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Tuesday, July 29, 1986

CALL TO ORDER

At 9:40 a.m., the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, called the session to order.

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mr. Jose E. Suarez, to wit:

Dear Lord, I am not much at saying prayers. I don't have to tell You because You already know that I have been privately communicating with You rather frequently since the beginning of June, seeking Your divine guidance in making correct decisions for our people.

I entered this Commission awed by the enormity of the task before us. Having just emerged from the streets battling the evil forces of the dictatorship, I did not feel exactly comfortable in the presence of a select group. Midway to our common goal, however, I feel so relaxed with my colleagues. Everybody is so contributive and supportive. I have never worked with a nicer bunch of ladies and gentlemen. Imbued with a deep sense of nationalism, they served as an inspiration to me.

And, dear Lord, there is so much Went and decency around me that I pray to see the day when, in the not-too-distant future, these colleagues of mine will walk the corridors of power. Then, perchance, if they see me pounding once again the streets of Central Luzon clamoring for justice for our people, they will give me a knowing smile of recognition, or perhaps even a shaking of the head, which, after all if we are to believe Dick, could signify an approval.

Take good care of my colleagues, Dear Lord- especially the frail and fragile Fely, the ailing Pepe, Cosoy and Efrain who, I was cheered to learn last night, has not changed his sex at all. But, most of all, take good care of our dear leader, the kindly Celeng, in order that we may continue making honest decisions for our country and our people, that we may succeed in finally establishing a just and humane government.

Amen.

ROLL CALL

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

Aquino, F. S. Padilla, A. B.

Bennagen, P. L. Muñoz Palma, C.

Bernas, J. G. Quesada, M. L. M.

Rosario Braid, F. Rama, N. G.

Brocka, L. O. Regalado, F. D.

De Castro, C. M. Rigos, C. A.

Colayco, J. C. Rodrigo, F. A.

Concepcion, R. R. Rosales, D. R.

Davide, H. G. Sarmiento, R. V.

Foz, V. B. Suarez, J. E.

Gascon, a. L. M. C. Sumulong, L. M.

Guingona, S. V. C. Tadeo, J. S. L.

Jamir, A. M. K. Tan, C.

Lerum, E. R. Trefias, E. B.

Maambong, R. E. Uka, L. L.

Nieva, M. T. F. Villacorta, W. V.

Nolledo, J. N. Villegas, B. M.

With 34 Members present, the Chair declared the presence of a quorum.

The following Members appeared after the Roll Call:

Abubakar, Y. R. Laurel, J. B.

Alonto, A. D. Monsod, C. S.

Azcuna, A. S. Natividad, T. C.

Bacani, T. C. Ople, B. F.

Bengzon, J. F. S. De los Reyes, R. F.

Calderon, J. D. Romulo, R. J.

Garcia, E. G. Tingson, C. J.

READING AND APPROVAL OF THE JOURNAL

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

REFERENCE OF BUSINESS

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

REFERRAL TO COMMITTEES OF RESOLUTION, COMMUNICATIONS AND COMMITTEE REPORT

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

Proposed Resolution No. 535, entitled:

RESOLUTION IN RECOGNITION BY THE CONSTITUTIONAL COMMISSION OF THE INVALUABLE SUPPORT AND CONTRIBUTION OF THE PHILIPPINE SOCIAL SCIENCE COUNCIL IN THE PUBLIC CONSULTATIONS AND FOR PROVIDING RESOURCE MATERIALS FOR THE DRAFTING OF THE NEW CONSTITUTION

Introduced by Honorable Bennagen, Villacorta and Garcia

TO THE STEERING COMMITTEE

COMMUNICATIONS

Communication No. 358 — Constitutional Commission of 1986

Letter from Mr. Jose Leonidas of 128 N. Domingo St., San Juan, Metro Manila, urging the Constitutional Commission to adopt some measures for the preservation of the environmental balance

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

Communication No. 359 — Constitutional Commission of 1986

Communication from Bishop Emerito P. Nacpil and Mr. Emmanuel G. Cleto both of the United Methodist Church in the Philippines, submitting suggestions from a group of lay persons and clergy, entitled: "Theories of a Constitution for the Filipino people, Today and for the Future"

TO THE STEERING COMMITTEE

Communication No. 360 — Constitutional Commission of 1986

Communication signed by Ms. Mila Polotan and seven hundred seventy-seven others, urging the Constitutional Commission not to incorporate in the Constitution the issue of the U.S. bases

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 361 — Constitutional Commission of 1986

Letter from Mr. Wilfred D. Asis of Room 207, Ong Hoc Bldg., Butuan City, submitting various constitutional proposals for consideration by the Constitutional Commission

TO THE STEERING COMMITTEE

Communication No. 362 — Constitutional Commission of 1986

Letter from Mr. Candido B. Talosig of Saint Mary's College, Bayombong, Nueva Vizcaya, containing various constitutional proposals for consideration by the Constitutional Commission

TO THE STEERING COMMITTEE

Communication No. 363 Constitutional Commission of 1986

Letter from Mr. Meletico Palomata of 31 Camias St., Zone 1, Purok 2, Signal Village, Taguig, Metro Manila, containing some revelations regarding the "Sabah" issue

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

Communication No. 366 — Constitutional Commission of 1986

Position paper submitted by Mr. William H. Quasha of Don Pablo Bldg., 114 Amorsolo St., Makati, Metro

Manila, proposing that foreign investors be allowed to acquire and own land in the Philippines as an investment incentive, with appropriate restrictions

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

Communication No. 367 — Constitutional Commission of 1986

Communication from Mr. Moises B. Dayon, Acting Secretary, Sangguniang Panlungsod, Davao City, submitting Resolution No. 240, S. 1986 of said Sanggunian, to incorporate in the Constitution provisions on free secondary education in public schools

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 368 — Constitutional Commission of 1986

Communication signed by Miss Josefa de Lange of 39 11th St., New Manila, Quezon City, and four hundred ninety-eight others with their respective addresses, seeking the inclusion in the Constitution of a provision obliging the state to protect the life of the unborn from the moment of conception

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

Communication No. 369 — Constitutional Commission of 1986

Letter from Mr. Dionito B. Aplacador of Cataingan West, Masbate, containing suggestions on the various issues in the Constitutional Commission

TO THE STEERING COMMITTEE

Communication No. 370 — Constitutional Commission of 1986

Letter from Sr. Luz Emel Soriano, R.A., and two hundred seventy-six others, saying that the issue of U.S. military bases should not be in the Constitution and should be left to the government to negotiate so as to protect the national interest

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 371 — Constitutional Commission of 1986

Letter from Ms. Perla Golez of Bacolod City and sixty-nine others also of Bacolod City and other municipalities/cities in Negros Occidental, requesting the inclusion of provisions providing for religious instruction during regular school hours to be materially and financially supported by the government

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 372 — Constitutional Commission of 1986

Letter from Mr. Vicente Roy L. Kayaban Jr. Of 1649 Concepcion Aguila St., San Beda Subdivision, San Miguel, Manila, submitting a paper, entitled: "Land Reform: a Landowner's Introspection," and requesting that small landowners be accorded legislative seats: at least one for the agrarian sector and at least one for small apartment owners

