that he could use all his illegal wealth to destabilize and destroy the present government.

Finally, he appealed to the Members to think of the welfare of the country and not to allow it to fall into chaos and eventual disintegration.

### **REMARKS OF MR. NOLLEDO**

Speaking in support of the Committee Report, Mr. Nollado recalled that the nation held a snap election for President and Vice-President on February 7, 1986 characterized by frauds, the nature and scope of which were unparalleled in human history. He stressed that it was the most dishonest election in the country characterized by snatching of ballot boxes, falsification of ballots and certificates of election returns, disenfranchisement of voters by juggling the lists of registered voters, registration of flying voters, and money from the National Treasury which flowed like honey into the wide pockets of public officials and politicians whose allegiance and loyalty were pledged to those who were willing to share the fruits of grand larceny of the people's funds and resources.

Mr. Nollado also stated that the bases of the so called proclamation of the false victors by the rubber stamp Batasang Pambansa were the certificates of election results, most of which had spurious appearances, erasures, intercalations, and many more, and that the promise of the then Speaker to hear the beleaguered opposition members of the Legislature on those adulterated certificates before proclamation would proceed was not fulfilled,

for railroading was part of the orchestrated plan to forthwith proclaim the illegitimate winners.

He then inquired on the reason for the agonizing delay in the counting of votes when previous elections and referenda would need only two or three days to complete counting of more than twenty million votes. Moreover, he inquired as to the whereabouts of the members of the Commission on Elections at that time, when the COMELEC converted itself into a one-man body of Mr. Opinion deceitfully extrapolating the results of the election.

Mr. Nollado noted that all these frauds, deceits, falsehoods and lies were patently made before the eyes of the whole world and that Mrs. Aquino and Mr. Laurel were victims of these electoral frauds, deceits, intimidations and violence and, therefore, they were cheated in that February 7 election. He observed that even the entire Batasang Pambansa, which wrongly proclaimed Messrs. Marcos and Tolentino, knew who won in that election as evidenced by the fact that many Members of the legislative body manifested the desire to correct their mistake on condition that President Aquino would retain the Assembly.

He pointed out that when Mr. Felipe refused to answer Mr. Ople's question as to who won the election of February 7, 1986, he was just being courteous because the answer was obvious and, therefore, for the Committee on Transitory Provisions to recognize the victory of Mrs. Aquino and Mr. Laurel is a manifestation of justice in its highest order. He stated that anyone who says that the Committee Report is immoral is guilty of political blackmail in the form of a gratuitous claim that the people would not ratify the Constitution should the Report be favorably acted upon.

Mr. Nollado stated that the proximate assumption to office of Mrs. Aquino and Mr. Laurel was their victory in the February 7 election because their ascendancy to office was made possible by the most dramatic episode in Philippine history, the now historic EDSA revolution, under the

guiding hand of God and with the sweetest and most loving intercession of Mary, our Blessed Mother. He then narrated the events that took place in that historic event in which he took part. He affirmed that the EDSA revolution was the means by which the victory of Mrs. Aquino and Mr. Laurel could be transformed into reality and was the immediate cause of their lawful ascendancy to office.

He pointed out that the setting up of the revolutionary form of government was most appropriate to dismantle the illegal and unwanted institutions implanted by Mr. Marcos to perpetuate himself in power, leaving behind in its wake an economic turmoil, a bankrupt treasury, a graft-ridden government, a self-centered Constitution and a huge foreign indebtedness. He stressed that there is an urgent need to recover hidden and ill-gotten wealth freed from obstruction bordering on plain legalism.

Mr. Nollado underscored that Mrs. Aquino is God's cherished gift to the Filipino people at a time of their struggle for emancipation from the repressive regime of the Marcoses; and for the Commission to burden that gift with new elections or separate referendum would be pure heresy.

Finally, Mr. Nollado stated that if the reported coup d'etat by Mr. Enrile and his group were successful, the country would have a military dictatorship. However, he noted that with the assumption of Mrs. Aquino and Mr. Laurel through people power in a different milieu which God so willed, the country regained its freedom, and democracy is once more restored. He then urged his colleagues to nourish and invigorate democracy under the stewardship of Mrs. Aquino and Mr. Laurel.

### REMARKS OF MR. VILLACORTA

Mr. Villacorta supported Section 7 fixing the term of office of the President and Vice-president for six years starting at noon of February 25, 1986 until noon of February 25, 1992. As held by the Supreme Court in three cases, namely, GR Nos. 73748, 73972 and 73990, Mr. Villacorta stated that the people have accepted the government of President Corazon Aquino as one which is in effective control members of Congress shall be on the second Monday of May.

Upon request of Mr. Maambong, Mr. Davide read the new Section 7, to wit:

THE TERM OF OFFICE OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT ELECTED IN THE FEBRUARY 7, 1986 ELECTIONS, SHALL END AT NOON OF JUNE 30, 1992.

THE FIRST ELECTION UNDER THIS CONSTITUTION FOR THE PRESIDENT AND THE VICE-PRESIDENT SHALL BE HELD ON THE SECOND MONDAY OF MAY 1992.

### SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 8:14 p.m.

### RESUMPTION OF SESSION

At 8:16 p.m., the session was resumed.

### WITHDRAWAL OF THE SECOND PARAGRAPH

Upon resumption of session, Mr. Davide did not insist on the second paragraph in view of the understanding that there is no specific date of the election in the Article on the Executive. In view thereof, he proposed that Section 7 would read:

THE TERM OF OFFICE OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT ELECTED IN THE FEBRUARY 7, 1986 ELECTION, SHALL END AT NOON OF JUNE 30, 1992.

Mr. Monsod noted that the provision as amended, would give rise to some problems in the sense that the term of the President is six years and there might be a gap in the formulation if the six-year term and the four month extension are not given recognition.

### SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 8:19 p.m.

### RESUMPTION OF SESSION

At 8:27 p.m., the session was resumed.

Upon resumption of session, Mr. Suarez read the reformulated version of Section 7, as proposed by Mr Monsod and the other proponents, to wit:

SECTION 7. THE SIX-YEAR TERM OF THE OFFICE OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT ELECTED IN THE FEBRUARY 7, 1986 ELECTION IS, FOR PURPOSES OF

SYNCHRONIZATION OF ELECTIONS, HEREBY EXTENDED TO NOON OF JUNE 30, 1992.

However, Mr. Guingona proposed to reword the section so that it would read as follows:

THE SIX-YEAR TERM OF THE OFFICE OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT SHALL END ON FEBRUARY 25, 1992, THEN IT SHALL BE EXTENDED FOR PURPOSES OF SYNCHRONIZATION OF THE NATIONAL ELECTIONS TO NOON OF JUNE 30.

Mr. Monsod did not accept the proposal in order not to go into the details of the February 7, 1986 elections but merely to acknowledge that she won it and there is a six-year term attached to it and for purposes of synchronization it would be extended to June 30.

Mr. Guingona withdrew his proposal with this understanding.

Mr. Monsod stated for the record that the incumbent President and Vice-President being alluded to are President Corazon C. Aquino and Vice-President Salvador Laurel.

Mr. Ople stated that he, together with Messrs. Maambong, Natividad and de los Reyes is of the opinion that in adjudicating the issue of the February 7, 1986 elections in the provision, the Body was acting on a very unsure and questionable basis.

#### **APPROVAL OF THE REFORMULATED SECTION 7**

Thereafter, the reformulated version as read by Mr. Suarez was submitted to a vote, and with 34 Members voting in favor, 4 against and two abstentions, the same was approved by the Body.

Mr. Monsod stated that the list of coauthors of the proposal would be submitted to the Secretariat.

At this juncture, Mr. Bengzon requested for a suspension of session.

Mr. Suarez requested Messrs. Davide, Concepcion and Tadeo to discuss their proposals with the Committee.

#### **SUSPENSION OF SESSION**

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

It was 8:38 p.m.

#### **RESUMPTION OF SESSION**

At 9:33 p.m., the session was resumed with the Honorable Adolfo S. Azcuna presiding.

Upon resumption of session, Mr. Suarez inquired if Mr. Davide would insist on his proposed amendments.

#### **WITHDRAWAL OF MR. DAVIDE'S AMENDMENTS**

Thereupon, Mr. Davide withdrew his proposed amendments as contained in Item Nos. 3, 4 and 5 of the list of pending provisions.

#### **PROPOSED AMENDMENT OF MR. TADEO**

Explaining Item No. 6 of the list of pending provisions, Mr. Tadeo stated that it is of common of the entire country so that it is not merely a de facto government but is in fact and in law a de jure government.

He pointed out that there has been a consensus to affirm the six-year term of the incumbent. He opined that the

Commission has the prerogative to confirm the term of the incumbent because under its plenary powers it could propose such provision. He emphasized that what is important is that it is presented to the sovereign people and the latter ratify the same.

### **REMARKS OF MR. PADILLA**

Mr. Padilla stated that Section 7 of the Committee Report recognizes the term of six years which is fully justified by the snap presidential elections of February 7, 1986. He recalled that the snap election was held with several petitions filed with the Supreme Court alleging that the same was illegal because there was no vacancy in the Office of the President since President Marcos refused to resign. He also recalled the hearings before the Supreme Court in which he appeared as amicus curiae, wherein the Supreme Court ruled that the issue was political and not justiciable, and therefore, the election was held.

Mr. Padilla stated that despite massive vote-buying and frauds, President Aquino and Vice-President Laurel were elected in the February 7 snap election, but the Batasang Pambansa issued its proclamation rather arbitrarily and fraudulently disregarding the verdict of the Filipino people.

He opined that the peaceful February 1986 revolution was in support of the election of the incumbent President and Vice-President and was not in support of Mr. Enrile or General Ramos and, the present government is not de facto but de jure for its legitimacy is beyond doubt. He stressed that the Constitutional Commission and the entire world expressly recognize the legitimacy of the Aquino Government.

He reiterated support for Section 7 of the Committee Report.

### **PERIOD OF AMENDMENTS**

At this juncture, on motion of Mr. Calderon, there being no objection, the Body proceeded to consider amendments on the proposal.

### **PROPOSED AMENDMENT OF MR. OPLE**

Thereupon, Mr. Ople proposed the following amendment by substitution:

SECTION 7. WITHIN ONE HUNDRED TWENTY DAYS FROM THE RATIFICATION OF THIS CONSTITUTION, THE INCUMBENT PRESIDENT SHALL CALL ELECTIONS FOR PRESIDENT AND VICE-PRESIDENT WHICH MAY BE SIMULTANEOUS WITH THE ELECTION FOR MEMBERS OF CONGRESS ON MAY 11, 1987.

Upon inquiry the Chair, Mr. Suarez stated that the Committee should leave the amendment to the Body for decision.

Submitted to a vote, and with 4 Members voting in favor, 35 against and 1 abstention, the amendment was lost.

On the query of Mr. Davide, the Chair registered a negative vote.

### **REMARKS OF MR. LAUREL**

Mr. Laurel stated that he was withdrawing his vote against Mr. Ople's amendment because he had no doubt whatsoever that the wife of the new national hero, Ninoy Aquino, is the only President of the Republic of the Philippines, and also because he happened to be the brother of Vice-President Laurel.

### **FINAL RESULT OF THE VOTING**

Thereupon, the Chair stated for the record the result of the voting, to wit: 4 Members in favor, 34 against and 2 abstentions.

### **PROPOSED AMENDMENT OF MR. DE LOS REYES**

Mr. de los Reyes proposed to add the following words after the Committee proposal:

UNLESS A MAJORITY OF THE VOTES CAST IN THE PLEBISCITE HELD FOR THE PURPOSE IS FOR THE HOLDING OF AN ELECTION FOR PRESIDENT AND VICE-PRESIDENT SIMULTANEOUSLY WITH MEMBERS OF THE CONGRESS AFTER THE RATIFICATION OF THIS CONSTITUTION.

Mr. de los Reyes then stated that said issue shall submitted in the form of a separate question ring the ratification of this Constitution, to wit:

Do you want President Aquino and Vice-President Laurel to run for election for their respective post on May 11, 1987?

In case an election for said positions is held on the aforementioned date, the term of Office of the newly elected President and Vice-president shall commence at noon on June 30, 1987 and shall expire at noon on June 30, 1992.

### **INQUIRY OF MR. MAAMBONG**

In reply to Mr. Maambong's query, Mr. de los Reyes stated that his amendment is an amendment by addition.

### **VOTING ON MR. DE LOS REYES PROPOSED AMENDMENT**

Submitted to a vote, and with 4 Members voting in favor, 32 Members voting against and three abstentions, the proposed amendment of Mr. de los Reyes was lost.

### **MANIFESTATION OF MR. LAUREL**

Mr. Laurel manifested for the record that he was abstaining for the same reason he earlier advanced.

### **PROPOSED AMENDMENT OF MR. MONSOD**

Mr. Monsod proposed the substitution of Section 7 with the following:

THE TERM OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT BY VIRTUE OF THEIR ELECTION AND PROCLAMATION BY THE PEOPLE IN THE FEBRUARY 7, 1986 ELECTIONS SHALL BE EXTENDED FOR PURPOSES OF SYNCHRONIZATION OF THE NATIONAL ELECTIONS FROM FEBRUARY 25, 1992 TO NOON OF JUNE 30, 1992.

Mr. Monsod explained that this proposed amendment assumes that this Body does not need to give a term of six years to the incumbent President and Vice-President because they have already been granted that term. He stated that the only reason for the amendment is to synchronize national elections such that they have to be given an additional four months up to noon of June 30, 1992. On the question of whether there was a duly elected President and Vice-President in the snap elections, Mr. Monsod informed that he was involved in the NAMFREL count. He recounted how the 500,000 NAMFREL volunteers defended the sanctity of the ballot, a defense which caused four lives and the injury of 160 persons. He stressed that no one could turn his back on these people nor the millions of other Filipinos who upheld the integrity of that ballot by assuming that the election was not relevant to

the term of the President and the Vice-President.

### **INQUIRY OF MR. MAAMBONG**

On the phrase "proclamation by the people" in substitution of the proclamation made by the Batasang Pambansa, Mr. Monsod affirmed by stating that the proclamation is in the exercise by the people of their reserved and sovereign right.

### **MR. SUAREZ' AMENDMENT TO THE AMENDMENT**

As proposed by Mr. Suarez, Mr. Monsod accepted the amendment to delete the words "by virtue of their elections and proclamation by the people in the February 7, 1986 elections.

### **FURTHER INQUIRIES OF MR. MAAMBONG**

On whether it would be better to formulate the amendment to indicate that the incumbent President and Vice President are in a holdover capacity up to June 30, 1992, Mr. Monsod opined that the extension is preferred because it is within the plenary power of the Commission in the interest of synchronization of national elections.

### **INQUIRY OF MR. BENGZON**

On Mr. Bengzon's contention that the Commission is not giving a term to the President because the term has already been fixed when she was elected, Mr. Monsod stated that it was precisely the reason why he said that it is not the intent to give the incumbent President and Vice-President a six-year term but to synchronize the national elections such that in so doing, their term has to be extended by four months.

Mr. Maambong clarified that the discussion between him and Mr. Monsod was on the term of four months from the time of the expiry of the six-year term. He pointed out that the formulation itself assumes a period of six years.

### **INQUIRY OF MR. DE LOS REYES**

On whether the proposed amendment completely disregarded Batas Pambansa Blg. 883, specifically Section 2 thereof which refers to the direct vote and term of office of the President and Vice-President, Mr. Monsod explained that mention was made on the term of office in order to avoid any doubts although he is amenable to a formulation that recognizes the term up to June 30, 1992.

On Mr. Maambong's query, he affirmed that this amendment as formulated is only a reiteration of what is already contained in the law.

### **PROPOSED AMENDMENT OF MR. DAVIDE**

Mr. Davide proposed to insert after the word "oath" the words OFFICE OF and delete the clause "be extended for purposes of synchronization of the national elections from February 25, 1992, to" and in lieu thereof, substitute with the words END AT so that as amended, it would read: THE TERM OF OFFICE OF THE INCUMBENT PRESIDENT AND VICE-PRESIDENT ELECTED IN THE FEBRUARY 7, 1986 ELECTIONS SHALL END AT NOON OF JUNE 30, 1992.

Mr. Davide further proposed a new paragraph which reads:

THE FIRST ELECTION UNDER THIS CONSTITUTION FOR THE PRESIDENT AND THE VICE-PRESIDENT SHALL BE HELD ON THE SECOND MONDAY OF MAY, 1992.

Mr. Monsod opined that the proposal is not necessary, but Mr. Davide contended that the deletion of the phrase "for purposes of synchronization", is necessary to indicate the first election for President and Vice-President.

On Mr. Monsod's contention that this is already provided for in the Constitution, Mr. Davide stated that it is not, pointing out that the Article on the Executive only stated "as may be provided by law" unlike in the case of the Article on the Legislative where it was made specific that the election for knowledge that many government officials, before and during the Marcos era, had been able to take advantage of their positions and clout to acquire all types of real estate properties from agricultural to plush residences and high rise buildings through grossly illegal and fraudulent means.

He also stated that their acquisition was proven to have been through unjust means or by means of deceit, intimidation and violence, which resulted in the displacement of a sizeable number of tillers and urban dwellers in the countryside and in the cities. He agreed that insurgency gets mass support from the discontented peasants and urban poor dwellers and that most disturbances of peace and order arise directly or indirectly from land problems and/or conflicts, making agrarian and urban land reform crucial to the problem of peace and order. He contended that to adopt this proposal would hasten higher levels of economic productivity of the lands and properties, and put the same to good use for the common good, while idle or abandoned lands may be resold to qualified tillers and dwellers at cost under supervision and administration of the proper government agency, and foreclosed lands by banking institutions. He suggested that the government should resell foreclosed lands as well as sequestered real estate properties to qualified tillers and dwellers.

He noted that under General Order No. 2, Mr. Marcos placed the whole country under land reform which he made the centerpiece of his administration. He then inquired on the status of the agrarian reform program of the Aquino Government after 7 months.

Mr. Tadeo then gave the substance of his proposal which, he stated, covers the same program of the Aquino Administration, to wit:

Less controversial and less costly programs for 1987-1988

Under Operation Land Transfer:

- 1) Tenanted rice and corn lands — 730,734 hectares
- 2) Foreclosed lands — 147,000 hectares
- 3) Idle abandoned lands — 183,000 hectares
- 4) Sequestered lands — 50,000 hectares
- 5) Alienable and disposable lands — 4,000,000 hectares

Under Operation Leasehold:

- 1) Tenanted rice and corn lands under retention limit of 7 hectares and below
- 2) Leasehold and other crops
- 3) Landsharing
- 4) Integrated social forestry project

More controversial and more costly programs for 1989-1991

- 1) Tenanted rice and corn lands within retention limit (haciendas with workers)

- 2) Tenanted other crops
- 3) Transnational corporation farmlands
- 4) Fishponds
- 5) Saltbeds and coastal lands

Mr. Tadeo stated that in 1972, the number of farmworkers was only about 80,000, but in 1984, the number increased to 1.9 million, an increase of approximately about 1.1 million, so much so that under the expanded land, reform program there would be a total of 380,000 hectares.