TO THE COMMITTEE ON SOCIAL JUSTICE

Communication No. 373 — Constitutional Commission of 1986

Letter from Mr. Laufred I. Hernandez for the students of the College of Public Administration, University of the Philippines, submitting recommendations on the right of civil servants to collective bargaining, prohibition

of government resources for electioneering purposes, prohibition of nepotism and provisions for human resources development

TO THE COMMITTEE ON CONSTITUTIONAL COMMISSIONS AND AGENCIES

Communication No. 374 — Constitutional Commission of 1986

Communication from Muslim and Christian leaders who attended a SOLIDARITY- sponsored seminar on Mindanao urging a clear policy statement regarding Mindanao and Muslim affairs, among others

TO THE STEERING COMMITTEE

COMMITTEE REPORT

Committee Report No. 34 on Proposed Resolution No. 534, as reported out by the Committee on Social Justice, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A SEPARATE ARTICLE ON SOCIAL JUSTICE recommending its approval in substitution of Proposed Resolutions Nos. 19, 20, 25, 27, 82, 91, 93, 100, 113, 126, 167, 171, 180, 181, 227, 253, 277, 27S, 316, 320, 340, 342, 343, 366, 376, 379, 397, 398, 413, 419, 421, 425, 426, 429, 431, 479, 491, 504, 509, 513, 515 and 520.

Sponsors: Hon. Nieva, Gascon, Tadeo, Monsod, Aquino, Brocka, Suarez, Ople, Quesada, Bacani, Garcia, Lerum, Tan, Villacorta, Bennagen, Bengzon, Jr., and Rodrigo

TO THE STEERING COMMITTEE

DEFERMENT OF THE APPROVAL ON SECOND READING OF THE ARTICLE ON ACCOUNTABILITY OF PUBLIC OFFICERS

On motion of Mr. Rama, there being no objection, the Body deferred the approval, on Second Reading, of the Article on Accountability of Public Officers until copies thereof shall have been distributed to the Members.

BUSINESS FOR THE DAY: COMMITTEE REPORT NO. 26 ON PROPOSED RESOLUTION NO. 517 ON THE ARTICLE ON THE EXECUTIVE

Thereafter, on motion of Mr. Rama, there being no objection, the Body proceeded to the consideration, on Second Reading, of Committee Report No. 26 on Proposed Resolution No. 517, entitled:

Resolution to incorporate in the new Constitution an Article on the Executive.

Thereupon, the Chair recognized Mr. Sumulong, -Chairman of the Committee, and the other Members of the Committee for the sponsorship.

INQUIRY OF MR. SARMIENTO

In reply to Mr. Sarmiento's query as to how soon could the Body resolve the matter of sectoral representation in the Article on the Legislative, Mr. Rama stated that it would be taken up later in the day since the Commissioners concerned, namely Messrs. Monsod, Bernas and Villacorta, were not yet ready to present a compromise scheme.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, the Chair acknowledged the presence in the Session Hall of a group of women led by Deputy Foreign Minister Leticia Ramos Shahani as well as groups of students from St. Scholastica's College and other schools

SPONSORSHIP SPEECH OF MR. SUMULONG

In his speech, Mr. Sumulong stated that the Article on the Executive was based on many resolutions referred to the Committee on the Executive, among others, being those which dealt with concrete instances of misuse and abuse of executive power during the Marcos regime on which the Members devoted an exhaustive study to prevent their repetition but always on guard against imposing safeguards which could unreasonably restrict and emasculate the powers of future presidents.

Dwelling then on the salient constitutional changes embodied in the proposal, Mr. Sumulong called attention to Section 4 of the draft Article, on the canvassing of votes for President and Vice-President, which provides for a determination of the authenticity and due execution of the certificates of canvass before the votes for President and Vice-President may be counted and canvassed; for the Supreme Court, sitting en banc, to be the sole judge of all contests relating to the election, returns and qualifications of the President and Vice-President conformably with the decision reached by the Commission disqualifying the President from any reelection and allowing the Vice-President one reelection provided he shall serve for not more than 12 consecutive years.

On Section 15, relative to the powers of the President as Commander-in-Chief of the Armed Forces, Mr. Sumulong stated that "insurrection" and "imminent danger thereof" had been eliminated as grounds for declaring martial law or for suspending the privilege of the writ of habeas corpus, thus limiting it to invasion or rebellion when public safety requires it. He pointed out that under this Section, if martial law is declared, it has to receive the concurrence of the majority of all the Members of Congress in order to be effective and it would continue only for a period not exceeding sixty days, which period, however, may be shortened or extended by a vote of the majority of all the Members of Congress.

Mr. Sumulong stressed that whereas before the Supreme Court could not review the grounds relied upon by the President for declaring martial law or suspending the privilege of the writ of habeas corpus, under the proposed Article, the Supreme Court would have the power of review upon the filing of an appropriate petition by any citizen and it is required to promulgate its decision on the matter within thirty days from the filing of the petition.

On the meaning and effect of martial law as proposed in the Article, Mr. Sumulong explained that the declaration of martial law 1) would not suspend the operation of the Constitution; 2) would not supplant the functioning of the civil courts and the Legislature; 3) would not authorize the conferment of jurisdiction on military courts and agencies over civilians when the civil courts are able to function; and 4) it would not automatically suspend the privilege of the writ of habeas corpus

On the Resolution proposing to limit the state of martial law to thirty days and to require a two-thirds concurrence by Congress for a declaration of martial law to be effective, Mr. Sumulong recalled that it was the Committee's feeling that these conditions would make it difficult for the Chief Executive to declare martial law because, considering that the grounds therefor had been limited to actual invasion and actual rebellion, it could create a very dangerous situation in the country in the sense that the enemies of the State might prevent the Members of Congress from attending sessions just to forestall a two-thirds concurrence.

On Section 16, on the appointing power of the President, Mr. Sumulong stated that the Committee had proposed the restoration of the Commission on Appointments, a feature of the 1935 Constitution, in order to check and confirm presidential appointments which was not done under the 1973 Constitution. He pointed out that because of the non-existence of the Commission during the Marcos regime, the President's power to appoint became absolute resulting in the issuance of unilateral appointments. Besides the restoration of the Commission on Appointments, Mr. Sumulong adverted to Mr. Davide's proposal prohibiting the President from making appointments within two months preceding the date of the next presidential election in order to avoid "midnight

appointments" except temporary appointments to executive positions which, if left vacant, would prejudice public service or endanger public safety.

On Section 18, on the power of the President to contract or guarantee domestic or foreign loans on behalf of the Republic of the Philippines, Mr. Sumulong stated that after a study was made of the 1973 Constitution, the Committee felt the need of providing some limitations because of the country's foreign debt amounting to \$26 billion. Section 18, he said, would require prior concurrence of the Monetary Board, it being the custodian of the country's foreign reserves which is in the best position to determine whether an application for foreign loan would be within the country's paying capacity. He stated that Section 18 would further require the Monetary Board to submit to Congress complete quarterly reports of the decisions it has rendered on applications to contract or guarantee loans so that the Congress could study such reports for purposes of future legislations.

On Section 19, Mr. Sumulong stated that it contains prohibitions, namely: 1) prohibition for the President, Vice-President, Members of the Cabinet, chiefs of bureaus or offices or their assistants, during their term, from holding any other office or employment, from practicing any profession, from participating directly or indirectly in any business or from being financially interested directly in any contract with or in any financial or special privilege granted by the government or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation, and to avoid conflict of interest in the conduct of their office; and 2) prohibition for the spouse and relatives by consanguinity or affinity within the third civil degree of the President from being appointed as minister, deputy minister or head of bureau or office.

On the treaty-making power of the President, Mr. Sumulong stated that Section 20 provides that no treaty or international agreement entered into by the President shall be valid without the concurrence of the majority of all the Members of Congress unlike the 1935 Constitution where the provision was directory and the 1973 Constitution which allowed the President alone to enter into treaties or international agreements "in the interest of national welfare".

At this juncture, Mr. Sumulong yielded the floor to Mr. Regalado who explained the matter of vacancy in the Office of the Vice-President.

Mr. Regalado stated that although the Philippines had never experienced a vacancy in the Office of the Vice-President, the Committee felt it necessary to anticipate such a situation in the light of the experience in the United States where such office was vacated eighteen times. He stated that the Vice-President, although sometimes called the "spare tire", assumes importance especially in the order of succession. He recalled that the vacancy in the Office of the Vice-President in the United States assumed significance when then Vice-President Agnew resigned to avoid federal criminal charges simultaneous with the resignation of President Nixon because of the Water-gate scandal. He recalled that President Nixon then nominated Gerald Ford, the Minority Floor Leader of the House which was controlled by the Democrats. He stated that in keeping with the Constitution, Congress limited its investigation to the question of fitness of Mr. Ford. During the interim between Ford's nomination by Nixon and his confirmation by the Congress, there were constitutional questions raised particularly as to what would happen if President Nixon were removed from office and who would recommend to Congress who would become the Acting President.

On the incapacity of the President, Mr. Regalado posed the question as to who would determine such incapacity by citing the case of President Marcos, who was rumored to have been ill but who insisted that he was healthy while avoiding public appearances on the pretext that he was writing a book. He pointed out that Section 11 of the proposed Article, which was patterned after Section 3 of the 25th Amendment of the American Constitution, requires the President to transmit to Congress his declaration of incapacity or in its absence, the members of the

Cabinet to transmit to Congress that the President is incapable of discharging his powers and duties, and that he is also incapable of making such declaration of incapacity. However, if the President, thereafter, contends that he is capable of performing his duties, the Congress would decide, within 21 days after the receipt of the declaration by a vote of two-thirds of all its Members, whether the President is capable or incapable of performing his duties.

He also cited such instances of incapacity of Presidents Garfield, Wilson, Roosevelt and Eisenhower. He stated that although there had been no similar case in the history of Philippine Presidents, a provision regarding the incapacity of the President would be necessary to anticipate the possibility of a constitutional crisis.

On the pardoning power of the President, Mr. Sumulong pointed out that the proposed provision was lifted from the 1935 Constitution which provides pardon after conviction of the accused. He stated that the pardoning power of President Marcos under the 1973 Constitution was scandalous because he could grant pardon even before conviction of the accused, hence, the restoration of the phrase "after conviction" in the proposed Article.

SUSPENSION OF SESSION

At this juncture, on motion of Mr. Etama, there being no objection, the Chair suspended the session in order to enable the Members to meet with the representatives of the urban poor and the women's group led by Deputy Minister Leticia Ramos Shahani who presented scrolls to the President of the Constitutional Commission.

It was 10:47 a.m.

RESUMPTION OF SESSION

At 11:08 a. m., the session was resumed.

PERIOD OF INTERPELLATIONS

Upon resumption of session, on motion of Mr. Rama, there being no objection, the Body proceeded to the period of interpellations.

Thereupon, the Chair recognized Mr. Nollado for his interpellation.

INTERPELLATION OF MR. NOLLEDO

In reply to Mr. Nollado's query on whether "resident" in Section 2 contemplates not actual residence but constructive residence or domicile as applied to Members of Congress, and whether, Mr. Rafael Salas, for instance, who is the Chairman of the United Nations Commission on Population Control and who has been away from the Philippines for more than 10 years, could run for President if he comes back, Mr. Sumulong stated that what is contemplated is actual residence so that those who live abroad and come back to the Philippines one year before the election are disqualified from running for the office of the President.

On Mr. Nollado's observation that the interpretation of "resident" in-Section 2 would establish a distinction between candidates for Congress and candidates for President rather than allow men, like Mr. Salas, who have been temporarily absent from the Philippines on account of the exercise of profession or employment abroad but with the intention to come back, to run for the Presidency, Mr. Regalado explained that Section 2 was taken from the 1935 Constitution about which the records of the Constitutional Convention show that the distinction was made because of the collective nature of the Legislature as a separate branch of government in contrast with the Executive where only one person wields the power of the Presidency.

On whether political exiles, like Mr. Raul Manglapus, who fled the country because of the repressive regime,

would be allowed to run for President when they come back after democracy had been restored, Mr. Regalado explained that residence may be punctuated by voluntary absence for a justifiable reason or because of compulsion to be temporarily absent from the country. He also explained that under the provision a person who was an actual resident of the country would still be considered a resident despite his stay abroad in the concept of domicile as long as he has the *animus revertendi* or intent to come back as against an *animus manendi* or intent to establish permanent residence abroad. Mr. Regalado agreed with Mr. Nollado that what is contemplated in the phrase "resident of the Philippines" is domicile.

Additionally, Mr. Bernas stated that domicile could be broken if a person establishes permanent residence as a green card holder in the United States.

On Section 3, in reply to Mr. Nollado's query whether the Committee would be amenable to changing the word "may" to SHALL in the sentence "The Vice-President may be appointed as a member of the Cabinet", in order to cure the Constitutional void in the 1935 Constitution which created but relegated the position of Vice-President to a useless appendage in the administrative hierarchy of the government in the event the President does not appoint him Cabinet member, Mr. Regalado stated that the Committee used the permissive word "may" on the premise that when a person runs for Vice-President, he does so not with the intention, expectation or desire to be a Cabinet member. He also pointed out that it would be embarrassing for the President to be compelled to appoint a Vice-President who may refuse to serve the Cabinet, aside from the fact that it would also be an incursion into the appointing power of the President.

Mr. Bernas added that in line with the doctrine of qualified political agency which presumes the acts of the Cabinet members to be the acts of the President, it is necessary that the President appoint only those in whom he has complete trust.

On Mr. Nollado's query whether the phrase "upon determination of the authenticity and due execution thereof" in Section 4 means that the duty of Congress to canvass the certificates of election returns for the President-and the Vice-President would no longer be considered ministerial, Mr. Maambong, to whom Mr. Sumulong referred the query, explained that the Supreme Court in the case of Roxas vs. Lopez and other cases had decided that the canvassing conducted by the National Assembly is only ministerial, which means that the Legislature shall merely examine the certificates of canvass to determine whether on the face thereof there are flaws with respect to authenticity or due execution. He explained that the phrase "in the manner provided by law" was inserted to enable Congress to determine what flaws or deficiencies in the certificates of canvass the canvassing board of tellers may take cognizance of, considering the ambiguity of the Omnibus Election Code, the rules and regulations of the Commission on Elections (COMELEC) and jurisprudence on the matter.