### **INQUIRY OF MR. DE LOS REYES**

In reply to Mr. de los Reyes' query what the word "foreclosed" would refer to, Mr. Tadeo stated that it has reference to foreclosed and fraudulently acquired agricultural and non-agricultural lands or ill-gotten properties foreclosed by banking institution which the owners failed to redeem after the lapse of the one-year redemption period as provided by law.

Specifically, on whether there is still need for expropriating sequestered lands which were part of the ill-gotten wealth, Mr. Tadeo stated that according to the records of the Ministry of Agrarian Reform, only 50,000 hectares of sequestered agricultural lands would be placed under the program for 1987-1988. On whether the phrase "distributed to the beneficiaries of agrarian and urban land reform" implies that the distribution will be exclusively to the beneficiaries of agrarian and urban land reform or that part thereof would still be allocated to the veterans in accordance with the amendment of Mr. de Castro giving preference to veterans, Mr. Tadeo stated that war veterans would be entitled to public lands only as distinguished from private lands — idle, abandoned foreclosed and sequestered lands.

### **INQUIRY OF MR. MAAMBONG**

In reply to Mr. Maambong's query as to which of the formulations would Mr. Tadeo prefer, the latter stated that it would be the formulation starting with the words "All idle, abandoned, foreclosed, sequestered. . ."

### **REMARKS OF MR. MONSOD**

Mr. Monsod noted that the proposed section and its total implications are quite overwhelming because it is a sweeping provision on all kinds of idle, abandoned, foreclosed, sequestered and fraudulently acquired agricultural lands, all for the beneficiaries of agrarian and urban land reform.

He stated that while nobody would disagree with the spirit of the proposal and while it partakes of a transitory provision only because of the reference to the two-year period, in terms of its impact and coverage, the section needs thorough discussion by the Committee and by the Body. He stated that he would have second thoughts and reservations about the whole provision because all of the properties covered therein would be distributed to the lucky or fortunate beneficiaries within the next two years which would put the government in an inflexible position where it would literally and substantially diminish its properties that could be alienated or disposed for posterity.

Moreover, he noted that there are other rights and complications involved as to creditors, prior rights, and priorities for use of the land. He then manifested his objection to the inclusion of this provision in the Constitution because, firstly, it should not belong to the Transitory Provisions and, secondly, it is quite a substantial provision that affects many rights which could not be dealt with summarily in the formulation it was presented.

### **SUSPENSION OF SESSION**

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

It was 9:49 p.m.

### **RESUMPTION OF SESSION**

At 9:55 p.m., the session was resumed.

### **PROPOSED AMENDMENT OF MR. TADEO**

Upon resumption of session, Mr. Suarez informed the Body that Mr. Tadeo has submitted two alternative proposals, to wit:

- 1) ALL IDLE, ABANDONED, FORECLOSED, SEQUESTERED AND FRAUDULENTLY ACQUIRED AGRICULTURAL AND NON-AGRICULTURAL LANDS AS DEFINED BY LAW SHALL WITHIN TWO YEARS FROM THE RATIFICATION OF THIS CONSTITUTION BE EXPROPRIATED AND DISTRIBUTED TO THE BENEFICIARIES OF AGRARIAN AND URBAN LAND REFORM.
- 2) THE STATE SHALL EXPROPRIATE ALL AGRICULTURAL LANDS FRAUDULENTLY ACQUIRED BY GOVERNMENT OFFICIALS AND THEIR CRONIES AND IMMEDIATELY SUBJECT THE SAME TO LAND REFORM (AGRARIAN/URBAN).

Thereupon, Mr. Suarez stated that Mr. Monsod had called the attention of the Committee and the proponent to the existence of Section 4 of the Article on National Economy and Patrimony.

He then asked that Mr. Monsod be recognized.

### **MANIFESTATION OF MR. MONSOD**

Mr. Monsod observed that the intent of the alternative proposal of Mr. Tadeo jibes with Mr. Regalado's amendment on the lands of the public domain that had been fraudulently disposed or alienated to the reversion, the agricultural lands become lands of the public domain and would now be covered by Section 4 of the Article on National Economy and Patrimony which subjects said lands to the requirements of the agrarian reform program.

He opined that the proposal would not be necessary considering the provisions in the Article on National Economy and Patrimony and Section 6 of the Article on Social Justice which provide for the application of the principles of agrarian reform or stewardship whenever applicable in accordance with law in the disposition or utilization of natural resources including lands of the public domain suitable to agriculture under lease or concession.

### **REMARKS OF MR. TADEO**

Mr. Tadeo, however, maintained that his proposal refers to some 183,000 hectares of idle and abandoned lands which are considered private lands. He adverted to Section 166 of Republic Act No. 3844 which defines idle lands as those devoted directly to any crop or any economic purpose for at least one year prior to notice of expropriation except for reasons other than force majeure or any other fortuitous event but used to be devoted or is suitable to such crop or is contiguous to land devoted permanently or regularly to other essential and productive purpose; while abandoned lands refer to lands devoted to any crop at least one year prior to notice of expropriation but which have not been utilized by the owner for his benefit for the past five years prior to such notice of

expropriation. He underscored that, although lands' of the public domain are already covered by pertinent laws, the private lands he adverted to should be included in the 1987-1988 program of the Ministry of Agrarian Reform.

### **REMARKS OF MR. NOLLEDO**

Mr. Nollado supported Mr. Tadeo's proposal in view of many landholdings, particularly in Butuan City, which could be easily classified into idle or abandoned lands because they are not planted to any crop and their owners are already in the United States. He opined that this Constitutional mandate for the distribution of abandoned agricultural lands would give justice to people who are deserving beneficiaries of the agrarian reform program.

Relative thereto, Mr. Monsod stated that the agricultural lands which Mr. Nollado adverted to are already covered by the provisions of the Article on Social Justice.

### **RESTATEMENT OF MR. TADEO'S PROPOSED AMENDMENT**

On Mr. Maambong's inquiry, Mr. Tadeo stated that with the deletion of the words "foreclosed, sequestered and fraudulently acquired agricultural lands. . .", his proposed amendment would be formulated as follows:

ALL IDLE, ABANDONED AGRICULTURAL LAND AS DEFINED BY LAW SHALL, WITHIN TWO YEARS' FROM THE RATIFICATION OF THIS CONSTITUTION, BE EXPROPRIATED AND DISTRIBUTED TO THE BENEFICIARIES OF AGRARIAN REFORM.

### **OBJECTION OF MR. MONSOD**

Mr. Monsod reiterated his objection to the proposed amendment for the reasons he earlier stated. He added that the two-year period should not be a justification for its inclusion in the Transitory Provisions. He stated that such two-year period would put too much burden on the State to expropriate lands, where in fact they are actually covered by the general rule on the expropriation of agricultural lands.

He also believed that the priority distribution of idle and abandoned lands may be against the interest of the farmers because the State would be limited to the expropriation of the 183,000 hectares of private lands rather than encompass the already identified 500,000 hectares of agricultural lands.

### **INQUIRY OF MR. MAAMBONG**

In reply to Mr. Maambong's query, Mr. Tadeo affirmed that these idle and abandoned agricultural lands are covered by certificates of titles, but as long as they are idle or abandoned, they would be covered by his proposal as defined under Republic Act No. 3844.

Mr. Tadeo pointed out that the Presidential Decree which allows the cultivation of idle and abandoned agricultural land has never been implemented and its intent would be realized if it would be included in the new Constitution. He explained that although one can cultivate idle or abandoned agricultural land under such Presidential Decree, the farmer could not own the land because there is no tenancy relation.

In this connection, Mr. Monsod observed that the proposal would involve a lot of complications because it would burden the State with expropriating lands which are covered by Torrens title, in reply to which, Mr. Tadeo contended that the Ministry of Agrarian Reform should not have included the 183,000 hectares of idle and abandoned lands in its 1987-1988 program if the State considered it a burden.

Mr. Monsod then inquired on the necessity of the Constitutional proposal since it would already be implemented, in reply to which, Mr. Tadeo opined that the Constitution would strengthen such implementation.

Mr. Monsod maintained that the substance of the proposal is a matter of policy that should have been included in the Article on National Economy and Patrimony.

### **REMARKS OF MRS. QUESADA**

Mrs. Quesada recalled that the Body approved in the previous session a provision increasing the salary of government officials and employees but does not mention a specific period for implementation; while Mr. Tadeo's proposal has a definite two-year period of implementation, which proposal would strengthen the policy of government on agrarian reform.

She pointed out that although the general policy has been provided in the Article on National Economy and Patrimony, this is one of the provisions that needs immediate implementation for the benefit of the people by including it in the Transitory Provisions.

### **INQUIRY OF MR. DAVIDE**

Mr. Davide inquired what would be the penalty on Congress if it fails to implement the distribution of idle and abandoned aquacultural lands within two years.

He also observed that the proposal would not help the other landless citizens because the beneficiaries of the proposal would be those who are already entitled to lands under the agrarian reform program.

In reply, Mr. Tadeo pointed out that the beneficiaries of the proposed expropriation of idle and abandoned lands would be the landless agricultural workers which number to about 1.9 million, more particularly the kaingineros.

Mr. Davide stated that in that case, the proposal would be limited to landless agricultural workers, whereas under the land reform program, the beneficiaries are not only landless agricultural workers but also the landless farmers.

At this juncture, Mr. Rama moved for a vote on Mr. Tadeo's proposed amendment.

### **REMARKS OF MR. NOLLEDO**

In connection with Mr. Tadeo's reply to Mr. Davide, Mr. Nolleto clarified that the beneficiaries of the agrarian reform program are not only the agricultural workers and tenants but also the landless workers and tenants; and that the general rule is to give lands to the occupants of lands and if there are no occupants, the law shall define the expropriation of idle and abandoned lands.

He reiterated that the people in Mindanao had urged the government to do something about idle and abandoned lands, to accelerate agrarian reform.

He pointed out that the provisions adverted to by Mr. Monsod refer to agricultural lands in general but the proposal speaks only of idle and abandoned agricultural lands, and Congress would determine the beneficiaries of lands to be expropriated. He said Congress would be responsible to their constituency if it fails to implement this Constitutional mandate.

He stated, however, that he would propose to increase the two-year period to five years.

### **MRS. QUESADA'S AMENDMENT TO THE AMENDMENT**

Thereafter, Mrs. Quesada proposed to change the words "two years" to THE EARLIEST POSSIBLE PERIOD, to allow Congress more time in effecting an immediate implementation.

Mr. Tadeo accepted the amendment to his amendment.

### **MR. FOZ' PROPOSED SUBSTITUTE AMENDMENT**

Thereupon, Mr. Foz proposed a substitute amendment, as follows:

AT THE EARLIEST POSSIBLE TIME, THE GOVERNMENT SHALL ACQUIRE IDLE AND ABANDONED AGRICULTURAL LANDS FOR DISTRIBUTION TO THE BENEFICIARIES OF THE AGRARIAN REFORM PROGRAM.

Mr. Tadeo accepted Mr. Foz' substitute amendment.

### **MR. NOLLEDO'S AMENDMENT TO THE AMENDMENT**

Mr. Nolleto further proposed to insert the phrase AS DEFINED BY LAW between the words "lands" and "for", which Mr. Foz accepted.

Likewise, Mr. Maambong stated that the conjunction "and" should be changed to OR, to which Mr. Foz agreed.

### **MS. AQUINO'S AMENDMENT TO THE AMENDMENT**

Considering the intention to provide for expropriation of lands for subsequent distribution, Ms. Aquino proposed to change the word "acquire" to EXPROPRIATE, which amendment to the amendment was accepted by Mr. Foz.

### **INQUIRY OF MR. RODRIGO**

On Mr. Rodrigo's query whether there is an existing law which defines the expropriation of idle or abandoned lands, Mr. Tadeo adverted to Section 166 of Republic Act No. 3844 which defines abandoned lands as those not devoted to any crop at least one year prior to the notice of expropriation which was not utilized by the owner for his benefit for the past five years prior to such notice; while idle lands are those lands not devoted directly to any crop or to any definite economic purpose for at least one year prior to the notice of expropriation, except for reasons other than force majeure or any other fortuitous event, but used to be devoted or is suitable to such crop, but does not include lands devoted permanently or regularly to other essential and more productive purposes.

Mr. Foz also affirmed that when lands are not cultivated for one year, said lands could be expropriated by the government even if they are covered by Torrens title as provided in the existing Agrarian Reform Code which has not yet been challenged.

### **OBSERVATION OF THE CHAIR**

The Chair observed that Republic Act No. 3844 does not provide for expropriation of idle or abandoned lands but only provides for temporary planting.

In response thereto, Mr. Nolleto affirmed that the proposal does not refer to the provisions of Republic Act No. 3844 but refers to a future definition by law.

### **INQUIRY OF MR. MONSOD**

On Mr. Tadeo's reply that Republic Act No. 3844 does not provide for expropriation of idle or abandoned lands but only defines said lands, Mr. Monsod stated that the proposal not only incorporates the definition under the law but also provides for expropriation thereof.

The Chair clarified that the proposal would leave it to Congress to define idle or abandoned lands for purposes of expropriation and distribution.

Mr. Tadeo affirmed that since the provision on expropriation is not contained in any existing law, the proposal would mandate Congress to implement such expropriation.

Mr. Foz opined that if the agricultural land has been idle for five years because the owner may not have the time or the resourcefulness to devote the land to productive use, then the government would have sufficient basis to subject the land to expropriation.

### **INQUIRY OF MR. RODRIGO**

In reply to Mr. Rodrigo's query, the Chair clarified that the lands that would be subject to expropriation are lands abandoned for five years and those that have been idle for one year.

On whether the government could expropriate land which became idle because the owner got sick or may have travelled abroad, the Chair stated that the phrase "as may be provided by law" does not necessarily mean Republic Act No. 3844, pointing out that there may be another law that would define what idle and abandoned lands are for purposes of expropriation.

On whether it is Republic Act No. 3844 which is being referred to in the expropriation provision, Mr. Nollado explained that the purpose of the provision is to mandate Congress to fix conditions under which land may be considered idle or abandoned. He agreed with Mr. Rodrigo that one year would be an unreasonably short period.

### **COMMENT OF MR. MONSOD**

Commenting on Mr. Foz' assumption that the land may have become idle because the owner does not want to put it to productive use, Mr. Monsod maintained that there are many lands which the owners are unable to utilize because of circumstances beyond their control, for instance, the insurgency problem which deprives the owners of the opportunity to cultivate their lands, to which Mr. Foz replied that he made such remark on the assumption that peace and order prevail in the area. He clarified that his comment was on the five-year period which, he believed, is a reasonably long period that would justify the government in initiating expropriation proceedings.

Mr. Nollado opined that the situation contemplated by Mr. Monsod could be an exception to the additional tax for the idle lands under the Real Property Tax Code.

### **APPROVAL OF SECTION 24, AS AMENDED**

Mr. Foz restated the amendment designated by the Committee as Section 24, as amended, to wit:

AT THE EARLIEST POSSIBLE TIME, THE GOVERNMENT SHALL EXPROPRIATE IDLE OR ABANDONED AGRICULTURAL LANDS AS DEFINED BY LAW FOR DISTRIBUTION TO THE BENEFICIARIES OF THE AGRARIAN REFORM PROGRAM.

Submitted to a vote, and with 15 Members voting in favor, 9 against and no abstention, the Body approved Section 24, as amended.

### **REMARKS/AMENDMENTS OF MR. CONCEPCION**

Mr. Concepcion stated that Section 14 of the Article on the Judiciary contains three paragraphs specifying the period within which the following courts shall dispose of its cases: 1) 24 months for the Supreme Court; 2) 12 months for the Court of Appeals; and 3) three months for lower courts.

On subparagraph 2) thereof which reads "A case or matter shall be deemed submitted for decision or resolution

upon the filing of the last pleading, brief, memorandum, required by the Rules of Court or by the court itself", Mr. Concepcion explained that this submission of the case is the starting point for the 24-month period for the Supreme Court, 12-month period for the Court of Appeals and 3- month period for the lower courts.

On the paragraph which reads "Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties", Mr. Concepcion stated that this is sought to be amended by adding the following sentence: THE CERTIFICATE SHALL STATE WHY A DECISION OR RESOLUTION HAS NOT BEEN RENDERED OR ISSUED WITHIN SAID PERIOD.

To complete the sequel of thought in connection with these cases, he stated that the Committee is proposing to add the following as paragraph (4):

DESPITE THE EXPIRATION OF THE APPLICABLE MANDATORY PERIOD, THE COURT, WITHOUT PREJUDICE TO SUCH RESPONSIBILITY, IF ANY, AS MAY HAVE BEEN INCURRED IN CONSEQUENCE THEREOF, SHALL DECIDE OR RESOLVE THE CASE OR MATTER SUBMITTED THERETO FOR DETERMINATION WITHOUT FURTHER DELAY.

Mr. Concepcion pointed out the fact that Section 14 refers to cases submitted or filed before the adoption of the new Constitution and it is for this reason, he stated, that the Committee is proposing the inclusion of a provision in the Article on Transitory Provision which would read:

THE PROVISIONS OF PARAGRAPHS (3) AND (4) OF SECTION 14 OF ARTICLE ON THE JUDICIARY SHALL APPLY ALSO TO CASES FILED BEFORE THE RATIFICATION OF THE PRESENT CONSTITUTION, WHEN THE APPLICABLE PERIOD LAPSES AFTER SUCH RATIFICATION.

On the suggestion of Mr. Suarez, Mr. Concepcion agreed that the Body decide on the matter on the understanding that it would be subject to the approval of Section 14(3) and (4) of the Article on the Judiciary.

Submitted to a vote, and with 27 Members voting in favor, none against and no abstention, the Body approved Mr. Concepcion's amendment to be denominated as Section 25.

### **REMARKS OF MR. SUAREZ**

Relative to Section 7, specifically on the proposed deletion of the phrase "After the expiration of the RP-US Bases Agreement in 1991", Mr. Suarez recalled that when" this matter was taken up, the Chairman of the Steering Committee pointed out the fact that the text and the concept had already been voted upon, but he nonetheless made a reservation to take up this matter anew after the transposition of this particular Section from the Article on Declaration of Principles to the Article on Transitory Provisions. Mr. Suarez further recalled that the ruling of the Chair was to the effect that at the proper time, the phrase he earlier referred to would be correspondingly ruled upon.

### **REMARKS OF MR. BENGZON**

Reacting to Mr. Suarez' remarks, Mr. Bengzon adverted to the transcript of proceedings of September 18 where he precisely raised the point that when the Body voted on this particular matter, it voted not only on the concept and the ideas but also on the text. He then read to the Body the relevant portion of the transcript of proceedings, to wit:

"Madame President, in the past when we had voted on matters that would be transposed to the Transitory Provisions, we just voted on the concepts and ideas. But on this particular matter that we voted upon, Your Honor, we did not only vote on the concepts but also on the text. So that when we voted on the text of the particular

provision, that remains and that should be taken and form part of the report of the Transitory Provisions. That is the way I look at it when I voted for this.