On the rationale for leaving to Congress the manner of succession in case of vacancy in the office of the President or the Vice-President instead of providing it in the Constitution, Mr. Regalado replied that the Committee would welcome an amendment on the matter. He explained however, that the Committee wanted flexibility in the manner of succession to suit changing conditions. He stated that the United States Constitution has similarly left the matter of succession to law instead of providing for it in the Constitution.

On the incapacity of the President, in reply to Mr. Nollado's query whether the Committee had instituted safeguards against the possibility that the President may immediately change his Cabinet ministers in anticipation that the latter may declare him as incapacitated even if he is still discharging his duties, Mr. Regalado stated that when the Cabinet ministers meet for the purpose of determining the capacity or incapacity of the President, they respond to a political problem but if the President is able to know the cabalistic designs of his ministers, it would show that he is capacitated and not incapacitated.

Mr. Regalado also pointed out that the mere fact that Ministers appear to be the alter egos of the President does not rule out the possibility of independent minded and perceptive ministers, adding that the United States Constitution has included the Vice-President among those who would participate in the sending of a written declaration on the capacity or incapacity of the President but that the Committee decided to exclude him as a seemingly interested party.

On the meaning of "revoke" in Section 15, Mr. Concepcion stated that the President could declare martial law or suspend the privilege of the writ of habeas corpus with the concurrence of Congress which may revoke the proclamation or suspension upon a vote of at least a majority of all its Members.

On Mr. Nollado's query whether the "citizen" in Section 15 who could file a petition in the Supreme Court to review the factual basis for the declaration of martial law or suspension of the privilege of the writ of habeas corpus must be a taxpayer, Mr. Concepcion stated that he need not be a taxpayer.

On the rationale of the new provision in Section 17, Mr. Davide opined that since graft and corruption go into the fabric of public service, no executive clemency should be granted without the concurrence of the court which made the finding of conviction. However, he added that the Committee did not adopt his proposed resolution on the matter and instead left it to Congress to decide the need for curtailing the President's power to grant executive clemency.

On Section 18, in reply to Mr. Nollado's query whether the contracting of foreign loans would remain a Presidential prerogative considering that the members of the Monetary Board are still subject to the President's control, Mr. Regalado stated that there are also private representatives in the Monetary Board and that businessmen have been clamoring for more participation therein. He explained that the Committee placed the Monetary Board because it is the central monetary authority. He added that giving unlimited power to the President to contract loans could lead to a repetition of the past experience but, on the other hand, providing for too stringent rules like requiring legislative consent before a foreign loan could be contracted, could give rise to problems on delays, thus, -the compromise of requiring quarterly reports to the legislature on the action of the Monetary Board for concurrence if meritorious and, if not, for the enactment of remedial legislation.

At this juncture, Mr. Villegas informed that the Committee on National Economy and Patrimony would be submitting its Committee Report providing that majority of the members of the Monetary Board must come from the private sector. He added that in the future, there may no longer be any government official in the Board in order to make it completely independent of the Executive.

Finally, Mr. Nollado commended the Committee for deleting Section 17, Article VII of the 1973 Constitution which granted the President and his ministers immunity from suit.

INTERPELLATION OF MR. DE CASTRO

On Mr. de Castro's query whether Section 15 means that the President could only declare martial law when there is actual rebellion or invasion and only with the concurrence of Congress, Mr. Sumulong stated that under Section 15, the President can call armed forces to prevent or suppress invasion or rebellion even without declaring martial law.

Mr. de Castro stated that in cases of actual rebellion and hostilities, to require the President to suspend the privilege of the writ of habeas corpus with the concurrence of Congress would be very difficult as many would have been arrested and sent to jail or killed in the course of actual hostilities. He stated that the privilege of the writ of habeas corpus would have to be suspended even without the concurrence of a majority of the Members of Congress, because to require judicial action before one is jailed for participating in the rebellion or hostilities

would limit the powers of the Commander-in-Chief under this provision. He then asked if the Committee would allow certain amendments at the appropriate time, to which Messrs. Regalado and Sumulong replied that the Committee would consider such amendments.

On Section 16, relative to the nomination and appointment of military officers, Mr. de Castro stated that Deputy Minister Iletto and General Ramos had recommended to him the confirmation of appointments of military officers beginning with the rank of major general. He observed that colonels and brigadier generals are front-line officers who engage the insurgents in actual warfare and that major generals are the inspecting generals who normally function as the major service commanders. He then inquired whether he could submit proposals on the matter, to which Mr. Regalado replied that such proposals could be considered at the proper time.

Mr. Rama stated that, as a member of the Committee on the Executive, he proposed to lower the rank from general to colonel for purposes of confirmation. He stated that history shows that most coup d' etats were staged by colonels and that the February Revolution was staged mostly by colonels of the Reform the Armed Forces Movement (RAM) based on the interviews he had conducted. He stated that it is to prevent political instability that he proposed that the President should have a hand in appointing colonels.

Mr. de Castro invited attention to the fact that the President appoints cadets of the Philippine Military Academy who, upon graduation, are appointed as second lieutenants, underscoring the fact that the President appoints the lowest lieutenant in the Armed Forces.

On the RAM and its participation in the February Revolution, Mr. de Castro disagreed with the statement that said organization was instrumental in staging the revolution. He stated that he always questioned the position of the RAM as an organization within the military organization, since it tends to create division within the military establishment, as noted by the Chief of Staff of the Armed Forces. He stressed that no such organization exists in the armed forces of other countries. He also observed that it is not the colonels, but the majors and captains, who stage coup d'etats.

Reacting thereto, Mr. Rama reiterated that his statements on the role of the RAM in the February Revolution was based on interviews he had with its members, which led him to conclude that the organization played a big role in the 1986 Revolution. Mr. de Castro, however, stated that the leaders of the RAM solicit invitations from civic organizations so that they could project themselves in the newspapers.

Adverting to Mr. Nollado's query on Section 18 referring to the Monetary Board, Mr. de Castro opined that it could not serve as a check and balance in the presidential system of government because check and balance would apply only to the three branches of government. He maintained that foreign loans need planning within a long span of time. He suggested that it should be the Congress which should consent and approve foreign loans so that an effective system of check and balance could be installed in a presidential system.

REMARKS OF MR. RAMA

Mr. Rama stated that the matter of pardons and reprieves before conviction had invited his concern as even after conviction, the conviction could be appealed. He suggested tightening the phrase to read "after FINAL conviction". Replying thereto, Mr. Regalado stated that it has always been the understanding that the word "conviction" means "final conviction" since an appealable conviction is not considered as such. He stated that the Committee would accommodate Mr. Rama's suggestion at the proper time.

On the Vice-President, Mr. Rama observed that this is the most awkward of all government offices which in the past had functioned only as a sparetire. He suggested that the Committee conduct a study on the matter, to give the office a definite constitutional function, such as an ex-officio President of the Senate.

Mr. Regalado stated that the Committee would consider the matter at the proper time, observing that in the United States, the Vice-President acts as Senate President. He stated, however, that the matter would have to be considered together with the Committee on the Legislative since it concerns the affairs of the Legislature.

On the martial law power of the President, Mr. Rama asked whether the Committee had considered that a situation may be urgent as to dictate that the President declare martial law while Congress is not in session. He suggested that Section 15 incorporate a provision on the automatic convening of Congress in such a situation.

In reply, Mr. Regalado stated that he had invited the attention of the Committee to the draft proposal of former President Macapagal proposing the immediate convening of Congress without need of call by the President the moment such contingency arises. He opined that Congress could act on such situations.

INQUIRIES OF MR. MONSOD

In reply to Mr. Monsod's query on the meaning of "domestic loans" in Section 18, Mr. Regalado stated that the Committee had *motu proprio* decided to delete the provision on "domestic loans" since Governor Fernandez and Deputy Governor Singson, appearing before the Committee chaired by Mr. Villegas, had pointed out that they have no fiscal authority insofar as domestic loans are concerned.

On whether it is the intention of the Committee that Congress shall review and pass upon the merits of foreign loans, Mr. Regalado stated that the purpose is for the Monetary Board to inform Congress of its decisions on applications for loans to be contracted or guaranteed by the government. Mr. Regalado also affirmed that the Monetary Board would be under obligation to submit a report to Congress before the loans could become effective. He explained that within thirty days from the end of every quarter of the calendar year the report has to be submitted for Congress to be able to make representations with the monetary officials concerned. He stated, however, that the contracting of foreign loans need not require the approval of Congress since it would make the whole procedure tedious and cumbersome. He added that Members of Congress would have sufficient knowledge of the activities connected with the loans since they represent the people who would ultimately shoulder payment of such loans.

On whether the report would pertain to loans contracted or guaranteed and not to future loans, Mr. Regalado stated that a bill introduced in the last Batasan envisioned a situation wherein Congress would be aware of the loans to be contracted considering that these loans would have been on the drawing boards for a long time. He stated that it would be a desirable feature to have Congress informed in advance.

On whether the first Committee draft which vests the Lower House with the power to concur, was made before the Body had decided on a bicameral legislature, Mr. Regalado stated that when the substitute resolution was printed, the Secretariat overlooked the change from "National Assembly" to "Congress." He stated that all references to the "National Assembly" in the Article on the Executive should be understood to refer to "Congress."

On Section 15, in reply to Mr. Monsod's query on whether the Committee would be amenable to proposals that would make the provision less restrictive for the President to act within the first sixty days, Mr. Regalado stated that the Committee would entertain proposals at the proper time. He stated that the first sentence of the proposed provision takes care of the situation amounting to rebellion or invasion of a lesser magnitude requiring the suspension of the privilege of the writ of habeas corpus and that the President, as Commander-in-Chief, could immediately call on the Armed Forces to suppress lawless violence, invasion or insurrection, even without the concurrence of Congress.

However, should the situation escalate to a point that would call for the imposition of martial law and the

suspension of the privilege of the writ of habeas corpus, the second clause would apply.

Mr. Regalado stated that the second option would also apply to the intervening period when it can be assumed that the Members of Congress, aware of the situation, would be ready to convene.

INTERPELLATION OF MR. COLAYCO

Mr. Colayco inquired as to whether line 18 of Section 15 which states that the concurrence of at least a majority of all the Members of Congress would be required to suspend the privilege of the writ of habeas corpus or place the Philippines under martial law, would refer to numerical majority of two hundred fifty plus twenty-four or to the majority of both Houses, Mr. Sumulong replied that it would be majority of both Houses.

Mr. Colayco observed that if the phrase is retained, in the event that all the Members of the Lower House were to vote solidly, its vote would still prevail even if the Senate were to vote solidly against it. Mr. Sumulong maintained that the phrase would give a clearer intent that concurrence would be majority of both Houses.

INTERPELLATION OF MS. TAN

On line 9, Section 15, Ms. Tan inquired as to the particular offenses included in the clause "offenses inherent in or directly connected with invasion", in reply to which, Mr. Regalado explained that these are offenses enumerated in Title I, Book II of the Revised Penal Code which are crimes against national security and against the law of nations, such as treason, espionage, communication during wartime with the hostile country and giving of information.

On whether subversion is excluded or implied, Mr. Regalado pointed out that subversion is a peacetime counterpart of treason which takes place only during wartime and treason, he added, would be incubated during peacetime. He stated that penalties for treason and subversion are the same - prison mayor to death.

On Ms. Tan's observation that this was not so during the period of martial law, Mr. Regalado stated that the definition of subversion at that time was Mr. Marcos' own definition and what he had just stated is its legal definition.

As to whether martial law would automatically give the powers of legislation through decrees to the President, Mr. Concepcion adverted to the provision of Section 15 stating that martial law does not necessarily give the President such power.

As to what specific power would be necessary to enable the President to proclaim martial law, Mr. Concepcion stated that in general, in case of invasion, the President would have all the powers of a general in the army.

Mr. Bernas, who was requested to further elaborate on the matter, recalled that the same question was asked during the Committee meetings. He explained that the first, second and third lines of the third paragraph of the Section stating that "a state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies" were inserted to reverse the ruling of the Supreme Court in the case of *Aquino vs. COMELEC* that in times of martial law, the President automatically has legislative power. He further stated that the clause "a state of martial law does not suspend the operation of the Constitution" would not suspend the principle of separation of powers.

As to whether the President can issue decrees during martial law, Mr. Bernas replied that the feeling of the Committee is that during martial law, the President may have the powers of a commanding general in a theater of war who has the authority to issue orders which have the effect of law. He added that this was not the situation obtaining during martial law. Moreover, Mr. Bernas stated that there is an effort to return to the traditional

concept of martial law as it was developed in American jurisprudence, where it has reference to the theater of war.

On Section 18, Ms. Tan observed the omission of Congressional approval for foreign loans, stating that while treaties would need Congressional approval, foreign loans would not require such approval. She inquired if the concurrence of the Monetary Board in case of foreign loans would be sufficient.

Mr. Regalado replied that the reasons for not requiring Congressional concurrence are: (1) it would take some time before such concurrence can be obtained and there might be an urgent need for the loan or, if the concurrence is finally obtained, the offered loan may no longer be available, and (2) if Congressional concurrence is required, an obstructionist Congress could prevent the President from negotiating foreign loans which may be urgently needed.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session until two-thirty in the afternoon.

It was 12:19 p.m.

RESUMPTION OF SESSION

At 2:41 p.m., the session was resumed.

Upon resumption of session, Mr. Sumulong informed the Body that copies of the substitute resolution adjusted to the bicameral legislature which had just been distributed to the Members would be used during the deliberations.

INTERPELLATION OF MRS. QUESADA

On Mrs. Quesada's query whether Section 14 defines the specific areas of general supervision by the Executive over local governments, Mr. Regalado stated that the entire Section 14 is an exact copy of Section 10(1) of the 1935 Constitution and the phrase "general supervision over all local governments" has already a settled meaning in jurisprudence as distinguished from control over the Executive departments, bureaus and offices. The powers of the President over local governments are defined by law.