"Madame President, I think it will be recalled that precisely this Commission recessed in order that the text of the proposals of Commissioners Romulo and Bernas could be harmonized. And when this Commission went back into session, the text had been finished and had been harmonized. There were only two or three areas that could not be agreed upon which were submitted to the Body. So what was really voted upon, Your Honor, was not only the idea or concept but also the text of the provision itself. So, as approved by the Body, it should go in toto to the report of the Committee on Transitory Provision."

Mr. Bengzon pointed out that at that time the Chair concurred with his manifestation that what had been approved was the text "as is" and that this particular text shall be placed in the Transitory Provisions. Furthermore, he stated that upon going over the transcripts, he could not find any statement of the Chair relative to Mr. Suarez' reservation.

In view thereof, Mr. Bengzon insisted on his contention that this particular issue had been totally foreclosed and that the text as approved by the Body on September 18 be transposed in toto as it has been transposed to the Article on Transitory Provisions.

Reacting thereto, Mr. Suarez argued that the fundamental issue that he raised was whether or not after the transposition of the entire Section to the Article on Transitory Provisions, any Member could still suggest amendments to the transposed provision. He further pointed out that the question was whether or not the Committee on Transitory Provisions would accept it in a ministerial character without being able to offer amendments or alterations to the transposed provision.

Mr. Bengzon pointed out that the question as to whether or not the Committee on Transitory Provisions would just accept the provision was raised by Mr. Ople, as reflected in the transcript of the proceedings, to wit:

MR. OPLE: Madame President, will the Chairman of the Steering Committee yield to a question? It is, of course, presumed under the Rules that this Commission can command any of the Committees. Is the Committee on Transitory Provisions; of which I am a member, being commanded by this Commission to just receive this transitory provision and act simply as a mechanical conduit for bringing it back to the floor and subsequent to that, may I ask whether this is equivalent to discharging the Committee on Transitory Provisions?

MR. BENGZON: First, the Commission decided on the text of this particular concept and, therefore, the Commission has approved not only the concept but also the text and the wording and decided that it should be included in the Transitory Provisions and insofar as this particular matter is concerned, the whole thing is foreclosed.

Second, I do not think and please do not consider it as a discharge of the Committee's responsibility. It is just that this particular text was approved unlike the other concepts that we had approved. We just throw the concept to the Transitory Provisions Committee and it is up to them to prop the words which should be brought back to the floor for discussion.

MR. OPLE: So that Committee is not being discharged of this task?

MR. BENGZON: The Committee, certainly, is not being discharged of its task even insofar as this provision is concerned. It just happened that this Commission gave its imprimatur not only insofar as the concept is concerned but also the text.

MR. OPLE: And I presume that this action of the Commission is a precedent that will apply to other Committees

in the future.

MR. BENGZON: Well, if it is clear as it has been made clear that this is the decision of the Commission.

MR. OPLE: Well, thank you for your interpretation but I did have reservations about the right of this Commission to override a Committee without prior notice and without prior consultation. I supposed as a Member of the Committee, I accept the superior authority of the Commission but I hope that in the future, prior consultation could be effected so that the integrity of the Committees under the Rules will be properly safeguarded.

In the light of the foregoing, Mr. Bengzon maintained that there is no other way but for the Committee on Transitory Provisions to accept the text as approved by the Body in the September 18, 1986 session.

Replying thereto, Mr. Suarez stated that he did not know if Mr. Bengzon had a copy of the transcript of the dialogue between him and the Chair regarding the question as to whether or not, after the transposition and the matter was taken up in the Article on Transitory Provisions, any Member could still present amendments to the provision in question. He recalled that the Chair ruled that the corresponding ruling would be made at the proper time.

Mr. Bengzon stated that the points raised by Mr. Suarez were reflected in the transcript of proceedings, the relevant portion of which reads:

"THE PRESIDENT. There was a parliamentary inquiry made by Commissioner Suarez. As the Chair already stated, what was submitted to a vote was the text and where it is to be placed. So, I believe that that is settled.

"Now, as to the question on whether the report of the Committee on Amendments and Transitory Provisions when submitted with this particular text, would allow any amendment to the same, that will be resolved when the time comes. So, the Chair will not make any commitment on that but will reserve its resolution on that particular point."

### **RULING OF THE CHAIR**

The Chair ruled that it considers the reservation made by Mr. Suarez, Chairman of the Committee on Transitory Provisions, as a reservation by way of a motion for reconsideration. The Chair further ruled that Mr. Suarez may file a motion for reconsideration.

### **RESERVATION OF MR. COLAYCO**

Mr. Colayco made a reservation to move for reconsideration of the ruling of the Chair in the next session, which reservation was noted by the Chair.

### **MANIFESTATION OF MR. BENGZON**

Mr. Bengzon informed that the Body would still have to reopen the Articles on the Legislative, the Judiciary and the Executive and that the discussion thereon should be finished in the next session so that it would be able to meet the schedule and submit the Constitution to the President on October 15. He further informed that aside from these three Articles, there are about two or three proposed amendments for which the Body might have to hold another marathon session.

Mr. Suarez added that the Body has to consider also Mr. Bernas' proposal on the ratification of the Constitution in packages.

## **SUSPENSION OF SESSION**

Thereafter, the Chair suspended the session until nine-thirty in the morning of the following day.

It was 10:56 p. m.

## **RESUMPTION OF SESSION**

At 10:08 a.m., Wednesday, October 8, 1986, the session was resumed with the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, presiding.

## **NATIONAL ANTHEM AND PRAYER**

The National Anthem was sung followed by a prayer led by Mr. Ricardo J. Romulo, to wit:

Our Father, Who art in heaven, hallowed be Thy name, Thy kingdom come, Thy will be done in the Constitutional Commission as it is in heaven. Give us this day our daily debate and forgive us our fallacies as we forgive others theirs; And lead us not into sophisms but deliver us from paradigms.

Dear Lord, for almost five months, we have labored in the vineyards of the Constitutional Commission. Much has been asked of us and much we have given. Reward, therefore, our endeavor with success through its acceptance by our people. More than this Lord, bless our work that it may bring to our people and nation the peace, progress and prosperity which we seek and so desperately need.

To us, individually, we pray You, give us that inner spiritual strength that will enable us to face our challenges with hope and serenity. Grant us that religious faith which lifts ordinary human beings to greatness in seasons of stress. Endow your people, dear Lord, with patience and wisdom that we may collectively heal the wounds that divide this nation.

Amen.

## **REFERENCE OF BUSINESS**

On motion of Mr. Rama, there being no objection, the Body proceeded to the Additional 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. 1072 — Constitutional Commission of 1986

Letter from Mr. Apollo Z. Lateo of Santa Cruz, Laguna,' seeking the adoption of Tagalog instead of Pilipino as the national language of the Philippines

## **TO THE COMMITTEE ON HUMAN RESOURCES**

Communication No. 1073 — Constitutional Commission of 1986

Letter from Mr. Conrado Alviola Dadivas of Pagadian City, Zamboanga del Sur, seeking the incorporation in the Constitution of the provision that the separation of Church and State shall be inviolable as embodied in the 1973 Constitution and as understood historically and jurisprudentially in the Philippines

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

Communication No. 1074 — Constitutional Commission of 1986

Letter from Mr. Bienvenido Castillo of Pulilan, Bulacan, expressing strong objection to any provision in the proposed Constitution that would make mandatory the teaching of religion in public elementary and high schools during class hours

### **TO THE COMMITTEE ON HUMAN RESOURCES**

Communication No. 1075 — Constitutional Commission of 1986

Letter from Mr. Benigno Valeroso of Camiling, Tarlac, pointing out that like the US military bases, foreign dominated churches or religions, schools, banks, hotels, and other establishments are the glistening sun of foreign colonization in the Philippines, saying however, that the bases are being leased or rented and benefiting not only the Philippines but also the South East Asian region

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

Communications No. 1076 — Constitutional Commission of 1986

Letter from Mr. Romeo Q. Lagunay of Rosario Heights Subdivision, Iligan City, Lanao del Norte, seeking a constitutional provision prohibiting politicians to recommend any individual for military service, to back up military promotion, or to intercede for the retention of overstaying officers in the military

### **TO THE COMMITTEE ON GENERAL PROVISIONS**

Two communications expressing adherence to democracy and to the tenets and principles of the democratic form of government, repudiating communism in all its forms and implications, and also favoring the retention of the U S. military bases in the Philippines, even beyond 1991, to wit:

Communication No. 1077 — Constitutional Commission of 1986

1) Mr. Bienvenido Ortiz and two hundred seventy-seven other concerned citizens of Bacolod City

Communication No. 1078 — Constitutional Commission of 1986

2) Patria Amante and one hundred other residents of Negros Occidental

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

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

On motion of Mr. Rama, there being no objection, the Body resumed consideration, on Second Reading, of Proposed Resolution No. 540 (Committee Report No. 38), entitled:

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

### **THE PARLIAMENTARY SITUATION**

On the parliamentary situation, Mr. Rama invited attention to Mr. Colayco's reservation for a reconsideration of the Chair's ruling on Item No. 7 in the list of pending provisions.

Thereupon, the Chair recognized Mr. Colayco.

### **MR. COLAYCO'S MOTION FOR RECONSIDERATION**

Thereupon, Mr. Colayco manifested that his reservation was for reconsideration of the ruling of the Chair (Mr. Azcuna) that, notwithstanding the Body's approval of the concept of the Romulo amendment on the matter of the RP-US Military Bases Agreement, the Committee on Transitory Provisions, under whose Committee Report the said provision was incorporated, has the authority to reconsider and review the approval of the provision.

He recalled that in the Journal of September 18, 1986 it appeared that upon inquiry of Mr. Suarez, the Chair stated that a ruling on the matter shall be made at the proper time. He stated that Mr. Azcuna, who presided over the session the previous night, acting on this statement of the Chair ruled that the Committee on Transitory Provisions has the authority to review the decision to the Article on Transitory Provisions. The September 18 Journal, he stated, would show that the Body had debated and closed the matter on the Military Bases Agreement and that Mr. Ople made a reservation that in the future when matters already considered and voted upon by the Body would have to be transposed to another Article, the Committees concerned should be given prior notice so as to preserve their integrity.

Thereupon, Mr. Colayco moved for a reconsideration of the Chair's ruling which was made in the previous night's session.

### **OBJECTION OF MR. AZCUNA**

Mr. Azcuna opposed the motion for reconsideration. He explained, adverting to the situation obtaining then, that it was the first time that the Body decided to transfer a provision to an Article which has not yet been taken up on the floor although prior thereto it had transferred provisions already approved to the Committees whose reports were under consideration.

It was on this basis, he stated, that Mr. Suarez, as Chairman of the Committee on Transitory Provisions, made a reservation which was not acted upon by the Chair although the Chair reserved the right to rule on the same reservation.

Mr. Azcuna clarified that when he presided in the previous night's session, he made a ruling that the reservation amounted to a reservation of the right to move for reconsideration of the provision which was transferred to the Transitory Provisions, but not a right to reopen the same. He noted that Mr. Suarez reserved the right: 1) to move for reconsideration in order to propose changes in the wordings to make the provision suitable as a transitory provision; or 2) to move for reconsideration of the very act of transferring the provision to his Committee inasmuch as the Committee was not consulted and therefore might feel that the provision does not belong to the Article on Transitory Provisions. Mr. Suarez, he maintained, has the right to respond.

### **CLARIFICATION OF THE CHAIR**

To set the records straight, the Chair adverted to the transcript of September 18, 1986, to wit:

"THE PRESIDENT. There was a parliamentary inquiry made by Commissioner Suarez. As the Chair already stated, what was submitted to a vote was the text and where it is to be placed. So, I believe that that is settled.

"Now, as to the question on whether the report of the Committee on Amendments and Transitory Provisions when submitted with this particular text, would allow any amendment to the same, that will be resolved when the time comes. So, the Chair will not make any commitment on that but will reserve its resolution on that particular point."

The Chair clarified that the reason why the Chair stated that particular point — whether any amendment to the text

on the U.S. bases provision can be submitted and accepted while the Committee on Transitory Provisions is submitting the same for consideration of the Body—was the need to resolve the issue at the opportune time inasmuch as the ruling would depend on the nature of the amendment being offered.

The Chair observed that if the amendment would change the test, substance or concept of the provision already approved by the Body, the amendment would be out of order inasmuch as there is no motion for reconsideration of that particular point but if the amendment would only change the phraseology, then the Chair would permit the amendment.

On whether submission of the particular provision to the Body by the Chairman of the Committee on Transitory Provisions would reopen the same for the purpose of reconsideration of the text or concept stated therein, the Chair clarified that the ruling is that such an amendment would not be in order. The Chair noted that there was no motion for reconsideration reserved by Mr. Suarez on September 18, 1986 but that he simply made a query to which the Chair responded.

The Chair stated that it will make a ruling on whatever amendment shall be proposed on the said provision, whether such an amendment is in order or out of order. She noted that whatever may have been the intent or effect of the ruling of the Presiding Officer last night would have to be adjusted to the ruling of the Chair.

#### **PARLIAMENTARY INQUIRY OF MR. MAAMBONG**

Mr. Maambong observed that there seems to be no provision for a motion for reconsideration of the ruling of the Chair in the Rules although there is a provision on appeal from the ruling of the Chair.

He asked the Chair whether Mr. Colayco's motion can be considered an appeal from the ruling of the Chair.

The Chair manifested that it is inherent in the power of the Chair to reconsider any ruling that it may have issued — either to reconsider or sustain it. She noted that if there is any appeal, it should be an appeal from the ruling of the Chair.

Mr. Maambong observed that the motion of Mr. Colayco can be considered an appeal from the ruling of the Chair.

#### **REMARKS OF MR. SUAREZ**

Mr. Suarez noted that the Chair's statement on the parliamentary situation is correct and that confusion has arisen because of his own dual capacity — as a Member and as Chairman of the Committee.

Mr. Suarez recalled that the records will show that as a Member he raised the possibility of deleting the introductory phrase "After the termination of the RP-US Military Bases Agreement in 1991" inasmuch as it recognizes the legality and validity of the said Agreement which some Members consider null and void ab initio.

He noted that the transposition of the provision from the Article on Declaration of Principles to the Article on Transitory Provisions would not enable the Committee on Transitory Provisions to reject or deny the referral of the said provision which would then be accepted ministerially by the said Committee, without it exercising discretion, which was the basis of the parliamentary inquiry. The Chair, he noted subsequently made the ruling which had just been reiterated.

He stated that as a Member he would have argued before the Committee on Transitory Provisions for the deletion of the phrase. Thereupon, he asked for a ruling of the Chair.

### **SUSPENSION OF SESSION**

The Chair suspended the session.

It was 10:35 a.m.

### **RESUMPTION OF SESSION**

At 10:39 a.m., the session was resumed.

### **REMARKS OF MR. BENGZON**

Upon resumption of session, Mr. Bengzon stated that after listening to the explanation of Mr. Suarez, reiterating his desire to delete the phrase "After the expiration of the RP-US Agreement in 1991", he felt that there would be a substantial change in the concept and in the text which has already been approved by the Commission. He then requested for a ruling on the matter.

### **RULING OF THE CHAIR**

The Chair ruled that, if the proposal or submission of the Chairman of the Committee on Transitory Provisions is to delete the phrase "After the expiration of the RP-US Bases Agreement in 1991" as provided for in the text that was approved at the time when the Committee on Declaration of Principles was considering the particular section, then such a proposal or submission would be out of order.

The Chair also stated that this particular section on the U.S. bases or the foreign military bases has been approved by the Body in its text, concept and substance, and that should the first clause be deleted, it would substantially affect the very concept stated in the section. Therefore, the same could no longer be considered at this time when the Body is considering its inclusion in the Article on Transitory Provisions; otherwise, it would amount to a reconsideration of the text that has been approved, which reconsideration would no longer be tenable at the particular stage of the proceedings.

### **REMARKS OF MR. SUAREZ**

Mr. Suarez explained that he was reiterating his motion to delete the phrase "After the expiration of the RP-US Bases Agreement in 1991" in support of the contention that said RP-US Agreement is null and void ab initio. He pointed out that its inclusion in the Transitory Provisions or in any other part of the Constitution would have the effect of constitutionalizing the recognition of the RP-US Bases Agreement. He stated that, without accepting totally the validity of the Chair's ruling, he was making of record all the circumstances in order that the matter may be closed.

### **REMARKS OF MR. RODRIGO**

Mr. Rodrigo stated that since there has been no appeal from the ruling of the Chair, he would also make it of record that the phrase "After the expiration of the RP-US Bases Agreement in 1991" is found in Committee Report No. 36 of the Committee on Preamble, National Territory and Declaration of Principles, captioned "Portion for Inclusion in Transitory Provisions".

Thereupon, the Chair declared the matter closed.

### **REMARKS OF THE CHAIR**

At this juncture, the Chair stated that the particular section, which is No. 7 in the pending provisions in the Transitory Provisions referring to the RP-US Agreement in 1991 and foreign military bases, would be adopted as Section 26.

### **WITHDRAWAL OF MR. BERNAS' AMENDMENT**

On the proposal to package the ratification of the Constitution, Mr. Bernas stated that he had sniffed around to test the waters and he found out that his amendment has no chance of surviving, in view of which, he was constrained to withdraw the same.

### **INQUIRY OF MR. MAAMBONG**

Mr. Maambong observed that this provision which was originally Section 12 of the Committee Report does not yet contain the amendment of Mr. Bernas. He then inquired whether Mr. Bernas was not insisting on the original formulation which has nothing to do with piecemeal approval.

In response thereto, Mr. Bernas stated that the amendment he had proposed was an additional sentence and, therefore, the original formulation could stand by itself.

Thereupon, Mr. Maambong asked that the first sentence minus the amendment be put to a vote.

### **SUSPENSION OF SESSION**

On motion of Mrs. Quesada, the Chair suspended the session.

It was 10:50 a.m.

### **RESUMPTION OF SESSION**

At 10:57 a.m., the session was resumed.

### **PROPOSED AMENDMENT OF MR. BERNAS**

Upon resumption of session, Mr. Bernas restored his proposed amendment which would constitute as the second sentence to the original Section 12, to wit:

THE PRESENTATION FOR RATIFICATION HOWEVER SHALL BE IN THREE DISTINCT PARTS:

**1) A VOTE ON THE ARTICLE ON SOCIAL JUSTICE;**

**2) A VOTE ON THE ARTICLE ON THE NATIONAL ECONOMY; AND**

**3) A VOTE ON ALL THE REST.**

On the mechanics of the provision, Mr. Bernas explained that it would consist of three questions, namely:

Do you approve Article \_\_\_\_\_ on Social Justice? Yes or No.

Do you approve Article \_\_\_\_\_ on the National Economy? Yes or No.

Do you approve all the rest? Yes or No.

Mr. Bernas explained that his proposal would simply give the people the opportunity for an individualized judgment on key areas of the constitutional provisions which were, in many ways, controverted. He pointed out that there were many opponents of the Social Justice provision, stating that it is a retrogression from what the country had under the Marcos rule. Furthermore, he also stated that the Article on National Economy and Patrimony was criticized as anti-Filipino, pro-multinational and, therefore, harmful to the nation. Finally, he stressed that all the rest, as a totality, would be a complete Constitution by itself, so that even if the Commission were to drop the Article on Social Justice and the Article on National Economy and Patrimony the country would still have a complete Constitution, on the understanding that the disapproval of the Article on Social Justice and of the Article on National Economy and Patrimony would mean the retention of whatever there is in the present Constitution on these subjects. He stated that if it is the desire to change what is there now with something other than what the Commission approved, then the Constitution should provide for a constituent body which could formulate the necessary amendment. He reiterated that his proposal is a simple manner of presenting the Constitution for ratification and is more democratic because it would give the people the opportunity for an individualized judgment on the various articles.

#### **MR. GUINGONA'S AMENDMENT TO THE AMENDMENT**

Mr. Guingona proposed to include the Article on National Territory as among those to be separately ratified.

Mr. Bernas did not accept the amendment.

#### **REMARKS OF MR. FOZ**

Supporting the amendment, Mr. Foz stated that the idea behind the proposal is to subject the submission of the constitution as draft to a more democratic process because it would give the people a chance to examine its major portions.

Mr. Foz stated that there is some measure of support for such a scheme of submitting the draft to the people in a plebiscite based on the audience response during conferences and symposia.

#### **REMARKS OF MR. DAVIDE**

Speaking against the proposal, Mr. Davide stated that, as was contended by Mr. Bernas, if these separate parts would be voted down, the country would be governed insofar as these concepts are concerned by the existing Constitution. He stated that he does not know what existing Constitution he referred to, considering that if it would be the Freedom Constitution, then the nation would be governed partly by a de jure Constitution and partly by a revolutionary Constitution, which would appear absurd.

Moreover, Mr. Davide stated that the first sentence which has not been amended speaks of the totality of the Constitution and, therefore, if the proposal of Mr. Bernas were to be approved, the first sentence needs to be reworded to read "This Constitution or parts thereof shall take effect upon its or their ratification in a plebiscite held for the purpose" which, he opined, would not be appropriate at this time.

Mr. Davide also stated that the issues separated are not as crucial as other issues, thereby giving rise to the possibility of being charged of partiality against certain proposals, such as the bases, the nuclear weapons, and the term of the incumbent President and Vice-President.

### **MANIFESTATION OF MR. MAAMBONG**

Mr. Maambong informed the Body that the Committee has no definite stand on the matter and would rather leave it to the Body.

### **REMARKS OF MRS. QUESADA**

Mrs. Quesada noted that the proposal of Mr. Bernas has been well publicized and elicited several responses from the people. She opined that if the proposal were voted down without further discussions, it may look funny, the reason being that it was endorsed by 28 Members. She expressed support for the proposal as more democratic that it would allow the people to express reservations on some articles in the same manner that some Members have such reservations. She maintained that the new Constitution would not be a perfect Constitution and that it is just proper that everybody should be given the opportunity to express or comment on some portions thereof which may be unacceptable to them without negating the entire document.

### **REMARKS OF THE CHAIR**

The Chair stated that even if there were 28 signatories to the petition, they were not recorded as votes, and therefore they had no meaning.

### **REMARKS OF MR. NATIVIDAD**

Mr. Natividad opined that the proposal is inconsistent with the position taken by the Body then it turned down the suggestion to present two vital issues in the plebiscite. He warned that presentation of the Constitution in packages or portions may be taken by the people to mean that several Constitutions are being presented. He stated that approval of the proposal could result in a mess and comedy in the sense that there would be several groups supporting certain articles, and another opposing them. He opined that the proposal is in effect an appeal from the decision of the Commission. He pointed out that when he, together with Messrs. Ople, Maambong and de los Reyes, presented their proposal which was turned down during the previous session, they accepted and respected the decision without sulking. He urged the other Members to do the same by accepting the decision of the majority. He stated that presentation of the Constitution from a disunited front would serve nobody except those who want to destabilize the government.

### **REMARKS OF MR. NOLLEDO**

Mr. Nollado adopted Mr. Natividad's arguments, adding that he would not want to present a mangled Constitution. He urged that the Members rise and fall with the Constitution they have drafted. He suggested that if certain Articles contain objectionable provisions, the same could be remedied by presenting the whole Constitution and letting the Congress to amend or revise it later, if necessary.

### **INQUIRY OF MR. SUAREZ**

Mr. Suarez recalled that a constitutional issue reducing the voting age from 21 to 18 came up in the 1971 Constitutional Convention and the delegates felt that the matter was urgent enough to justify a separate plebiscite thereon. It was elevated by former Senator Tolentino to the Supreme Court which voted it down with a ruling that all proposals and amendments should be submitted in one single plebiscite. He then inquired how the proposal could be reconciled with the doctrine enunciated in the Tolentino vs. COMELEC case.

Replying thereto, Mr. Bernas stated that a careful reading of the Tolentino vs. COMELEC case would show that it

does not prohibit what he was proposing. He pointed out that when the amendment on the voting age was presented for ratification it was then the only Section approved by the Constitutional Convention and the Supreme Court ruling was that if it were to be part of a total Constitution it must be placed in the context of the Constitution of which it would be a part. He stated that his proposal on the other hand would place the entire Constitution before the people except that there would be separate voting on some articles. He maintained that the Tolentino vs. COMELEC ruling is not applicable.

### **REMARKS OF MR. TINGSON**

Mr. Tingson recalled that in 1787, there were interminable debates among the 13 colonies in Philadelphia with General George Washington presiding the Constitutional Convention and yet when the Constitution was framed, they never thought of presenting it to the thirteen colonies in separate packages. He pointed out that in the 1899, 1935 and 1971 Constitutional Conventions, there never was unanimity and yet presenting the Constitution in different packages was never thought of.

Mr. Tingson also opined that presentation of the Constitution in different packages would be more divisive than unifying.

### **VOTING ON MR. BERNAS' PROPOSED AMENDMENT**

Mr. Bernas stated that the fact that it was not done in the past should not be an argument against the proposal and pointed out that the country never had a revolution like what happened in February, yet the people did it.

Thereupon, Mr. Bernas restated his proposed amendment, to wit:

THE PRESENTATION OF THE RATIFICATION, HOWEVER, SHALL BE IN THREE DISTINCT PARTS

**1) A VOTE ON THE ARTICLE ON SOCIAL JUSTICE;**

**2) A VOTE ON THE ARTICLE ON NATIONAL ECONOMY; AND**

**3) A VOTE ON ALL THE REST.**

Submitted to a vote, and with 10 Members voting in favor, 31 against and no abstention, the proposed amendment was lost.

### **MANIFESTATION OF MR. MAAMBONG**

Mr. Maambong stated that the Body should then vote on the original formulation of the Committee as indicated in Section 12.

### **PROPOSED AMENDMENTS OF MR. DAVIDE**

Mr. Davide proposed to substitute the words "its ratification" with the phrase THE PROCLAMATION BY THE PRESIDENT THAT IT HAS BEEN RATIFIED; and to add the words AND THEIR AMENDMENTS after "Constitutions".

Mr. Maambong stated that the Committee would accept the first proposed amendment but not the second, the reason being that the word "Constitutions" refers to previous Constitutions including the amendments.

Mr. Davide desisted from pursuing his second proposal, in lieu of which, he proposed to add: THE

PROCLAMATION SHALL BE MADE WITHIN FIVE DAYS FOLLOWING THE COMPLETION OF THE CANVASS BY THE COMMISSION ON ELECTIONS OF THE RESULTS OF SUCH PLEBISCITE.

Mr. Maambong stated that the Committee felt that the second proposed amendment in the form of a new sentence would not be necessary because it would be too much to impose a time frame on the President to issue the proclamation. He adverted to an approved provision in the Article on the Executive which mandates the President to make certain that all laws shall be faithfully complied with and with the approval of the first proposed amendment of Mr. Davide, there would be a law which the President would naturally comply with.

Mr. Davide withdrew his second proposed amendment on the assumption that there would be an immediate proclamation of the results.

#### **REMARKS OF MR. BERNAS**

Mr. Bernas asked the Committee to reconsider its acceptance of the amendment which makes the effectivity of the new Constitution dependent upon the proclamation of the President. He maintained that the effectivity of the Constitution should commence on the date of the ratification and not the date of the proclamation of the President. He recalled that in 1976 when the amendments to the Constitution were ratified, the draft presented to the people contained a qualification to the effect that the effectivity of the amendments would be upon the proclamation made by the President and he suspected that such qualification was placed in the draft precisely to give the President some kind of a leeway on whether to announce the ratification or not.

#### **INQUIRY OF MR. MAAMBONG**

On whether he would agree that an exact date has to be fixed as to indicate when the Constitution is supposed to have been ratified, Mr. Bernas stated that the ratification is effective on the date the votes are cast so that if the President, for instance, were to say that the plebiscite would be held on January 19, 1987, then the date for the effectivity of the new Constitution would be January 19, 1987. He explained that ratification is the act of saying "yes" which is done when the ballot is cast.

#### **REMARKS OF MR. DAVIDE**

Mr. Davide stated that he would insist on his proposed amendment and that he could not subscribe to Mr. Bernas' view that the date of ratification is reckoned from the date of the casting of the ballots. He opined that technically, it would be alright if it would be upon the announcement of the results of the canvass conducted by the COMELEC. He stressed that it is necessary that there must be a body which would make the formal announcement of the result of the plebiscite and that is either the President or the COMELEC.

#### **REMARKS OF MR. NOLLEDO**

Mr. Nollado agreed with Mr. Bernas that it is the date of the casting of the "yes" votes that is the date of the ratification of the Constitution. He maintained that the announcement merely confirms the ratification even if the results are released two or three days after. He argued that it is a fundamental principle in political as well as civil law that announcement is a mere confirmation and that the act of ratification is the act of voting by the people. He stated that if there should be any need for presidential proclamation, that proclamation would merely confirm the act of ratification.

### REMARKS OF MR. REGALADO

Speaking in support of Mr. Bernas' position, Mr. Regalado stated that the canvass thereafter is merely the mathematical confirmation of what was done on the day of the plebiscite and that the proclamation of the President is merely the official confirmatory declaration of an act of the Filipino people in adopting the Constitution.

### REMARKS OF MR. LERUM

Mr. Lerum expressed support for Mr. Davide's proposal by stressing the need for fixing a date for the effectivity of the Constitution in relation to the obligations and rights that may accrue therefrom.

### FURTHER INQUIRIES OF MR. MAAMBONG

On Mr. Maambong's query, Mr. Bernas stated that there would be a necessity for the COMELEC to declare the results of the canvass because it is the body which makes the official announcement of the results.

On whether there would be a necessity for the President to make a proclamation of the results of the canvass submitted by the COMELEC, Mr. Bernas stated that the proclamation of the President would be immaterial because it is the COMELEC which is charged with the administration of all election laws.

Mr. Bernas further affirmed that the President may issue the proclamation but it would have no effect even if she contradicts the report of the COMELEC. He added that if the date of effectivity is the day of the casting of the votes, it would mean that the Constitution takes effect on every single minute and every single second of that day because the Civil Code says that a day has 24 hours so that even if the votes are cast in the morning, the Constitution would really be effective from the previous midnight.

Finally, Mr. Bernas affirmed that whatever would be the date of publication of the results of the canvass by the COMELEC, it would retroact to the date of the plebiscite.

### REMARKS OF MR. GUINGONA

Commenting on the statement that there is a need to provide a definite date, Mr. Guingona stated that Mr. Bernas' interpretation speaks of ratification that would have a definite date because there would be no definite date if it is made to depend upon the canvassing by the COMELEC.

### REMARKS OF MR. CONCEPCION

Mr. Concepcion stated that whoever makes the announcement of the result of the plebiscite, be it the COMELEC or the President, will announce that a majority of the votes cast on a given date was cast in favor of the Constitution, so that that would be the date when the Constitution takes effect, apart from the provision on amendments to the Constitution which provides that a Constitution becomes effective upon ratification by a majority of the votes cast. He opined, however, that the ratification could not be from the very beginning of the date of the plebiscite because as of that time, it is impossible to determine whether there is a majority. He stated that the new Constitution would be considered ratified only upon determination that majority of the votes was cast.

### REMARKS OF MR. PADILLA

Speaking against Mr. Davide's proposed amendment, Mr. Padilla stated that the ratification of the Constitution is on the date that the people, by majority vote, cast their votes in favor of the Constitution. He pointed out that even in Civil Law, if there is a contract between an agent and a third person and that contract is ratified or confirmed by the principal, the validity does not begin on the date of ratification but retroacts to the date when the contract was executed. For the same reason, he stated that the date of the Constitution as ratified should retroact to the date when the people cast their affirmative votes.

### WITHDRAWAL OF MR. DAVIDE'S PROPOSED AMENDMENT

Mr. Davide withdrew his proposed amendment on the assumption that the Office of the President or the COMELEC would make the formal announcement of the results.

### RESTATEMENT AND APPROVAL OF THE COMMITTEE FORMULATION OF SECTION 12

Mr. Maambong then read the Committee formulation of Section 12, to wit:

THIS CONSTITUTION SHALL TAKE EFFECT IMMEDIATELY UPON ITS RATIFICATION BY A MAJORITY OF THE VOTES CAST IN A PLEBISCITE CALLED FOR THE PURPOSE AND SHALL SUPERSEDE ALL PREVIOUS CONSTITUTIONS.

Submitted to a vote, and with 35 Members voting in favor, none against and no abstention, the Body approved Section 12.

Thereupon, in reply to the Chair's query, Mr. Suarez stated that there was only one more pending provision.

### PROPOSED AMENDMENT OF MR. OPLE

Mr. Ople manifested that he proposed an amendment to Section 8 which reads:

SHARES OF STOCK UNDER SEQUESTRATION IN A CORPORATION MAY NOT BE VOTED TO ESTABLISH CONTROL OF THAT CORPORATION EXCEPT UPON DETERMINATION BY THE SANDIGANBAYAN OF THE TRUE OWNERSHIP OF THE SHARES.

He stated, however, that after consultation with the Committee he would be willing to withdraw his amendment but requested that the explanatory note thereof be inserted into the Record.

Thereupon, Mr. Guingona requested that this objection to Mr. Ople's proposed amendment be likewise put on record.

### AMENDMENTS OF MR. MAAMBONG

On behalf of the Committee, Mr. Maambong proposed to the Committee on Style that the first paragraph of Section 15 be transposed to the second paragraph of Section 1 of the Article on Transitory Provisions, so that the latter would read:

THE FIRST LOCAL ELECTIONS SHALL BE HELD ON THE DATE TO BE DETERMINED BY THE PRESIDENT, WHICH MAY BE SIMULTANEOUS WITH THE ELECTION OF THE MEMBERS OF THE CONGRESS. IT SHALL INCLUDE THE ELECTION OF MEMBERS OF THE CITY OR MUNICIPAL COUNCIL IN THE METROPOLITAN MANILA AREA.

He stated that the second paragraph of Section 15 would remain therein.

On Section 17, he proposed to change "its" to THEIR on the second line; and on the third line, to change "province" to PROVINCES.

### **TERMINATION OF THE PERIOD OF AMENDMENTS**

There being no other amendments, on motion of Mr. Rama, there being no objection, the Body closed the period of amendments on the Article on Transitory Provisions.

Thereupon, Mr. Maambong informed the Floor Leader that the Committee had been furnished by the Secretariat with clean copies of the approved Sections of the Article on Transitory Provisions except from what had been approved in the day's session. Mr. Suarez added that the Body had approved 26 Sections of the Article.

### **APPROVAL ON SECOND READING OF THE ARTICLE ON TRANSITORY PROVISIONS, AS AMENDED**

In view thereof, on motion of Mr. Rama, there being no objection, the Body proceeded to vote, on Second Reading, on Proposed Resolution No. 540, entitled:

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

Submitted to a vote, and with 33 Members voting in favor, none against, and three abstentions, the Body approved on Second Reading, Proposed Resolution No. 540 on the Article on Transitory Provisions, as amended.

On behalf of the Committee, Mr. Suarez expressed his gratitude to all the Members of the Commission for their cooperation in the deliberations on the Article on Transitory Provisions.

Mr. Rama manifested that the Body had already finished all the provisions of the new Constitution except for some reservations, most of which were matters of style.

### **FURTHER AMENDMENT OF MR. MONSOD**

In connection with his reservation on the new Section 7 of the Article on the Declaration of Principles, Mr. Monsod moved for reconsideration of its approval in order that the Body could consider his proposed amendment on Section 7, to read:

THE PHILIPPINES, CONSISTENT WITH THE NATIONAL INTEREST, ADOPTS AND PURSUES A POLICY OF FREEDOM FROM NUCLEAR WEAPONS IN ITS TERRITORY.

He explained that his amendment would reflect more accurately the intent of the Committee and the Commission that freedom from nuclear weapons is a general policy which is subject to exceptions involving the national interest. He stated that he had attached to his proposal the excerpts from the deliberations thereon, and that Mr. Azcuna, the original proponent, and Mr. Davide agreed to his formulation, which reflects said intent.

### **INQUIRY OF MR. SARMIENTO**

Mr. Sarmiento pointed out that the reservation of Mr. Monsod was made because of the latter's amendment in relation to Mr. Suarez' proposed amendment. He stated that if Mr. Suarez would not insist on his amendment, Mr. Monsod's amendment would not be in order.

In reply, Mr. Monsod underscored the reasons why he asked for reconsideration, as borne out by the transcript of records, namely, the proposal of Mr. Suarez, which was subsequently withdrawn; and the apparent conflict in the intent of the provision, hence, the need to clarify it in fairness to the government and the people.

## SUSPENSION OF SESSION

At this juncture, the session was suspended.

It was 11:50 a.m.

## RESUMPTION OF SESSION

At 12:06 p.m., the session was resumed.

On Mr. Monsod's query whether the meaning of "consistent with" is the same as "subject to", to avoid possible misinterpretation of the phrase, Mr. Azcuna replied that the latter phrase with respect to the nuclear-free provision means subject to national interest, for which reason there is no need for the substitution because its meaning is already clear as confirmed by the records of the Body's deliberations.

In reply to Mr. Ople's query whether there is any Member who dissents from Mr. Azcuna's interpretation of the phrase "consistent with", the Chair replied in the negative.

At this juncture, Mr. de los Reyes, the main author of the provision, requested for the insertion into the records of his short comment in support of the concept.

The Chair took note of the manifestation.

Mr. Monsod pointed out that some might interpret that the phrase "consistent with" was placed there as the basis for adopting and pursuing the policy of freedom from nuclear weapons which is erroneous because the Body interprets it as equivalent to "subject to".

Replying thereto, Mr. Azcuna reiterated that "consistent with" means "subject to" which means that both the adoption and pursuit of the policy as well as exceptions therefrom must be subject to national interest.

Thereupon, Mr. Monsod requested that his motion be, likewise, entered into the records so that there would be no confusion as to the interpretation of the phrase.