With respect to autonomous local governments and their degree of general supervision, Mr. Regalado stated that they will have to be provided by law, because under the 1973 Constitution, the autonomous regions are not considered political or geographical divisions. He stressed that the extent of general supervision of the President over these autonomous regions shall have to be defined by the incoming Legislature.

Mrs. Quesada, however, pointed out that she was concerned about the clamor of local governments to have more autonomy and that the cause of local autonomy would suffer some setback by adopting this particular section. She observed that shortcomings in the local government system were attributed to Presidential intervention in purely local affairs and this provision would strengthen the Presidential hold on local governments.

Replying thereto, Mr. Regalado stated that the apprehensions of Mrs. Quesada may be true in the past regime where laws were promulgated by one man, resulting in the emasculation of local autonomy. He expressed the hope, however, that the incoming Legislature would do away with the restrictive decrees.

Mr. Bernas, to whom Mr. Regalado yielded the floor, added that the phrase "as may be provided by law" would have to be adjusted to whatever is approved on the Article on Local Governments.

On the power of the President to contract or guarantee foreign and domestic loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board without having to go through Congress, Mr.

Regalado expressed willingness to consider amendments at the proper time.

On the scope of treaties and international agreements as contained in Section 20, Mr. Regalado explained that the phrase "international agreement" is all-embracing to include all agreements entered into by the President, like treaties, executive agreements, international conventions or even administrative agreements.

On International Labor Organization Convention 149 cited by Mrs. Quesada which has something to do with the conditions of life and work of nurses and other health personnel, Mr. Regalado stated that under the former regime, there was no counterpart provision of concurrence by the Batasang Pambansa with respect to international agreements. He contended that many of these international agreements were conducted by the President on his own authority.

INTERPELLATION OF MR. FOZ

In reply to the query of Mr. Foz on the manner by which Congress, in joint session, determines the authenticity and execution of the certificates of canvass, Mr. Maambong stated that under the present laws, the authenticity and due execution are determined by the rules and regulations promulgated by the Commission on Elections, by the provisions of the Omnibus Election Code, and by the rulings and decisions of the Supreme Court. He pointed out, however, that the phrase "in the manner provided by law" was inserted in the proposal so that, in future canvassings, the Legislature would be expected to promulgate or enact a law that would set out in formal terms the guidelines to be followed by the Board of Tellers of Congress in canvassing the votes for President and Vice-President.

As to how authenticity and due execution of the certificates of canvass are determined under the present laws and the Rules of the Batasang Pambansa, Mr. Maambong explained the steps taken by the Board of Canvassers, namely: 1) to look at the document itself, to find out if it is regular on its face; 2) whether it was signed by the members of the city, provincial or district board of canvassers, 3) whether the thumbmarks are present; 4) whether the words and figures are clearly indicated; 5) whether or not the envelope in which the certificate of canvass is contained- is the genuine envelope furnished by the COMELEC; 6) whether the COMELEC paper seal is affixed on the envelope; and 7) whether the certificate of canvass has the COMELEC paper seal.

With respect to the genuineness of the signatures appearing in the certificates of canvass, Mr. Maambong stated that the same is considered during the actual canvassing of votes by comparing the signatures in the Opposition party's copy of the certificate of canvass with those of the Board of Tellers and the Majority Party to determine whether there has been any deviation in the signatures therein.

On the possibility of deleting the phrase "where civil courts are able to function" found on Section 15, Mr. Bernas stated that said phrase was inserted, precisely to clarify the meaning of martial law as it has existed in jurisprudence on international law. He pointed out that when a country is in a theater of war, civil courts are unable to function, thus the military commander is authorized to grant jurisdiction to military courts because the civil courts are closed in that area. He further pointed out that the phrase "nor authorize the conferment of jurisdiction on military courts and agencies over civilians" has reference to the practice under the Marcos regime wherein military courts were given jurisdiction over civilians, which should not be allowed, except, in areas where civil courts are unable to function.

On the term "assistants" as used in Section 19, Mr. Regalado stated that with respect to members of the Cabinet, the assistants would refer to their deputy ministers or to persons next in line with respect to other governmental offices. He also stated that the term "assistants" does not refer to any particular head of office but to the assistants of these different heads of office.

On the philosophy behind Section 19, Mr. Regalado stated that, while conflict of interest would be one of the purposes, the most desirable trait in any public officer is full attention and devotion to his duties, on the assumption that when he sought appointment to an office, he was aware of the limitations enshrined in the Constitution.

On the argument that the Commission, in considering this Section, should be realistic given the rising costs of living, aside from the low salaries they receive, Mr. Regalado pointed out that the problem could be remedied by increasing their compensation if the government could afford it or by allowing these public officers to engage in other activities to augment their income, provided that these do not conflict with the objective of this Section.

On Mr. Foz' observation that the provision would practically allow no other activity from which they could derive income, Mr. Regalado stated that the provision would not preclude members of the families from engaging in business. He stressed that the disqualification is a personal disqualification designed to ensure fulltime attention to duties.

On the clause "hold any other office or employment", Mr. Regalado stated that it is directed against the holding of a private office. On the existence of a law which prohibits an employee from holding another government office, he pointed out the rule on incompatibility of duties of public officers and the prohibition against holding two offices at the same time.

On the prohibition on the President from appointing his spouse or relatives by consanguinity or affinity within the third civil degree as ministers, deputy ministers or heads of bureaus or offices, Mr. Regalado explained that under the rules of civil law, the relatives within the third civil degree are the brother, sister, niece or nephew. He opined that it may be too harsh to include relatives within the fourth civil degree especially if they are competent and acceptable to the people.

Finally, Mr. Regalado stated that the Committee would entertain amendments, with their justification, to include government-owned or controlled corporations and their subsidiaries.

INTERPELLATION OF MR. RODRIGO

On Section 8, in reply to Mr. Rodrigo's observation that it would be more logical to limit the nomination or choice, in case of vacancy in the Office of the Vice-President, to the Members of the Senate who, like the Vice-President, are also elected nationwide, Mr. Regalado stated that the provision referred to was taken from the 25th Amendment of the United States Constitution. He opined that the President should be given the freedom to nominate from the legislators regardless of the House to which he belongs. However, he stated that the Committee would be willing to entertain amendments at the proper time.

On Section 11 regarding the inability of the President to discharge the powers and duties of his office, Mr. Regalado affirmed that under the first paragraph thereof, the Vice-President would take over the position upon the recommendation of all the members of the Cabinet through a written declaration addressed to the Senate President and the Speaker of the House that the President is unable to discharge his powers and duties. However, in the second paragraph of the same Section, the President would resume his powers and duties upon transmitting his own written declaration addressed to the Congress that no inability exists. He further explained that if the Cabinet contests such declaration of the President, the President would continue discharging his powers and duties while Congress decides the issue. Mr. Regalado admitted that the last paragraph, specifically on lines 3 to 5 of page 6 should be rephrased.