Thereafter, Mr. Villacorta requested Mr. de los Reyes to read the document which he wanted to be inserted into the records.

Thereupon, Mr. de los Reyes read the document as follows:

The U.S. Military Bases in the Philippines as competently stated in the brilliant speeches of our colleagues were here long before the conceptualization of nuclear wars. The strategy of their presence in our country is in the concept of a conventional war or conventional armed engagement. Even the choke points so ably explained by the Honorable Crispino de Castro in his speech in support of the United States bases in the Philippines are in consonance with conventional armed engagement, not nuclear wars. All these choke points and all the US bases in our country are of insignificant importance in the event of a nuclear war between Russia and America. I have already explained this.

We need a nuclear-missile free policy to convey to the world, especially to Russia and America, the folly, perhaps even the stupidity, of huge nuclear-weapon arsenals that must sooner or later be justified only by actual use.

The Americans and the Russians are part of what we call humanity. Our voice might be just a tiny sound in a world dominated by superpowers. Even then, our obligation to humanity demands that we speak the truth. And the truth is that the single existing thing that can wipe out humanity is the nuclear missile.

Let me say this — it is more in keeping with enlightenment and our relation to God to be obsessed by the desire to

preserve humanity than to contribute to its destruction. I say this because we know only so well that a nuclear war will put humanity in an irreversible state of destruction. Why in God's name should we contribute to our own destruction?

Mr. Villacorta manifested his disagreement with the foregoing statement because contrary to the claim that the American bases here are merely for the purpose of conventional warfare, the U.S. Information Service itself produced materials showing that the bases in the country are strategic not only for the Asia-Pacific region but even for the Indian Ocean region.

This strategic value of the bases clearly necessitates that they be useful for nuclear warfare. It would be naive, he said, to think that these biggest bases outside U.S. territory are only for conventional warfare.

On Mr. Jamir's query whether the phrase "consistent with" has the same meaning as "subject to", Mr. Monsod replied that it is the Committee's interpretation as approved by the Body since no Member objected to it.

Mr. Jamir stated that he was about to object to it before it was approved by the Body. He then queried as to which is the better phrase to avoid confusion. Mr. Monsod replied that it is "subject to".

As to why would the Body not simply use it, Mr. Monsod explained that it may no longer be necessary to substitute "consistent with" with SUBJECT TO because there is no doubt as to its meaning as evidenced by the records.

Mr. Jamir maintained that its meaning remains doubtful even if explained in the records because a person reading the provision would not dig into the Body's records just to determine the real intention of the Commission.

Mr. Monsod agreed that the point has merit and it is precisely for this reason that he presented his proposal.

As to the reason why he did not insist on his proposal, Mr. Monsod explained that although he had not yet formally withdrawn the proposal, he would be willing to accept the Committee's interpretation. He then requested for a suspension of session to determine whether there is still a need for the substitution.

At this juncture, the Chair read the transcript of the proceedings on September 20, 1986 which showed that Mr. Monsod was satisfied with Mr. Azcuna's interpretation that any divergence in the country's nuclear-free policy could only be justified by reason of national interest and that the latter made a reservation to ask for a reconsideration in the event that this would no longer reflect the policy.

Mr. Jamir maintained that he was merely concerned about the possible misinterpretation of the phrase "consistent with" especially among the citizens who do not have the time to examine the records of the Commission.

The Chair stated that it would be up to the Members to explain to the people the truth and intent behind the particular provision.

Mrs. Quesada requested for the complete transcript of the discussion between Messrs. Monsod and Azcuna to inform the Body of the circumstances which led to the motion for reconsideration.

Thereupon, Mr. Monsod stated that if there is any doubt as to his right to file a motion for reconsideration or to his interpretation of the phrase "consistent with" as confirmed by Mr. Azcuna, then the same should be submitted to a vote.

The Chair clarified that Mrs. Quesada was merely trying to recall the discussion between Messrs. Monsod and Azcuna in the previous session.

### **SUSPENSION OF SESSION**

At this juncture, the Chair suspended the session.

It was 12:27 p.m.

### **RESUMPTION OF SESSION**

At 12:45 p.m., the session was resumed.

### **SUSPENSION OF SESSION**

At this juncture, on motion of Mr. Rama, the Chair suspended the session until two o'clock in the afternoon.

It was 12:45 p.m.

### **RESUMPTION OF SESSION**

At 2:45 p.m., the session was resumed.

Upon resumption of session, Mr. Bengzon informed that the Body would reopen certain Articles, to wit:

1. Article on the Judiciary, in view of the proposal to increase the membership of the Supreme Court from 11 to 15;
2. Article on the Executive, to align Section 4 thereof to the provision on the election of the President and Vice-President.

Mr. Bengzon observed that the Article on the Legislative contains the date on which the elections are going to be held while the Article on the Executive does not contain such a statement and hence the need to align the two Articles.

3. Article on the Legislative, in view of the desire of some Members to rethink the Body's decision with respect to the election of Members of the House of Representatives by district as well as to settle the matter regarding Metro Manila.

He informed, moreover, that the Body would finish consideration of the various sections affected before the end of the day as the Committees on Style and Sponsorship have to submit their respective reports the next day.

### **INQUIRY OF MRS. QUESADA**

Mrs. Quesada inquired on the criteria considered to reopen certain articles which have been approved on Third Reading. She advised that the Committee on Social Justice would like to reopen the Article although the proposal might not be favorably acted upon.

Mrs. Quesada inquired whether there were certain considerations such as the feedback from the Supreme Court Justices. She stressed the need for uniformity in the application of the Rules.

In response, Mr. Bengzon clarified that the Committees on the Legislative and the Judiciary presented petitions to the Steering Committee, which after studying the petitions, recommended the reopening of said Articles. He stated that a Section in the Article on the Executive would be merely aligned with the Section on the election of the President and Vice-President in the Article on the Legislative. On the criteria, Mr. Bengzon remarked that it would depend on the grounds for reopening to be presented by the Committee which would then have to file a

petition or else bring the matter to the floor.

### **INQUIRY OF THE CHAIR**

Upon inquiry of the Chair, Mr. Bengzon affirmed that under the Rules, the Steering Committee would have to recommend the reopening.

The Chair queried whether the urgent petition of the Committee on the Judiciary to reopen the Article which was endorsed by the Steering Committee would need a 2/3 vote of the Body.

Mr. Bengzon pointed out that Committee Report No. 41 filed by the Steering Committee recommended the reopening of certain Sections in the Article on the Judiciary which Committee Report shall be presented for the Body's approval.

Mrs. Quesada then inquired whether there should be a sponsor to seek the reopening of the Article.

In reply thereto, Mr. Bengzon clarified that it is for this reason that the Steering Committee is about to present Committee Report No. 41 referring to the petition of the Committee on the Judiciary with the recommendation that it be approved by the Body.

### **SUSPENSION OF SESSION**

The Chair suspended the session to allow the Members to go over Committee Report No. 41 and Petition No. 4 and thus be guided in voting.

It was 3:00 p.m.

### **RESUMPTION OF SESSION**

At 3:04 p.m., the session was resumed.

Upon resumption of session, Mr. Bengzon moved for the approval of Committee Report No. 41 recommending the reopening of certain Sections in the Article on the Judiciary.

### **INQUIRY OF MR. DE CASTRO**

On the query of Mr. de Castro whether a reopening would be equivalent to reconsideration, Mr. Bengzon pointed out that it would not reopen the whole Article and that should the Body act favorably on the recommendation of the Steering Committee the Body would then discuss any specific sections.

In addition, the Chair clarified that the specific sections to be reopened should the Body approve the petition are Sections 3, 7, 10, 11, 13 and 14 of said Article.

Mr. de Castro averred that under the Rules, since the time has lapsed for a motion for reconsideration, the Body would have to suspend the Rules to reopen the Articles on the Judiciary.

Mr. Bengzon affirmed that if Committee Report No. 41 is approved, it will in effect suspend the Rules.

The Chair clarified that the matter would be submitted to a vote and should it get 2/3 vote, the Sections would be reopened but should it fail to get the 2/3 vote, the petition to reopen is lost.

Upon inquiry of Mr. de Castro, the Chair clarified that under the Rules, 2/3 vote of those present is required. The Chair, moreover, explained that the petition to reopen was coursed through the Steering Committee which recommended its approval, otherwise, suspension of the Rules would require unanimous vote.

On the query of Mrs. Quesada, whether the motion is for suspension of the Rules and not to consider Committee Report No. 41, Mr. Bengzon stated that Committee Report No. 41 endorses Petition No. 4 filed by the Committee on the Judiciary, which, if approved by 2/3 vote would suspend the Rules.

#### **VOTING ON COMMITTEE REPORT NO. 41 ON PETITION NO. 4**

Thereafter, upon direction of the Chair, the Secretary-General read the title of Committee Report No. 41 on Petition No. 4 prepared by the Steering Committee entitled:

An urgent petition to reopen Sections 3, 7, 10, 11, 13, and 14 of the Article on the Judiciary.

Submitted to a vote, and with 35 Members voting in favor and none against, Committee Report No. 41 was approved by the Body.

#### **SPONSORSHIP REMARKS OF MR. CONCEPCION ON PETITION NO. 4**

Mr. Concepcion stated that the Petition requested for opportunity to consider certain sections although there is only one purpose which is to take appropriate measures to ensure that the cases pending in the Judiciary are resolved and to avoid further delay in the administration of justice. He added that this would require certain adjustments of the aforementioned sections.

Mr. Concepcion stated that paragraph 1 of Section 3, as approved by the Body establishes a Supreme Court of 11 members which the Committee seeks to increase to 15 to ensure the speedy resolution of pending cases and new cases expected to be filed upon the new Constitution's ratification. He noted that under the increased membership, the Court would be given the discretion to effect the division of the Court into 3, 5 or 7 members, the reason being that the nature or seriousness of the cases might require a lesser or bigger number in the composition of each division.

As proposed, the Section would read:

THE SUPREME COURT SHALL BE COMPOSED OF A CHIEF JUSTICE AND FOURTEEN ASSOCIATE JUSTICES. IT MAY SIT EN BANC OR, IN ITS DISCRETION, IN DIVISIONS OF THREE, FIVE OR SEVEN MEMBERS. ANY VACANCY SHALL BE FILLED NINETY DAYS FROM THE OCCURRENCE THEREOF.

Mr. Concepcion stated that the last sentence had been approved by the Body.

#### **INQUIRY OF MR. DE CASTRO**

Mr. de Castro observed that when the Body was discussing the Section, he asked the Committee why the number of justices as provided for in the 1973 Constitution could not be followed. The Committee, he noted, reasoned out that the smaller number was recommended by Chief Justice Teehankee as 15 is unwieldy.

On the rationale for increasing the number to fifteen, Mr. Concepcion stated that after the approval on Third Reading of the Article on the Judiciary, the Committee had received some feedback from the Philippine Bar and from many lawyers who insist that it is impossible for the Supreme Court to eliminate the backlog considering the pace at which it has been disposing cases. He stated that although the Chief Justice preferred to retain the number at eleven, the Members of the Committee felt that they could not take chances on this matter due to numerous complaints received by the government on delays in the dispatch of cases on the theory that justice delayed is justice denied.

Mr. Concepcion pointed out that once the Constitution is approved, the Members of the Commission could no

longer approve other measures and have to stick to what has been done and, therefore, to obviate such a possibility, the Committee deemed it best to increase the membership of the Supreme Court to fifteen to enable it to sit in divisions at its discretion. Moreover, he stated that it is difficult for a court to admit that it could not cope with its job.

In reply to Mr. de Castro's inquiries, Mr. Concepcion affirmed that the last sentence is a mandate to the Executive to fill the vacancy right away, considering that in the past thirty years, seldom has the Supreme Court had a complete complement. He, likewise, affirmed that upon ratification of the Constitution, the Judicial and Bar Council shall be in operation and that a Member of Congress would be a member thereof.

Mr. Concepcion admitted that it is possible that by the time the Constitution is ratified, Congress is not yet convened and it would take until November or December before the other four Justices would be filled up if the Bar and Judicial Council were to be followed. He stated that the Bar and Judicial Council could function even without the member from Congress, who would be an ex-officio member, because a majority would be enough. He affirmed that upon ratification of this Constitution, it is possible that the President would appoint the members of the Bar and Judicial Council initially without a representative from Congress.

### **INQUIRY OF MR. SUAREZ**

In reply to Mr. Suarez' query, Mr. Concepcion affirmed that under Section 3(1), the Supreme Court, composed of 15 Justices, may in its discretion divide itself into divisions of three, five or seven, with a quorum of two, three and four, respectively.

Mr. Concepcion also affirmed that paragraph (3), in relation to paragraph (1) of the same Section 3, means that in a division of three, it would have to be a unanimous vote of three; in a division of five, at least three should vote in favor of a decision; and in a division of seven, at least four could render a decision, therefore, paragraph (3) would affect only a division of three.

### **APPROVAL OF SECTION 3**

Thereupon, Mr. Romulo restated Section 3(1), to wit:

THE SUPREME COURT SHALL BE COMPOSED OF A CHIEF JUSTICE AND FOURTEEN ASSOCIATE JUSTICES. IT MAY SIT EN BANC OR IN ITS DISCRETION IN DIVISIONS OF THREE, FIVE OR SEVEN MEMBERS. ANY VACANCY SHALL BE FILLED WITHIN NINETY DAYS FROM THE OCCURRENCE THEREOF.

Submitted to a vote, and with 34 votes in favor and none against, Section 3(1) was approved by the Body.

### **INQUIRY OF MR. BERNAS**

On Section 3(2), in reply to Mr. Bernas' query on whether under the original proposal, a vote of five would be sufficient to declare a law unconstitutional, Mr. Concepcion stated that a majority of those participating would be enough so long as there is a quorum. He affirmed that the same would hold true with respect to the present provision contained in paragraph (2) which is a consolidation of the original paragraphs (2) and (3), the reason being that there have been cases in the past when a minority prevailed over the majority in cases involving the declaration of unconstitutionality by reason of the fact that the law at that time required a fixed number of votes for purposes of declaring a law unconstitutional.

### **APPROVAL OF SECTION 3(2)**

Mr. Suarez restated Section 3(2), to wit:

ALL CASES INVOLVING THE CONSTITUTIONALITY OF A TREATY, INTERNATIONAL OR EXECUTIVE AGREEMENT, OR LAW WHICH SHALL BE HEARD BY THE SUPREME COURT EN BANC, AND ALL OTHER CASES WHICH UNDER THE RULES OF COURT ARE REQUIRED TO BE HEARD EN BANC, INCLUDING THOSE INVOLVING THE CONSTITUTIONALITY, APPLICATION OR OPERATION OF PRESIDENTIAL DECREES, PROCLAMATIONS, ORDERS, INSTRUCTIONS, ORDINANCES AND OTHER REGULATIONS, SHALL BE DECIDED WITH THE CONCURRENCE OF A MAJORITY OF THE MEMBERS WHO ACTUALLY TOOK PART IN THE DELIBERATIONS ON THE ISSUES IN THE CASE AND VOTED THEREON.

Submitted to a vote, and with 34 Members voting in favor and none against, Section 3(2) was approved by the Body.

### **RESTATEMENT OF SECTION 3(3)**

Mr. Suarez restated the provision of Section 3(3), to wit:

CASES OR MATTERS HEARD BY A DIVISION SHALL BE DECIDED OR RESOLVED WITH THE CONCURRENCE OF A MAJORITY OF THE MEMBERS WHO ACTUALLY TOOK PART IN THE DELIBERATIONS ON THE ISSUES IN THE CASE AND VOTED THEREON, AND, IN NO CASE, WITHOUT THE CONCURRENCE OF AT LEAST THREE (3) OF SUCH MEMBERS. WHEN THE REQUIRED NUMBER IS NOT OBTAINED, THE CASE SHALL BE DECIDED EN BANC; PROVIDED, THAT NO DOCTRINE OR PRINCIPLE OF LAW LAID DOWN BY THE COURT IN A DECISION RENDERED EN BANC OR IN DIVISION MAY BE MODIFIED OR REVERSED EXCEPT BY THE COURT SITTING EN BANC.

Mr. Suarez explained that the only substantial change or amendment is the substitution of the phrase "participated when the case was submitted for decision" with TOOK PART IN THE DELIBERATIONS ON THE ISSUES IN THE CASE AND VOTED THEREON.

He also stated that on the matter of voting, concurrence is needed in cases or matters in the division level, which is why, the following phrase was added:

IN NO CASE, WITHOUT THE CONCURRENCE OF AT LEAST THREE (3) OF SUCH MEMBERS.

### **INQUIRY OF MR. RODRIGO**

In reply to Mr. Rodrigo's query on whether, in case of failure of the required votes, the smallest division of three should immediately go to the court en banc of fifteen Justices or should it go first to a bigger division, Mr. Concepcion stated that it would immediately go to the court en banc. Mr. Suarez affirmed that the phrase "when the required number is not obtained, the case shall be decided en banc" would operate automatically because the required number of three (3) has not been obtained. He pointed out that the Supreme Court, in its discretion, could divided itself into divisions of 3, 5, or 7, but dividing themselves into divisions of 3 would eliminate the theoretical assumption that there would be a division of 5 or 7.

### **INQUIRY OF MR. MAAMBONG**

In reply to Mr. Maambong's query whether it is the intention of the provision that the division in the Supreme Court would be on the basis of specializations, Mr. Suarez replied in the negative, explaining that the intention is to leave the matter to the discretion of the Court.

On the suggestion that the Supreme Court can solve the clogging of dockets by going into divisions of 3 or 5 members, Mr. Concepcion stated that the Court does not have to organize 5 divisions of 3 members each but may have a division of 3, a division of 5, and another division of 7 depending on the demands of public service and also to give it more flexibility.

At this juncture, Mr. Regalado invited attention to the fact that even in the Intermediate Appellate Court, there are no more specialized divisions.

### **APPROVAL OF SECTION 3(3)**

Thereupon, Mr. Suarez restated Section 3 (3), to wit:

CASES OR MATTERS HEARD BY A DIVISION SHALL BE DECIDED OR RESOLVED WITH THE CONCURRENCE OF A MAJORITY OF THE MEMBERS WHO ACTUALLY TOOK PART IN THE DELIBERATIONS OF THE ISSUES IN THE CASE AND VOTED THEREON, AND, IN NO CASE, WITHOUT THE CONCURRENCE OF AT LEAST THREE (3) OF SUCH MEMBERS. WHEN THE REQUIRED NUMBER IS NOT OBTAINED, THE

CASE SHALL BE DECIDED EN BANC: PROVIDED, THAT NO DOCTRINE OR PRINCIPLE OF LAW LAID DOWN BY THE COURT IN A DECISION RENDERED EN BANC OR IN DIVISION MAY BE MODIFIED OR REVERSED EXCEPT BY THE COURT SITTING EN BANC.

Submitted to a vote, and with 34 Members voting in favor and none against, Section 3(3) was approved by the Body.