With respect to the five-day period within which the Cabinet can question the declaration of the President, Mr. Regalado stated that after the lapse of that period, the Cabinet is deemed to have impliedly acquiesced to the

President's capacity to discharge his duties, but should the Cabinet decide to make another declaration after the five-day period, then the process has to be started all over again because there was a supervening fact that the President was capable of discharging his powers and functions.

Additionally, Mr. Bernas explained that if the Cabinet complies with the five-day period, its message should be reviewed by Congress but if it allows the period to lapse and it is found that the President has a new ailment, then the process should start all over again and the Vice-President takes over.

Finally, Mr. Rodrigo raised the possibility that if the Cabinet wanted the Vice-President to take over, it could just allow the five-day period to lapse, in reply to which Mr. Bernas expressed the hope that such a situation would not happen.

INTERPELLATION OF MR. BACANI

On Section 4, on Mr. Bacani's observation that the word "immediate" on lines 5 and 6 should have been deleted to conform with the decision prohibiting the President from running for reelection, Mr. Regalado admitted that the word "immediate" should have been deleted.

On Section 15 which empowers the Senate, by a majority vote of all its Members, to extend the suspension of the writ of habeas corpus or the imposition of martial law, Mr. Regalado stated that the provision should have been worded in such a way that the concurrence should come from each House.

Mr. Bernas explained that should Congress decide to extend the suspension of the writ of habeas corpus but the President objects, such writ would have no effect because the imposition of martial law means presidential assumption of extraordinary power.

On Section 19 on the prohibition on the President from appointing his spouse and relatives by consanguinity or affinity within the third civil degree, Mr. Bacani recalled that the Article on the Civil Service Commission provides for exception in the case of policy determining, highly technical or primarily confidential positions. He inquired whether the same exceptions could be extended to the President.

In reply, Mr. Regalado stressed the need of applying a stricter rule for the President because of the vast powers attributed to the office. Moreover, he pointed out that the nature of the positions of Minister, Deputy Minister or head of bureau or office is not primarily confidential.

INTERPELLATION OF MR. VILLACORTA

On Section 5, Mr. Villacorta pointed out the possibility that a President-elect would be incapacitated to assume office at the time fixed for the beginning of his term and that the Vice-President-elect would assume office until the President-elect shall be able to assume office and qualify. He then inquired whether it would be possible to amend said section by inserting between the word "died" and the comma (,) the words OR INCAPACITATED TO ASSUME OFFICE.

In reply, Mr. Regalado explained that Section 5 presupposes that the President-elect shall have died and the Vice-President shall become President but if the President-elect is merely temporarily incapacitated, the Vice-President may temporarily act as President until the President-elect shall have recovered.

On the possibility that the President-elect could be permanently incapacitated without having died, Mr. Maambong explained that Section 5 should be read together with Section 9. He pointed out that when it comes to election, there are several points of reference to consider, namely: 1) election by the people; 2) canvassing of votes and proclamation; 3) qualification wherein the person proclaimed takes his oath; and 4) assumption of

office. He explained that when the President is permanently disabled or died before his proclamation or even after he had qualified and begun his term of office, the Vice-President becomes the President. He stated that the instances where the Vice-President shall act as President are when the President was elected but not proclaimed, proclaimed but he failed to qualify, or qualified but did not assume office.

Mr. Regalado stated that the Committee would consider a possible amendment to cover the situation when the President dies or has been definitively established to be permanently incapacitated.

Mr. Maambong pointed out the possibility of realigning Sections 5 and 9.

On Section 4 which makes the Supreme Court the sole judge of all contests relating to election, returns and qualifications of the President or Vice-President, Mr. Villacorta sought clarification whether or not the matter of determining the outcome of the contests is purely a political matter and should not be left to the judiciary. He inquired whether said provision would violate the doctrine of separation of powers.

In reply, Mr. Regalado stressed that it could not be considered as an intrusion into the separation of powers guaranteed to the Judiciary because this is strictly an adversarial proceeding.

On the rationale behind said provision which superseded Republic Act No. 7950 that created the Presidential Electoral Tribunal, Mr. Bernas pointed out that election contests are by nature judicial and therefore they are cognizable only by courts. He stated that the background of the provision could be traced to the case of Roxas vs. Lopez when the Supreme Court ruled that the new powers given to it was not an attempt to create two Supreme Courts. He pointed out that, as the Supreme Court stated, there was no creation of another Supreme Court, but that Congress merely allocated new jurisdiction to the Supreme Court as allowed by the Constitution.

He also stated that the creation of the Presidential Electoral Tribunal was necessitated by election contests which may take place between two Presidential candidates and two Vice-Presidential candidates. He underscored, however, that the Committee proposed to constitutionalize something statutory but that it would not impeach the separation of powers because the powers to be given to the Supreme Court would also be judicial.

On Section 14, on the control of the President of all executive departments, bureaus and offices in relation to the supervisory power of the Prime Minister under Section 9, Article IX of the 1973 Constitution, Mr. Villacorta suggested the substitution of the word "control" with "administer" because of some dictatorial tone of the former, in reply to which, Mr. Bernas explained that under the presidential form of government, there is only one Executive and he is the President whose power of control has acquired a definite meaning in jurisprudence, which is the authority of the superior to substitute his judgment for the judgment of his inferior. He further stated that control does not refer to discipline or general supervision which is just seeing to it that laws are being followed by his subordinates.

On Mr. Villacorta's suggestion on Section 15, to transpose the phrase "whenever it becomes necessary" after "armed forces" so that the calling out of the armed forces would only be necessary to prevent or suppress lawless violence, invasion or rebellion, and not discretionary on the part of the President, Mr. Regalado opined that there would be no substantial difference and it would just be a matter of style. Mr. Bernas added that the powers of the President as Commander-in-Chief would be graduated, to wit: to suppress lawless violence, invasion or rebellion; to suspend the privilege of the writ of habeas corpus; and to impose martial law. He underscored that in the suspension of the privilege of the writ of habeas corpus and the imposition of martial law, the judgment of the President would be subject to review by the Supreme Court and concurrence by the Legislature, but in calling the armed forces for lesser disturbances, his judgment could not be reviewed by anybody.

On Section 19, relative to Mr. Villacorta's query on whether the prohibition on the President to appoint "his or her

spouse and relatives by consanguinity or affinity within the third civil degree" should also be applied to the Vice-President, Mr. Regalado pointed out that the Committee decided to exclude the Vice-President because he has no appointing power, and in the event he becomes acting President, certain safeguards have already been installed.

On the possibility that a President might appoint the relatives of his Vice-President, Mr. Regalado opined that the prohibition would already extend too far which could even deprive persons the opportunity to serve the country just because of relationship which is accidental.

However, Mr. Regalado stated that the Committee would welcome any suggestion thereon at the proper time.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, the Chair acknowledged the presence in the gallery of students from Maryknoll High School and a Political Science class from the University of the Philippines.

INTERPELLATION OF MR. GARCIA

In reply to Mr. Garcia's query on whether the Committee has considered a mechanism, such as popular consultation, to democratize the power of the President in contracting foreign loans or entering into international agreements, Mr. Regalado stated that any proposal on the matter would be considered at the appropriate time.