### **RESTATEMENT OF SECTION 7(2)**

Mr. Suarez restated the provision of Section 7(2), to wit:

REVIEW, REVISE, REVERSE, MODIFY, OR AFFIRM ON CERTIORARI, AS THE LAW OR THE RULES OF COURT MAY PROVIDE, FINAL JUDGMENTS AND DECREES OF LOWER COURTS IN . . ."

Mr. Suarez stated that the only suggested amendment is the deletion of the words "appeal or" in the proposed section.

### **INQUIRY OF MR. GUINGONA**

In reply to Mr. Guingona's query on the rationale for deleting the words "appeal or", Mr. Concepcion stated that Section 7 is an enumeration of specific powers of the Supreme Court, while paragraph (2) refers to cases being reviewed by the Supreme Court. He stated that in the U.S. Federal Supreme Court, all cases are taken up on petition for review and a case need not be given due course and decided on the merits unless the issues raised deserve the attention of the court. He maintained that questions of fact need not be reviewed by the Supreme Court, which is one of the steps adopted to ensure the speedy disposition of cases. He pointed out that, at any rate, the importance of the court as such is its doctrinal authority and, therefore, insofar as questions of fact are concerned, the court need not pass upon them unless there are certain conditions which amount to lack of

jurisdiction, abuse of discretion or excess of jurisdiction.

Mr. Concepcion affirmed that this particular provision would preclude the Supreme Court from making any findings of facts and would relieve the court of the duty to make the findings. He pointed out, however, that it is not a definite prohibition although the court would welcome the relief of this burden. He opined that it is a very tedious thing and it is a question of appreciation of credibility for which it could not claim to be in a better position than the lower courts. He also stated that if the Supreme Court chooses to deny the petition for review or certiorari, it is the end of the case.

### **INQUIRY OF MR. MAAMBONG**

In reply to Mr. Maambong's query on the meaning of the phrase "rules of court" not in capital letters, Mr. Regalado stated that the phrase would refer to any rules of court enforced at the time. He stated that the phrase "as the law or the rules of court may provide" would refer to procedural laws.

On the word "law", Mr. Regalado stated that it would refer to the provisions of the Judiciary Act of 1948, as amended, which are still in force as a complementary to BP Blg. 129.

On whether Presidential decrees relative to remedial law would fall under "law" or under the "rules" of court", Mr. Regalado replied that it would include the participation of the Supreme Court. He affirmed that the rules of court being referred to in the proposed amendment is the Rules of Court of 1964, as amended.

As to why the letter "r" in the word "rules" and the letter "c" in the word "court" were not capitalized, Mr. Regalado stated that there might be another set of rules of court, the fact being that the 1985 rules on criminal procedure has already started. He further affirmed that the rules on criminal procedure would fall under the term "rules of court" because the rules on summary procedure and for that matter the interim rules and guidelines were prepared by the Supreme Court.

### **INTERPELLATION OF MR. COLAYCO**

Mr. Colayco stated that Section 7 as originally worded included the phrase "appeal or certiorari" but he noted under the proposal the deletion of the word "appeal" which, he opined, runs counter to the fundamental principle in the Rules of Court that when the remedy of appeal is granted by the Rules, it could not be denied, the reason being that this is a matter of automatic right while on the other hand, it is also fundamental that when the remedy of certiorari is given, it is not just a matter of right of the appellant but a matter of discretion on the part of the court. He pointed out that in a criminal case where the accused is convicted and sentenced to reclusion perpetua, it is a matter of right on the part of the accused to appeal the judgment of conviction. He then inquired whether under this proposed amendment, if the accused wants to have his sentence reviewed, the court could decide not to accept it.

Replying thereto, Mr. Concepcion explained that the defendant may have to file a petition for review on certiorari, to which Mr. Colayco stated that it would still be subject to the discretion of the court.

Mr. Concepcion pointed out that it is not discretion but judgment, explaining that a judgment is a choice between right and wrong while discretion is a choice between several alternatives without being wrong in either alternative. He stated that the court may, if in its judgment the case is not worthy of its attention, refuse to give due course to the petition for review on certiorari.

On whether this could be treated like an ordinary petition for certiorari, Mr. Concepcion replied in the affirmative stating that an original petition for certiorari is an original action.

Mr. Colayco pointed out that under the present Rules, one can appeal from a decision of the Court of Appeals by petition for certiorari which, however, is not a matter of right on the part of the appellant. He then inquired whether under the amendment, an appeal from a judgment of conviction sentencing the accused to reclusion perpetua could be treated on a similar basis, to which Mr. Concepcion replied in the affirmative, and stressed that this proposal is part of the endeavor to allow the court to clear its docket without, in any way, its abusing its jurisdiction.

On whether the Committee could consider an amendment to reinstate this remedy of appeal, Mr. Concepcion replied in the affirmative.

Mr. Colayco questioned the propriety of sacrificing even that right for the simple purposes of helping the Supreme Court clean up its docket, to which Mr. Concepcion replied that the laws grant a right to review but whether it is by appeal or by petition for review, that is a procedural matter.

Mr. Colayco recalled that in his experience in the Appellate Court, there is a strong temptation to dispose of the appeal at a glance where he knew that it is not the right of the appellant to make the appeal, to which Mr. Concepcion stated that this is a matter of appreciation by the courts which are presided by human beings and no human being is perfect. He reminded that before it reaches the Supreme Court, there must be a decision of the Regional Trial Court and thereafter, the decision of the Intermediate Appellate Court.

Mr. Colayco pointed out that in the case of judgment of conviction sentencing the accused to reclusion perpetua, it goes straight to the Supreme Court, to which Mr. Concepcion agreed.

On Mr. Colayco's contention that the law should have to be changed, Mr. Concepcion agreed by stating that the change could be made through the Constitution.

### **SUSPENSION OF SESSION**

At this juncture, the Chair suspended the session.

It was 3:52 p.m.

### **RESUMPTION OF SESSION**

At 3:54 p.m., the session was resumed.

### **INQUIRY OF MR. GUINGONA**

On Mr. Guingona's observation that the principal reason for the deletion is to help the Supreme Court with regard to the present problem of clogged court dockets, Mr. Concepcion stated that that is not actually the only reason because the principal reason is that a great majority of the appeals are without merit. He stated that the Committee is willing to restore the remedy of appeal.

On Mr. Guingona's contention that the Supreme Court can so declare if in its judgment the appeal is without merit, Mr. Concepcion stated that even if an appeal is without merit, it has to be given due course.

### **ACCEPTANCE OF MR. COLAYCO'S PROPOSED AMENDMENT**

Mr. Suarez stated that as proposed by Mr. Colayco, the Committee is accepting the proposal to restore the phrase APPEAL OR in Section 7(2).

### **PROPOSED AMENDMENT OF MR. SARMIENTO**

Mr. Sarmiento suggested the deletion of the word "decrees" and in lieu thereof, the substitution of the words FINAL JUDGMENT AND DECISIONS, explaining that in actual practice, the word "decrees" referring to final judgment and decision of lower courts is seldom used, to which Mr. Suarez replied that in land registration cases, there are decrees that are being issued preparatory to the issuance of a torrens title. He affirmed that the word "decrees" does not refer to decisions but decrees issued by the Courts of First Instance acting as Land Registration Courts.

Thereupon, Mr. Sarmiento withdrew his proposed amendment.

### **PROPOSED AMENDMENT OF MR. PADILLA**

Mr. Padilla maintained that even in land registration cases, the judgment of the court is called decision and after it is rendered, then there is what is called a decree leading to the issuance of the title. He insisted on the substitution of the word "decrees", as suggested by Mr. Sarmiento, to FINAL JUDGMENTS AND DECISIONS, in reply to which Mr. Suarez opined that there is no substantial difference between judgment and decision, for which reason, the words "judgment" and "decrees" were used separately.

Mr. Padilla maintained that the usual term for a determination made by a court of justice is a decision.

### **PROPOSED AMENDMENT OF MESSRS. SARMIENTO AND PADILLA**

Mr. Sarmiento, jointly with Mr. Padilla, reiterated his proposal to change the word "decrees" to DECISIONS.

In reply, Mr. Concepcion pointed out the fact that the opinion is generally alluded to as decision but judgment is the dispositive part.

Upon inquiry of the Chair, Mr. Concepcion stated that the word "decrees" covers orders.

In view thereof, Mr. Sarmiento proposed to change the word "decrees" to ORDERS, which the Committee accepted.

### **OBJECTION OF MR. LERUM TO MR. COLAYCO'S AMENDMENT**

Mr. Lerum objected to Mr. Colayco's amendment on the ground that the backlog of cases in the Supreme Court would remain. He opined that when a petition is filed before the Supreme Court, it should be able to decide immediately whether or not such a petition should be given due course. He asked for the retention of the Committee's formulation and that it be submitted to a vote.

Reacting thereto, Mr. Colayco pointed out that people are not sentenced to life imprisonment everyday, the fact being that there are very few cases. He stated that when one is sentenced to life imprisonment, some people prefer that they might as well be sentenced to death because languishing in jail for life is not a joke. He insisted that the old rule be retained.

Mr. Lerum maintained that when a case is brought by certiorari to the Supreme Court, it has all the time to study the petition and if it finds that it is meritorious, then it should be given due course, on the other hand, if from the record the Supreme Court would find the appeal without merit, then it should be dismissed right away.

### **REPLY OF MR. REGALADO**

Mr. Regalado stated that in the 1935 Constitution, the mode of appeal was by certiorari or writ of error but this was eliminated and the mode of appeal was limited to certiorari and regular appeal but with the qualification "as the law or the rules of court may provide". He pointed out that under Republic Act No. 5440, almost all cases appealed to the Supreme Court were appealable only by certiorari. He informed that the only two things left for review by the Supreme Court and regular appeal were those wherein the sentence was reclusion perpetua or at that time, the death penalty.

He stated that while it is true that this appeal would only apply to reclusion perpetua because of the abolition of the death penalty, there is also a provision which provided that the death penalty may be restored in case of heinous crimes, and in the event that this is restored, there is the question as to whether the rule on automatic review would be inconsistent with this proposed amendment. To this question, he adverted to the clause "as the law or the rules of court may provide" and recalled that over the years, the law has gradually delimited the exclusive appellate jurisdiction to reclusion perpetua or death.

Mr. Lerum insisted that his proposal be submitted to a vote.

### **VOTING ON MR. LERUM'S PROPOSED AMENDMENT**

Submitted to a vote, and with 4 Members voting in favor, 25 against and one abstention, Mr. Lerum's proposed amendment was lost.

### **RESTATEMENT AND APPROVAL OF SECTION 7(2)**

Mr. Suarez restated Section 7(2), to wit:

REVIEW, REVISE, REVERSE, MODIFY, OR AFFIRM ON APPEAL OR CERTIORARI, AS THE LAW OR THE RULES OF COURT MAY PROVIDE, FINAL JUDGMENTS AND ORDERS OF LOWER COURTS IN:

Submitted to a vote, and with 35 Members voting in favor, none against and no abstention, the Body approved Section 7(2), as amended.

### **COMMITTEE AMENDMENT ON SECTION 10**

Mr. Suarez proposed a new Section 10 which reads:

THE MEMBERS OF THE SUPREME COURT AND JUDGES OF LOWER COURTS SHALL HOLD OFFICE DURING GOOD BEHAVIOR UNTIL THEY REACH THE AGE OF SEVENTY YEARS OR BECOME INCAPACITATED TO DISCHARGE THE DUTIES OF THEIR OFFICE. THE SUPREME COURT EN BANC SHALL HAVE THE POWER TO DISCIPLINE JUDGES OF LOWER COURTS, ORDER THEIR DISMISSAL BY A VOTE OF A MAJORITY OF THE MEMBERS WHO ACTUALLY TOOK PART IN THE DELIBERATIONS ON THE ISSUES IN THE CASE AND VOTED THEREON.

### **APPROVAL OF SECTION 10**

Submitted to a vote, and with 36 Members voting in favor, none against and no abstention, the Body approved Section 10.

## COMMITTEE AMENDMENT ON SECTION 11

Mr. Suarez then read proposed Section 11, as amended, to wit:

THE CONCLUSIONS OF THE SUPREME COURT IN CASE SUBMITTED TO IT FOR DECISION EN BANC OR IN DIVISION SHALL BE REACHED IN CONSULTATION BEFORE THE CASE IS ASSIGNED TO A MEMBER FOR THE WRITING OF THE OPINION OF THE COURT. A CERTIFICATION TO THIS EFFECT SIGNED BY THE CHIEF JUSTICE SHALL BE ISSUED AND A COPY THEREOF ATTACHED TO THE RECORD OF THE CASE AND SERVED UPON THE PARTIES. ANY MEMBER WHO TOOK NO PART, OR DISSENTED, OR ABSTAINED FROM A DECISION OR RESOLUTION MUST STATE THE REASON THEREFOR. THE SAME REQUIREMENTS SHALL BE OBSERVED BY ALL LOWER COLLEGIATE COURTS.

### INQUIRIES OF MR. GUINGONA

On Mr. Guingona's query as to where would the reason be stated and whether the statement of the reason would refer to the certification considering that a Member may not have taken part because he is either hospitalized or is abroad, Mr. Concepcion stated that when a Member is hospitalized or abroad it could not be a personal thing but as to the reasons for the abstention, it is the party involved such that it is considered personalized. He further stated that this is one way of seeing to it that all justices participate because one should explain why he did not participate.

### INQUIRY OF MR. JAMIR

Mr. Jamir inquired as to who would perform the certification in case the Chief Justice is abroad or incapacitated from discharging the duties of his office, to which Mr. Concepcion replied that there is a law which determines the authority of the member next in rank.

### INQUIRY OF MR. LERUM

On Section 11 which provides that the conclusion of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a member for the writing of the opinion of the Court, and a certification to this effect signed by the Chief Justice shall be issued, Mr. Lerum inquired if the certification would indicate the Justices who have participated and to whom the case had been assigned for writing of the opinion, to which Mr. Concepcion replied in the negative and added that said certification, which shall be issued immediately after the deliberation, is different from the decision to be promulgated by the Supreme Court.

### INQUIRY OF MR. RODRIGO

In reply to Mr. Rodrigo's query, Mr. Concepcion affirmed that the statement of the reasons why a Justice did not participate, dissent or abstain would be made simultaneous with the decision.

On how could the member state his reasons for taking no part, dissenting or abstaining if he is abroad, Mr. Concepcion stated that the Committee would welcome any suggestion to improve the formulation of the provision.

Mr. Rodrigo stated that although it could not be stated that a member was abroad, the provision says that an explanation should be made.

In this connection, Mr. Bengzon pointed out that the provision could probably be interpreted to allow the Chief Justice or the next ranking Justice to certify that a member was not able to participate because he was abroad.

Mr. Concepcion added that the Chief Justice could also state that the member did not participate because he was abroad.

### **PROPOSED AMENDMENT OF MR. SUMULONG**

On Section 11, Mr. Sumulong expressed his doubt whether all the justices could always discuss issues before reaching a decision. He pointed out that it was sometimes the practice that a member of the Supreme Court would discuss an issue with another member on the phone and would ask a member to write the decision which would be concurred or rejected by other members.

In view thereof and in order to ensure that the decision would be a decision of a collegiate court, Mr. Sumulong proposed to substitute the words "in consultation" with the phrase AFTER DUE DELIBERATION ON THE ISSUE INVOLVED.

Mr. Concepcion observed that the proposal is already contemplated in another section which provides that the cases must be decided by a vote of the majority of those who took part in the deliberations and voted thereon, which means that those who did not take part cannot vote.

Mr. Sumulong maintained that the intent should also be provided in Section 11 to ensure that the case submitted for decision would be deliberated on by all the members of the Supreme Court or its division before a decision is reached.

### **SUSPENSION OF SESSION**

At this juncture, the Chair suspended the session.

It was 4:24 p.m.

### **RESUMPTION OF SESSION**

At 4:31 p.m., the session was resumed with the Honorable Jose F. S. Bengzon, Jr., presiding.

### **MANIFESTATION OF MR. REGALADO**

After consultation with some Members, Mr. Regalado stated that the observation of Mr. Sumulong was well taken but the words "in consultation" need not be substituted by the phrase AFTER THE DELIBERATION ON THE ISSUES INVOLVED THEREIN because the latter is already contemplated in Section 3(2) and (3), and in Section 10. He explained, however, that the words "in consultation" should be interpreted to mean that before a decision or conclusion of the court is submitted, it shall be arrived at with the participation of the Justices.

Mr. Sumulong agreed to Mr. Regalado's explanation although he would prefer his amendment.

### **PROPOSED AMENDMENT OF MR. GUINGONA**

Mr. Guingona restated Mr. Sumulong's proposal to substitute "in consultation" with AFTER DUE DELIBERATION in order to align Section 11 with the other sections of the Article.

Mr. Concepcion stated that the Committee would have no objection although it should be noted that the last sentence of Section 10 uses the same phrase and it would appear a little awkward.

Mr. Guingona explained that the change from "deliberation" to "consultation" might give rise to confusion, in reply to which, Mr. Regalado pointed out that the words "in consultation" also appeared in the previous Constitutions and it was interpreted to mean due deliberation.

Mr. Guingona insisted on his proposed amendment.

However, Mr. Regalado reiterated that the words "in consultation" has a settled meaning in the previous Constitutions, and Mr. Sumulong was in fact satisfied with the explanation. Mr. Guingona did not insist.

Mr. Guingona recalled that in his previous interpellations, Mr. Concepcion stated that the nonparticipation of a member of the Supreme Court may be certified by the Chief Justice or any responsible official of the Court.

### **AMENDMENT OF MR. RAMA**

As proposed by Mr. Rama and accepted by the Sponsor, the Body approved the deletion of the words "to it" between "submitted" and "for".

### **APPROVAL OF SECTION 11, AS AMENDED**

On motion of Mr. Suarez, there being no objection, the Body approved Section 11, as amended, to wit:

THE CONCLUSION OF THE SUPREME COURT IN ANY CASE SUBMITTED FOR DECISION EN BANC OR IN DIVISION SHALL BE REACHED IN CONSULTATION BEFORE THE CASE IS ASSIGNED TO A MEMBER FOR THE WRITING OF THE OPINION OF THE COURT. A CERTIFICATION TO THIS EFFECT SIGNED BY THE CHIEF JUSTICE SHALL BE ISSUED AND A COPY THEREOF ATTACHED TO THE RECORD OF THE CASE AND SERVED UPON THE PARTIES. ANY MEMBER WHO TOOK NO PART, OR DISSENTED, OR ABSTAINED FROM A DECISION OR RESOLUTION MUST STATE THE REASON THEREFOR. THE SAME REQUIREMENTS SHALL BE OBSERVED BY ALL LOWER COLLEGIATE COURTS.

### **PROPOSED AMENDMENT ON SECTION 13**

On Section 13, Mr. Suarez stated that the Committee proposes *motu proprio* the deletion of the second sentence because the same provision on the salaries of the Chief Justice and the Associate Justices of the Supreme Court was already approved in the Transitory Provisions, and with such deletion, Section 13 would now read:

THE SALARY OF THE CHIEF JUSTICE AND OF THE ASSOCIATE JUSTICES OF THE SUPREME COURT, AND OF JUDGES OF LOWER COURTS SHALL BE FIXED BY LAW.

He explained that under the Transitory Provisions, the starting annual salaries of the Chief Justices and Associate Justices of the Supreme Court would be P240,000 and P204,000, respectively, until otherwise provided by Congress.

On the Chair's observation that the Body had earlier agreed that whatever figures would be approved in the Transitory Provisions would be provided in the respective Articles, Mr. Suarez stated that what had been approved in the Transitory Provisions should remain therein and the other Articles should be adjusted accordingly.

In this connection, Mr. Monsod informed the Chair that the phrase "shall be provided by law" was provided in the different Articles in the body of the Constitution so that the specific starting salaries would be provided in the Transitory Provisions.

Submitted to a vote, and with 28 Members voting in favor, and none against, Section 13 as amended, was approved by the Body.

### **INQUIRY OF MR. MAAMBONG**

On Mr. Maambong's query whether the words "final judgment and order" as found in Section 7 could be interchangeable with "resolution or decision" as found in Section 11, Mr. Romulo pointed out that Section 7 refers to lower courts while Section 11 refers to collegiate courts.

Mr. Regalado also explained that in Section 7, a distinction was made between a judgment and a decision, the former being only a part of the latter. He stated that judgment is the dispositive portion from which one may appeal. He underscored, however, that in Section 11, the decision or resolution refers to the entire document but any Member may dissent only with respect to the judgment, statements of the facts and ratio decidendi.

Finally, Mr. Romulo affirmed that lower courts should either use "final judgment or order" while the Intermediate Appellate Court and the Supreme Court should use "decision or resolution".

### **PROPOSED AMENDMENT ON SECTION 14**

Mr. Suarez proposed to amend Section 14, to read:

UPON EXPIRATION OF THE CORRESPONDING PERIOD, A CERTIFICATION TO THIS EFFECT SIGNED BY THE CHIEF JUSTICE OR THE PRESIDING JUDGE SHALL FORTHWITH BE ISSUED AND A COPY THEREOF ATTACHED TO THE RECORD OF THE CASE OR MATTER, AND SERVED UPON THE PARTIES. THE CERTIFICATION SHALL STATE WHY A DECISION OR RESOLUTION HAS NOT BEEN RENDERED OR ISSUED WITHIN SAID PERIOD.

Mr. Suarez stated that the second sentence was added to the original provision.

Submitted to a vote, and with 28 Members voting in favor and none against, Section 14(3) was approved by the Body.

### **MOTION FOR RECONSIDERATION/ AMENDMENTS OF MR. LERUM**

Thereupon, Mr. Lerum moved for reconsideration of the approval of the amendment to give way for his proposal to delete "if any" because it is unnecessary and would dilute the responsibility of the Justices concerned.

The motion was submitted to a vote and with 31 Members voting in favor and none against the same was approved by the Body.

Thereafter, Mr. Lerum proposed the deletion of "if any" and the comma (,) on line 8 of page 3.

Mr. Suarez accepted the proposal.

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

Mr. Suarez then read the section as amended, to wit:

DESPITE THE EXPIRATION OF THE APPLICABLE MANDATORY PERIOD, THE COURT, WITHOUT PREJUDICE TO SUCH RESPONSIBILITY AS MAY HAVE BEEN INCURRED IN CONSEQUENCE THEREOF, SHALL DECIDE OR RESOLVE THE CASE OR MATTER SUBMITTED THERETO FOR DETERMINATION WITHOUT FURTHER DELAY.

The whole section, as amended, was submitted to a vote and there being no further objection, the same was approved by the Body.

### **APPROVAL ON SECOND READING OF THE ARTICLE ON THE JUDICIARY**

Thereupon, Mr. Rama moved for the approval, on Second Reading, of the Article on the Judiciary, as amended.

Submitted to a vote, and with 32 Members voting in favor and none against, the Body approved, on Second Reading, the Article on the Judiciary, as amended.

### **MOTION FOR THIRD READING OF THE ARTICLE ON THE JUDICIARY**

Thereupon, under the suspended Rules, Mr. Rama moved to take up on Third Reading, the Article on the Judiciary, as amended.

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

### **RESOLUTION OF MR. MONSOD JOINTLY WITH MESSRS. JAMIR, AZCUNA, ROMULO, SUAREZ AND OPLE**

At this juncture, Mr. Monsod read to the Body the Joint Resolution in order to put to rest the matter discussed by the Body during the morning session on Section 7 of the Declaration of Principles, to wit:

Resolved that since it is the intent and sense of the Constitutional Commission that the phrase "consistent with the national interest" in Section 7 of the Article on the Declaration of Principles involving the policy on nuclear weapons in Philippine territory also means "subject to the national interest" as borne by the records of the proceedings and the unanimous manifestation of the Members of the Commission, the motion to reconsider and amend such provision filed by 28 Commissioners is, deemed unnecessary and withdrawn from further consideration but is hereby incorporated in the records of the Commission.

Mr. Monsod stated that those who signed the original motion were the following: Messrs. Ople, Calderon, Rigos, Tingson, Davide, Mrs. Nieva, Messrs. Romulo, Bengzon, Padilla, Natividad, de Castro, Treñas, de los Reyes, Rodrigo, Regalado, Bacani, Colayco, Jamir, Guingona, Foz, Alonto, Uka, Abubakar, Laurel, Rama, Mrs. Rosario Braid, and Messrs. Lerum and Villegas.

The Resolution was submitted to a vote and with 34 Members voting in favor and none against, the same was approved by the Body.

Thereafter, Mr. Sarmiento withdrew his remarks to the effect that Mr. Monsod was out of order when he presented his motion for reconsideration during the morning session.

Mrs. Quesada, likewise, withdrew her request for the copy of the transcript of records relative to Mr. Monsod's previous motion.

### **VOTING ON THIRD ON THE ARTICLE ON THE JUDICIARY**

Thereupon, on motion of Mr. Rama, there being no objection, the Chair declared in order voting, on Third Reading, on the Article on the Judiciary, as amended.

The Secretary-General of the Commission called the Roll for nominal voting, and thereafter a second call was made.

## RESULT OF THE VOTING

The result of the voting was as follows:

In favor

Aquino Bengzon Rosario Braid

Azcuna Bennagen De Castro

Bacani Bernas Colayco

Davide Padilla Suarez

Garcia Muñoz Palma Sumulong

Gascon Quesada Tadeo

Guingona Rama Tan

Jamir Regalado Tingson

Lerum Rigos Treñas

Maambong Rodrigo Uka

Monsod Romulo Villacorta

Nieva Sarmiento Villegas

Against

None

With 36 Members voting in favor and none against, the Body approved, on Third Reading, the Article on the Judiciary, as amended.

(At this juncture, the Presiding Officer relinquished the Chair to the Honorable Jose C. Colayco.)

## MOTION OF MR. BENGZON

Thereupon, Mr. Bengzon invited attention to page 2, Section 4 of the Article on the Executive and to page 3, Section 8 of the Article on the Legislative. He pointed out that the latter Article contains a provision which reads as follows: "Unless otherwise provided by law, the regular election of Senators and Members of the House of Representatives shall be held on the second Monday of May" whereas the former Article does not contain a provision with respect to the election of the President and the Vice-President.

Thereafter, Mr. Bengzon moved, with the unanimous consent of the Body, for the reopening of the Article on the Executive solely for the purpose of inserting in Section 4 thereof a sentence to the effect that the election of the President and the Vice-President shall take place on the second Monday of May.

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

### AMENDMENTS OF MR. SUMULONG

Mr. Sumulong, on behalf of the Committee on the Executive, proposed to insert between the first and second paragraphs of Section 4, the following: UNLESS OTHERWISE PROVIDED BY LAW, THE REGULAR ELECTION FOR PRESIDENT AND VICE-PRESIDENT SHALL BE HELD ON THE SECOND MONDAY OF MAY.

Submitted to a vote, and with 27 Members voting in favor and none against, the same was approved by the Body.

Thereafter, Mr. Sumulong proposed to reword the first sentence of Section 4 so that the same would read as follows: THE PRESIDENT AND THE VICE-PRESIDENT SHALL BE ELECTED BY A DIRECT VOTE OF THE PEOPLE FOR A TERM OF SIX YEARS.

Submitted to a vote, and with 30 Members voting in favor and none against, the same was approved by the Body.

### INQUIRY OF MR. MONSOD

At this juncture, Mr. Monsod inquired whether a two-thirds vote had been obtained before suspension of the Rules, to which Mr. Bengzon replied that when he asked for unanimous consent of the Body, nobody objected.

Mr. Monsod maintained that pursuant to the Rules the Body could only suspend the Rules through a written endorsement by the Steering Committee and by the Body's approval consisting of the two-thirds vote and that the suspension of the Rules through the unanimous consent of the Body is not covered by the Rules.

Replying thereto, Mr. Bengzon explained that under the Rules if the suspension was officially recommended by the Steering Committee, the Body would have to approve it with a two-thirds vote. However, he pointed out that if there is no such written endorsement by the Steering Committee then the Body could approve the same through unanimous consent in accordance with the Rules of the Batasan which are suppletory in character.

Mr. Monsod expressed his reservations relative to the comments of Mr. Bengzon. He then queried whether the whole Article on the Executive has been reopened, to which Mr. Bengzon replied that his request for the reopening was solely for the purpose of accommodating the amendments just approved by the Body, unless the Body would decide otherwise.

Mr. Monsod opined that if the Article had been reopened, the other Members of the Body would be free to propose amendments. He added that he made a reservation in the previous session to review the provision prohibiting the reelection of the President after the Body has taken a look at the entire Constitution. He then inquired whether it would be proper for the Body to discuss the issue now, to which Mr. Bengzon opined that it is. He added that

Mr. Monsod could file a motion to that effect with the unanimous consent of the Body.

Mr. Monsod requested for a reservation to present his proposal later on, to which the Chair replied that the Body should first vote on the issue relative to the need for two-thirds vote to effect the suspension of the Rules.

Thereupon, Mr. Monsod queried on the possibility of making a reservation to rediscuss the question of the President's reelection, to which the Chair replied in the affirmative and took note of such reservation.

At this juncture, Mr. Bengzon explained that the parliamentary situation is that insofar as he is concerned the Article on the Executive was reopened solely for the purpose of accommodating the amendments presented by Mr. Sumulong which were approved by the Body. He added that if Mr. Monsod would like to reopen the section prohibiting the immediate reelection of the President, he could do so by filing a motion asking for the Body's

unanimous consent and, if approved, he could present amendments thereto. He added that if Mr. Monsod is not ready with his proposals, the Body could suspend the session but it could not approve the Article on the Executive on Second or Third Reading without first disposing of the matter.

In reply to Mr. de Castro's query as to what was the reservation relative to the question of the President's immediate reelection, Mr. Monsod explained that it was made in the course of his remarks during the discussions on the section. He added that in one of the caucuses it was clarified that it was not necessary at that time to move for reconsideration of the section prohibiting the immediate reelection of the President because it should be made when the Body is already considering the entire Constitution, for such motion for reconsideration is in the context of prohibition and limitations on the Executive.

Mr. de Castro observed that the nature of Mr. Monsod's reservation requires the suspension of the Rules, which the Chair and Mr. Monsod affirmed.

Noting that Mr. Bengzon's request to reopen is in order on the basis of a specific bill of particulars, Mr. de Castro inquired whether it would foreclose his previous reservations before another motion to reopen is made.

In reply, Mr. Bengzon stated that a motion to reopen could be filed for that purpose.

### **SUSPENSION OF SESSION**

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

It was 5:16 p.m.

### **RESUMPTION OF SESSION**

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

Upon resumption of session, Mr. Bengzon confirmed that Mr. Monsod, indeed, made a timely reservation which would not require the consent of the Body to reopen, while in Mr. de Castro's case, the unanimous consent of the Members would be necessary.

He stated that the reservation of Mr. Monsod would be considered.

Mr. de Castro demanded, however, for the presentation of the records to show that Mr. Monsod's reservation was made on time, reiterating the consequence of such reservation.

### **INQUIRY OF MR. PADILLA**

In reply to Mr. Padilla's query whether the suspension of the Rules and the reopening of the Article on the Executive would allow the reconsideration of the provision on the suspension of the writ of habeas corpus to insert the phrase "imminent danger of rebellion or invasion", the Chair opined that if the motion for suspension of the Rules does not specify any particular section of the article, the whole article would then be open for review.

Mr. Padilla stated that it would be unsatisfactory to limit the reasons or causes for the suspension of the writ of habeas corpus stressing that the phrase "imminent danger" is recognized in the two previous Constitutions. He stated that when he was proposing for the insertion of the phrase, he was prevented from doing so with the excuse that the provision in the Bill of Rights on the suspension of the writ had been previously decided without the phrase.

### **INQUIRY OF THE CHAIR**

In reply to the Chair's query whether the motion to suspend the Rules would cover the entire article, Mr. Bengzon stated that his motion is only for a specific purpose.

### **REMARKS OF MR. JAMIR**

Mr. Jamir confirmed that Mr. Monsod's reservation was made before the Second Reading, for which reason, his amendment to include the eligibility of the Vice-President for reelection in the Article on the Executive was delayed.

### **SUGGESTION OF THE CHAIR**

The Chair suggested to first consider the formalization of the vote on the motion of Mr. Bengzon to suspend the Rules.

### **INQUIRY OF MR. SUAREZ**

In reply to Mr. Suarez' query whether the suspension of the Rules could be entirely lifted considering that he and Mr. Padilla would like to propose amendments to the Article on the Executive, the Chair stated that the movant should give strong reasons to support his motion so that the Body could vote intelligently on whether to approve or deny the same.

### **WITHDRAWAL OF MR. MONSOD'S MOTION**

At this juncture, Mr. Monsod withdrew his motion, expressing agreement to the Chair's ruling that the suspension of the Rules was for a specific bill of particulars which had already been voted upon.

He stated that what remains is his reservation which would not require the suspension of the Rules and which he would bring up on the next session day or the day after.

Mr. de Castro insisted on looking at the records so that the Rules need not be suspended, to which Mr. Monsod acceded.

The Chair stated, however, that the records would not be available for scrutiny at this time.

### **CONSIDERATION OF COMMITTEE REPORT NO. 40 ON SECTIONS 5 AND 11 OF THE ARTICLE ON THE LEGISLATIVE**

At this juncture, Mr. Bengzon presented Committee Report No 40 on behalf of the Steering Committee to reopen for consideration Sections 5 and 11 of the Article on the Legislative. He stated that the petition was circulated among the Members of the Committee on the Executive and of the Steering Committee.

### **INQUIRIES OF MR. SUAREZ**

In reply to Mr. Suarez' query on the meaning of "without precedent" which appears on Committee Report No. 40, Mr. Bengzon explained that the Steering Committee had considered the merits of the petition to reopen but that it should not be regarded as a precedent for any future motion to reopen unless the Steering Committee considers it to be meritorious.

He affirmed that it could not be a bar to a rejection of the petition to reopen, and conversely, it could not also be used as an example for reopening.

On reservations, he stated that there was an agreement to reopen based on the merits of the proposals.

He also affirmed that the phrase "conditioned on entertaining others" as used by Mr. Bernas, is self-explanatory, stating that all the Members listed therein have voted in favor of the reopening accompanied by their respective comments thereto without considering it as a precedent.

### **INQUIRIES OF MR. DE CASTRO**

In reply to Mr. de Castro's query on the reasons for reopening Sections 5 and 11 of the Article on the Legislative, Mr. Davide stated that he expressed the possibility of reopening Section 5 to accommodate a separate representation for the Metropolitan geo-political unit when the Article on Local Government was under consideration. He stated that Mr. Rama, likewise made a proposal to have representatives in cities elected at large to be appended to the Constitution but that it could not be justified unless the Principle is embodied in the Article. He stated that there was a clamor to reassess the manner of representation and to consider the possibility of changing representation by legislative districts to representation by province, at least for, the first election, due to the difficulty encountered by his Committee in meeting the counter proposals of several parties as against the COMELEC proposal on the apportionment schemes. Finally, he stated that after reflecting on the matter, the Committee has decided to mandate that each House of the Legislative Assembly should keep a Journal and a Record of all its proceedings which was left out due to inadvertence.

On whether the clamor of the first district of Laguna was taken into consideration, Mr. Davide stated that it is for that reason that reopening is necessary to determine the merits of the scheme on representation.

Mr. de Castro pointed out, however, that the proposal is by provinces, in reply to which, Mr. Davide stressed that it would apply only for the first election as the First Congress would allocate seats in accordance with the district scheme that has been adopted.

Mr. de Castro argued that the clamor of the first district of Laguna comprising the municipalities of San Pedro, Biñan, Sta. Rosa and Cabuyao is that they never had the opportunity to be represented in the Legislature because they were outnumbered by the City of San Pablo and the neighboring towns of Sta. Cruz and Calamba.

### **SUGGESTION OF MR. BENZON**

Mr. Benzon observed that Messrs. de Castro and Davide are already discussing the merits of the issue. He suggested that the Body first decide the question on whether to reopen or not.

### **SUGGESTION OF MR. JAMIR**

Mr. Jamir suggested to limit Mr. Benzon's motion to reopen to the first three paragraphs of Section 5 and to allow discussions on the other paragraphs at a later time by virtue of another motion to reopen.

Mr. Davide suggested, however, that the entire Sections 5 and 11 be reopened since the other paragraphs are related to the first three.

### **RULING OF THE CHAIR**

The Chair ruled that Committee Report No. 40 be submitted to a vote.

Mr. Benzon stated that two-thirds vote is required because the motion is sponsored by the Steering Committee.

Mr. Rodrigo clarified that voting should be on the reopening of Sections 5 and 11 for the specific purpose stated,

because sectoral representation and the party list system have, likewise, been provided for in Section 5, which clarification was affirmed by the Chair.

### **RESULT OF THE VOTING**

Thereupon, submitted to a vote, with 31 Members voting in favor and 4 against, the Body approved the motion to reopen Sections 5 and 11 of the Article on the Legislative.

### **REQUEST OF MR. DE CASTRO**

Upon the request of Mr. de Castro, the Chair directed the Secretary-General to count the Members inside the Session Hall to determine whether the required two-thirds vote was obtained.

Thereupon, the Secretary-General counted the Members and informed that 40 Members were in the Session Hall.

### **CONSIDERATION OF COMMITTEE REPORT NO. 40 ON PETITION NO. 3**

Upon direction of the Chair, the Secretary-General read the title of Petition No. 3, to wit:

An urgent Petition to Reopen Sections 5 and 11 of the Article on the Legislative.

### **SPONSORSHIP REMARKS OF MR. DAVIDE**

Mr. Davide stated that in Section 5, the composition of the Lower House is fixed at not more than 250 members who shall be elected from legislative districts apportioned among the provinces and cities in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio. As to the party list system of registered national, regional, and sectoral parties or organizations, he stated that the party list representatives shall constitute 20% Of the total membership of the House of Representatives for three consecutive terms after the ratification of the Constitution. He stated that 25 of the seats allocated to party list representatives shall be filled as provided by law by selection or election from the labor, peasant, urban poor, indigenous, cultural communities, women, youth and such other sectors as may be provided by law, except the religious sector.

He stated that each legislative district shall comprise as far as practicable, contiguous, compact and adjacent territory, and each city with a population of at least 200,000 or each province shall have at least one representative.

On the basis of this particular proposal, he stated that the COMELEC is requested to render assistance and that an apportionment on the basis of the standards provided therein is submitted by the COMELEC. He stated that a total of 199 districts and four municipalities were each given a separate seat, considering the increase of the population in the cities of Angeles, Bacolod, Butuan and General Santos. Mr. Davide noted that in so doing other cities which were earlier given separate seats, because they were considered highly urbanized cities with a population requirement of at least 150,000, were disenfranchised. As a consequence, he stated that the cities of Iligan and Baguio lost their seats.

In the districting, he remarked that COMELEC made the apportionment by splitting the number of districts corresponding to the number of seats it may be entitled to but that the Committee received counter-proposals from the different sectors that it would be impossible for the Commission to append an ordinance indicating the particular district corresponding to several municipalities in each province. He stated that the Committee thought that Congress would be in a better position to allocate the seats into districts inasmuch as all the provinces shall be

represented in the First Congress to be elected after the Constitution's ratification.

The only option, he stated, by which the Committee could apportion the seats insofar as the Lower House of the First Congress is concerned is to adopt the scheme of representation provided in the ordinance appended to the 1973 Constitution governing the constituencies for the regular Batasang Pambansa which was elected in May 1984. He stressed that the First Congress shall be mandated to allocate the seats according to districts, in accordance with the standards provided in Section 5.

Mr. Davide observed that this way, Mr. Rama's proposal that if a city is entitled to two or more seats, the representatives thereof should be chosen at-large or elected at-large, shall be taken care of. In the apportionment of seats under the 1984 election, he noted that cities with two or more representatives also elected their representatives at-large.

On the proposed composition of 250 members for the House of Representatives, Mr. Davide stated that it is too inflexible and that Congress would limit the seats to a maximum of 200 for the Lower House which would result in under representation of many provinces. He underscored the need for a flexible proposal and that Congress should be left to provide a greater number by law.

On the matter of determining the party list representatives, Mr. Davide noted that the 20% computation shall be on the total number which may not be filled up by the regular districts and the limitation of 20% may not be maintained for every Congress. The 20% he stated, should be on the basis of the total number of regular districts.

On Section 11, Mr. Davide clarified that the amendment would be a paragraph requiring the keeping of a record similar to the record of the Commission.

### **INQUIRY OF MR. DE CASTRO**

Upon inquiry of Mr. de Castro, Mr. Davide affirmed that among others there was also difficulty in the matter of districting the different provinces and cities.

In reply to Mr. de Castro's question, Mr. Davide affirmed that the Committee reverted to the apportionment of seats used in the election for the Batasang Pambansa in 1984 only with respect to the Lower House in the First Congress to be elected. He clarified that the succeeding elections will be by districts.

On whether the Committee seriously studied the implications of Section 5, Mr. Davide explained that there was a serious study although the Committee was cognizant of the fact that the matter of actual apportionment shall not be made in the Constitution itself but in the Ordinance to be appended thereto.

On why the Committee provided for election by legislative districts, Mr. Davide remarked that although the Committee stated that elections should be by legislative districts, it also had in mind the possibility of submitting to the Body an ordinance actually apportioning the seats. The actual apportionment, he stated, cannot be incorporated in the main body of the Constitution, inasmuch as the configuration of the ordinance indicating the legislative districts with the enumeration of the municipalities shall be five times thicker than the Constitution itself.

Mr. Davide added that the problem need not be resolved as the Commission need not append an ordinance and that it can be done through an executive proclamation although the Committee feels it is its duty to provide for actual apportionment by ordinance.

To Mr. de Castro's observation that as proposed, the apportionment will be by province, in accordance with the apportionment used for the Batasang Pambansa election in 1984, Mr. Davide informed that the Committee took

up the proposed apportionment of congressional districts and that the result was a thick document. The proposal, he stated, drew complaints from many provinces such as Benguet, Bohol, Bulacan, Butuan, Cagayan, Capiz, Cavite and many more.

Mr. de Castro informed that in his province of Laguna, the municipalities of San Pedro, Biñan, Sta. Rosa up to Cabuyao since the war was represented by only one Congressman and that all the Congressmen representing the municipalities come from Santa Cruz. He stated that he favors redistricting the province of Laguna so that his place can be represented in the House.

In reply, Mr. Davide stated that Laguna shall be redistricted in the Second Congress as the First Congress is mandated to apportion the seats into districts in accordance with the standards provided for in Section 5. Such redistricting, he observed, shall not only be in Laguna but would include other places inasmuch as some think that it is easier to win in a district. He noted that election by province would prevent warlordism, and would be less expensive since a candidate who belongs to a political organization can share the expenses in the campaign.

Mr. de Castro noted that election by province would require a candidate to spend and travel more and would encourage warlordism, to which Mr. Davide disagreed.

### INQUIRY OF MR. JAMIR

Upon inquiry of Mr. Jamir whether there were objections to redistricting by COMELEC, Mr. Davide replied that he enumerated many provinces which objected and that several groups made counter-proposals.

As to whether various political parties, during the First Congress, shall agree on redistricting, Mr. Davide pointed out that his proposal would mandate Congress to apportion seats, which duty it cannot avoid. He noted that should Congress fail to apportion, there would be no elections.

On whether there is anything in the provision which states that there will be no election, Mr. Davide drew attention to paragraph 5 which states:

THE FIRST CONGRESS ELECTED UNDER THIS CONSTITUTION SHALL MAKE THE APPORTIONMENT OF LEGISLATIVE DISTRICTS BASED ON THE STANDARDS PROVIDED HEREIN. IT MAY MAKE SUBSEQUENT REAPPORTIONMENT THEREOF ON SUCH BASIS, WITHIN THREE YEARS FOLLOWING THE RETURN OF EVERY ENUMERATION.

The last sentence, he informed, would be directory while the first would be mandatory.

Upon inquiry of Mr. Jamir, Mr. Davide affirmed that it is mandatory in the sense that Congress is supposed to redistrict during the first term.

Mr. Jamir stated that he is looking for a penalty clause to the effect that there will be no election if Congress fails to make the apportionment. Mr. Davide replied that there will be no basis for the seats inasmuch as the ordinance governing the 1984 election shall apply to the first election.

Mr. Jamir then inquired whether Mr. Davide would like to amend the provision by making patently clear that penalty clause, Mr. Davide stated that he would be willing to do so.

Mr. Jamir stressed the need for the penalty clause which he shall propose in time. He noted that in his province of Cavite, the Montanos and Camerinos had been fighting over the redistricting although nothing came out of it.

Thereupon, directed by the Chair, Mr. Davide restated Section 5, paragraph 1, as amended, to wit:

THE HOUSE OF REPRESENTATIVES SHALL BE COMPOSED OF NOT MORE THAN 250 MEMBERS,

UNLESS OTHERWISE FIXED BY LAW, WHO SHALL BE ELECTED FROM LEGISLATIVE DISTRICTS APPORTIONED AMONG THE PROVINCES, CITIES, AND THE METROPOLITAN MANILA AREA IN ACCORDANCE WITH THE NUMBER OF THEIR RESPECTIVE INHABITANTS, AND ON THE BASIS OF A UNIFORM AND PROGRESSIVE RATIO, AND THOSE WHO, AS PROVIDED BY LAW, SHALL BE ELECTED THROUGH A PARTY LIST SYSTEM OF REGISTERED NATIONAL, REGULAR, AND SECTORAL PARTIES OR ORGANIZATIONS.

#### **POINT OF INFORMATION OF MR. RODRIGO**

Mr. Rodrigo called attention to a provision in the Rules of the Batasang Pambansa, suppletory to the Commission's Rules, which states:

SECTION 124. If the Batasan votes to suspend the rules it shall forthwith proceed to consider the measure.

A two-thirds vote of the Members present shall be necessary for the passage of said measure a quorum being present.

He reiterated that the measure being proposed would require a 2/3 vote of the Members present, there being a quorum.

#### **INQUIRY OF MR. PADILLA**

On the query of Mr. Padilla, Mr. Davide affirmed that Section 5 provides for a House with 250 Members which includes the party list representatives.

Mr. Padilla recalled that in the past Congress, the Senate was composed of 24 Members while the Lower House was composed of not more than 120 Members and that in the Batasang Pambansa, being a unicameral body, the number was increased.

Mr. Davide informed that in the Interim Batasang Pambansa there were 187 Members including those appointed from the Cabinet and sectoral representatives while the Regular Batasang Pambansa, in accordance with the Ordinance appended to the 1973 Constitution, had 183 regular representatives. He noted that should that Ordinance be adopted, the regular representatives would number 183 although the recommendation of the COMELEC for the First Congress is 199.

On whether the 250 membership is too big, Mr. Davide contended that the issue had been decided and that the 250 membership is the maximum although the actual number may be less. He noted that adopting the 1984 model would put this number at 183 although the Committee proposes to add the clause UNLESS OTHERWISE FIXED BY LAW to provide the possibility of reducing or increasing the number should the population grow so much.

Mr. Padilla observed that assuming the population may grow, provided the district is contiguous, a particular territory may be composed of a determinate territory including the inhabitants therein and that the registered voters may increase. He noted that numerous seats would make it difficult to have an orderly procedure in the House or in the absence of several Members of the House, it may not even be possible to have a quorum.

In reply, Mr. Davide noted that the population as projected for 1986 was 56 million and that the COMELEC used a constant of 400,000 inhabitants to one seat in allocating the number of seats to 199. Any further reduction, he stated, might mean more and more people being under presented.

On the query of the Chair whether he had a specific amendment, Mr. Padilla informed that he would suggest that the maximum number of the Members of the House should be placed at 200 not 250.

Mr. Davide, in response, stated that he would leave the matter to the Body but invited attention to the fact that the 199 members proposed by the COMELEC is based on 1 seat for every 400,000 population on the average.

Mr. Davide clarified that for purposes of representation in the legislative body, the basis would be the total number of inhabitants, not the number of registered voters.

### **REMARKS OF MR. GASCON**

Mr. Gascon stated that when the matter of suspension of the Rules was discussed, Mr. Rodrigo reminded the Body that it was not a reopening of Section 5 but a suspension of the Rules to reopen for consideration the amendments proposed by the Committee. He noted that the Committee was not presenting any proposal with regard to changing the number of seats in the Lower House.

Mr. Padilla disagreed with Mr. Rodrigo's view that when the Body reopened Section 5, the Members would only be limited by what the Committee recommends, but that the whole Section would be reopened for reexamination by the entire Commission.

Reacting thereto, Mr. Bengzon stated that the motion to reopen Section 5 is limited to Mr. Davide's reservation particularly to portions where he has amendments to propose.

Additionally, Mr. Gascon stated that the Body could not present substantive amendments to Section 5 if not included in the reservation.

Mr. Bengzon informed the Body that Section 5(1) is the particular paragraph covered by the petition, in view of which, he suggested that the Body vote on it, because it does not touch on the subject matter adverted to by Mr. Padilla.

The Chair stated that Mr. Padilla was referring to the composition of the House of Representatives, such that any amendment thereon would be proper, to which Mr. Bengzon agreed.

Mr. Gascon called attention to the fact that the two hundred fifty Members proposed in the amendment is already in the Article on the Legislative and the only amendments are on the term "unless otherwise fixed by law" and the addition of "and the Metropolitan Manila Area". In this regard, he opined that the issue that should be debated upon is the substance of the two provisions and not the change in the composition of membership which had already been settled.

Mr. Bengzon subscribed to the view of Mr. Gascon.

Mr. Padilla noted that when the Chairman of the Steering Committee made the statement which had been recommended by other Members, said statement or motion had not been voted by the Body. He observed that what is strange is the view that the Members have been imposed upon to consider only certain matter that the Committee proposes and the Body has no other alternative but to accept it or reject it. He then inquired as to why should the judgment or the opinions of the Commission be limited to what a particular Committee desires.

In response thereto, Mr. Bengzon reiterated his intention to take up the proposals recommended by the Committee and no other.

Upon clarification of the Chair, Mr. Bengzon affirmed that Section 5, as presented, would be amended only insofar as the capitalized words or phrases are concerned. He, likewise, affirmed that the sentence which reads "The House of Representatives shall be composed of not more than 250 members" is the original formulation of Section 5 which has been passed upon by the Body.

In view thereof, the Chair agreed with Mr. Bengzon's contention that any amendment could not cover any portion of the section except those portions which are intended to be amended, otherwise, the Body would be going all over the whole section.

Mr. Padilla pointed out that even if he would concede that 200 or 250 is not very material, the Commission would not be limited in its discretion and judgment by any Committee, to which the Chair Stated that it is guided by what appears to be a logical sequence of the ordinary rules.

### **REMARKS OF MR. RODRIGO**

At this juncture, Mr. Rodrigo adverted to Section 124 of the Rules of the Batasang Pambansa with regard to a motion to suspend the Rules for the passage of a measure, to wit:

"A motion to suspend the Rules for the passage of a measure may be debated for one hour which shall be divided equally between those in favor and those against. If the Batasan votes to suspend the Rules, it shall forthwith proceed to consider the measure. A two-thirds vote of the Members present shall be necessary for the passage of said measure, a quorum being present."

Mr. Rodrigo pointed out that it is very clear that the measure which is the reason specified for suspension of the Rules could be taken up.

Reacting thereto, Mr. Padilla stated that Committee Report No. 40 precisely states "An Urgent Petition to Reopen Section 5 and 11 of the Article on the Legislative" and does not state that the Body would be limited to whatever the Committee on the Legislative would present to the Body.

Responding thereto, Mr. Bengzon stated that what Mr. Padilla adverted to is the title of the report. He contended that when he presented his motion, it was with the intention of Mr. Rodrigo's comments and which the Body voted upon and, therefore, it is not a matter of the Committee imposing its will on the Commission because the Commission decided on that point.

### **APPROVAL OF THE AMENDMENT**

Thereafter, the Chair stated that only the portions in capital letters in Section 5(1) should be taken up as amendment, and submitted them to a vote, and with 27 Members voting in favor, none against and one abstention, the same was approved by the Body.

### **CONSIDERATION OF THE SECOND AMENDMENT OF MR. DAVIDE**

Mr. Davide read the second paragraph, to wit:

THE PARTY-LIST REPRESENTATIVES SHALL CONSTITUTE TWENTY PERCENT OF THE TOTAL NUMBER OF DISTRICT REPRESENTATIVES. FOR THREE CONSECUTIVE TERMS AFTER THE RATIFICATION OF THIS CONSTITUTION, ONE-HALF OF THE SEATS ALLOCATED TO PARTY-LIST REPRESENTATIVES SHALL BE FILLED, AS PROVIDED BY LAW, BY SELECTION OR ELECTION FROM THE LABOR, PEASANT, URBAN POOR, INDIGENOUS CULTURAL COMMUNITIES, WOMEN, YOUTH, AND SUCH OTHER SECTORS AS MAY BE PROVIDED BY LAW, EXCEPT THE RELIGIOUS SECTOR.

### **INQUIRY OF MR. MONSOD**

In reply to Mr. Monsod's query, Mr. Davide affirmed that the party-list representatives shall consist twenty percent of the total number of district representatives which is 183 plus 20 percent thereof representing the party-list representatives.

Thereafter, a lengthy discussion on the percentage of party-list representatives ensued between Messrs. Monsod and Davide vis-a-vis the total number of representatives.

### **SUSPENSION OF SESSION**

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

It was 6:29 p.m.

### **RESUMPTION OF SESSION**

At 6:37 p.m., the session was resumed.

### **MR. MONSOD'S AMENDMENT TO THE AMENDMENT**

Mr. Monsod proposed an amendment to the amendment, to wit:

THE PARTY-LIST REPRESENTATIVES SHALL CONSTITUTE TWENTY PERCENT OF THE TOTAL NUMBER OF REPRESENTATIVES INCLUDING THE THOSE UNDER THE PARTY-LIST.

### **INQUIRY OF MR. GASCON**

In reply to Mr. Gascon's query, Mr. Monsod agreed that the intent of his proposal is to maintain the ratio of eighty percent legislative district and twenty percent party-list representatives on a constant basis, regardless of the number of legislative representatives and the number of the party-list representatives.

Mr. Monsod pointed out that if the total number of representatives under the party-list is not divisible by two in whole numbers, then it is the sectoral representatives who would get the largest number.

### **INQUIRY OF MR. VILLACORTA**

In reply to Mr. Villacorta's query, Mr. Monsod affirmed that for the first Congress, the sectoral representatives would be 23.

### **RESTATEMENT OF SECTION 5(2)**

Mr. Monsod restated Section 5(2), to wit:

THE PARTY-LIST REPRESENTATIVES SHALL CONSTITUTE TWENTY PERCENT OF THE TOTAL NUMBER OF REPRESENTATIVES INCLUDING THOSE UNDER THE PARTY-LIST. FOR THREE CONSECUTIVE TERMS AFTER THE RATIFICATION OF THIS CONSTITUTION, ONE-HALF OF THE SEATS ALLOCATED TO THE PARTY-LIST REPRESENTATIVES SHALL BE FILLED AS PROVIDED BY LAW BY SELECTION OR ELECTION FROM THE LABOR PEASANT, URBAN POOR, INDIGENOUS, CULTURAL COMMUNITIES, WOMEN, YOUTH, AND SUCH OTHER SECTORS AS MAY BE PROVIDED BY LAW, EXCEPT THE RELIGIOUS SECTOR.

### **MR. JAMIR'S AMENDMENT TO THE AMENDMENT**

Mr. Jamir proposed an amendment to add the words WAR VETERANS AND VETERANS OF MILITARY CAMPAIGNS after the word, "youth".

The Chair reminded Mr. Jamir that it has earlier ruled that only portions of the section which is being amended or sought to be amended could be amended.

Mr. Monsod also stated that the phrase "such other sectors as may be provided by law" could include the veterans.

### **INQUIRY OF MR. MAAMBONG**

In reply to Mr. Maambong's query, Mr. Monsod affirmed that there would be 23 sectoral representatives and 183 regular representatives to be elected, the principle being that the party-list representatives shall constitute 20% of the total number of representatives.

### **APPROVAL OF SECTION 5(2)**

Thereafter, the Chair submitted Section 5(2) to a vote, and with 32 Members voting in favor, none against and one abstention, the same was approved by the Body.

At this juncture, Mr. Monsod manifested that the Committee on Style could improve the phraseology with respect to the Section on party-list representatives.

### **ADJOURNMENT OF SESSION**

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

It was 6:44 p.m.

I hereby certify to the correctness of the foregoing.

(SGD.) FLERIDA RUTH P. ROMERO  
Secretary-General

### **ATTESTED:**

(SGD.) CECILIA MUÑOZ PALMA  
President

Approved on October 9, 1986

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