Mr. Garcia suggested that the practice of President Aquino of visiting provinces and consulting the constituencies could be adopted and on a wider perspective, a referendum could also be instituted for said purpose, in reply to which, Mr. Regalado opined that although the suggestion would be welcome, the institutionalization of a mechanism may not be applicable in cases where there are many loans over a period of one year.

Mr. Garcia underscored that he was thinking of consultation only among the people to be largely affected or benefited by the loans or agreements, in reply to which, Mr. Regalado opined that the sentiments of the people on a particular matter should be directly brought to the attention of the Cabinet Ministers concerned. Mr. Bernas added that international agreements or treaties would not require the concurrence of two-thirds of all the Members of the Legislature, which is enough safeguard for the democratic exercise of the power of the President, considering that the Members of the Legislature are direct representatives of the people.

Furthermore, in line with Mr. Villegas' remarks that the Monetary Board should have at least the participation of the private sector, Mr. Garcia stressed that the independence and social character of the Monetary Board should be safeguarded, and as suggested by the Committee on National Economy and Patrimony, it should be composed of representatives of the private sector together with the Presidential appointees.

In this connection, Mr. Villegas, to whom Mr. Bernas yielded the floor, explained that the matter of composition of the Monetary Board would be left to the judgment of the Legislature, but that the members from the private sector could be taken from the business, labor and other non-governmental sectors. He opined, however, that it would be ideal if the representatives from the private sector, once they become full-time members of the board, would become government officials, like the Federal Reserve System of the United States which is completely independent of the Executive department although the members are full-time government officials. He stressed that private sector is not synonymous with the business sector but it includes all non-governmental sectors or institutions.

Mr. Garcia, however, contended that there should be a clear-cut mechanism to protect a social group in the contract of loans aside from the assurance of an independent Monetary Board.

INQUIRY OF MR. DE CASTRO

In reply to Mr. de Castro's query on who will appoint the members of the private sector to the Monetary Board, Mr. Villegas stated that it would be left to the discretion of the Legislature to provide for such mechanism of appointment.

Mr. de Castro pointed out that it was precisely the intention of his proposal to require the concurrence of the Congress on loans to be contracted by the government.

INTERPELLATION OF MR. DE LOS REYES

On Mr. de los Reyes' query on Section 15, relative to the deletion of the phrase "imminent danger thereof", in justifying the imposition of martial law and the suspension of the writ of habeas corpus, Mr. Regalado explained that although the phrase was not included in the Bill of Rights of the 1935 Constitution, the same was placed in the 1973 Constitution to install a strong President, but which phrase was fraught with abuse, since the President could just contend that there was imminent danger of rebellion based on military intelligence reports. He stated that the Supreme Court could not even question the so-called classified and highly reliable intelligence report.

Additionally, Mr. Bernas pointed out that "imminent danger of rebellion" could be covered by the first sentence, whereby the President may call on the armed forces to prevent or suppress lawless violence, invasion or insurrection, which, Mr. Regalado observed, would not require the concurrence of the Legislature or be subject to judicial review.

On whether the imposition of martial law or suspension of the privilege of the writ of habeas corpus was preparatory to the calling of the armed forces, Mr. Regalado pointed out that former President Marcos outlined the steps as the Committee had put it, namely: 1) to call out the armed forces to suppress or prevent lawless violence, which is at par with imminent danger of rebellion; 2) to suspend the privilege of the writ of habeas corpus if the situation worsens; and 3) to declare martial law if the two fail because of an extremely serious situation.

On Mr. de los Reyes' query whether it is the Committee's contemplation that the rebellion must be actual and not imminent, Mr. Regalado stated that Articles 134 and 135 of the Revised Penal Code define rebellion as an actual assemblage of men in an armed public uprising for the purposes and means provided for in said articles.

Mr. Bernas explained that it is not enough that there be actual rebellion. He stated that the Manila Hotel incident, even if it were considered an actual rebellion, would not by itself justify the imposition of martial law or the suspension of the privilege of the writ of habeas corpus because of the requirement that "public safety requires it." He opined that the President need not impose martial law or suspend the privilege of the writ even if there is actual rebellion if it could be handled and public safety could be protected.

On whether synchronized strikes in all industrial firms coupled with simultaneous isolated attacks of several places in order to destabilize the government and ultimately to supplant it with another could be considered a rebellion, Mr. Regalado replied that the question calls for a factual appreciation and evaluation of the magnitude and scope of the attacks. He stated that public disturbance could escalate from a mere tumultuous disturbance to sedition and finally to rebellion. However, he added, that although the President may have reached a determination that the armed public uprising falls within the ambit of rebellion, he could just call on the armed forces to prevent or suppress it without necessarily declaring martial law or suspending the privilege of the writ.

On the qualifying phrase "with the concurrence of at least a majority of all the Members of Congress", in reply to Mr. de los Reyes' query as to how this concurrence could be obtained if, for instance, all entrances of the Batasang Pambansa had been blocked by demonstrators, Mr. Regalado explained that Congress is any place where

Members thereof could lawfully congregate, assemble, deliberate and hold sessions whether it be the Batasang Building or the Daungan Restaurant.

Mr. Maambong agreed with Mr. de los Reyes' observation that it is the Congress' ministerial duty to canvass the certificates of election returns without being bound by the alleged authenticity of the returns and that the phrase "manner provided by law" does not only refer to statutory law but also to Supreme Court decisions on the matter.

INQUIRY OF MR. MONSOD

On Mr. Monsod's query as to the meaning of "without being bound", Mr. de los Reyes stated that the National Assembly has the duty to canvass the election returns but it has to determine whether they are indeed genuine and authentic based on existing laws and jurisprudence.

In reply to Mr. Monsod's query on the responsibility of the Congress if it finds that the certificates are not authentic nor duly executed, Mr. Maambong stated that pursuant to the Omnibus Election Code if the statement of votes is not attached to the certificate of canvass, the Board of Tellers could require the COMELEC to produce its copy of the certificate of canvass with the attached statement of vote for purposes of comparison with the copies of the Majority and Opposition parties.

Mr. Maambong acknowledged that it would be a problem if the figures in the certificate of canvass would not tally with the statement of votes per polling place. It is for this reason, he stated, that the Committee decided to put the clause "determination of due execution and authenticity in the manner provided by law" inasmuch as there is no such law providing guidelines to be followed in such a situation.

On whether there were instances when Congress still read the certificates of canvass even after examination that they were not authentic and regular on its face, Mr. Maambong stated that the usual objection made in the last canvass of election returns was that not all members of the canvassing board signed the certificate of canvass. He added that the Omnibus Election Code, however, provided that when the majority signed even if one or two members did not sign, the certificate of canvass could be tabulated. He opined that the problem was resolved because there was a law but other problems would arise in the absence of a law.

On Mr. Monsod's query whether the practice in the last Batasan canvassing would have binding effect on future canvassings, Mr. Maambong opined that the practice could not be considered as jurisprudence but it could be considered as a parallel authority.

Mr. Regalado added that although the decisions referred to by Mr. de los Reyes were those of the Appellate Courts, the doctrine of stare decisis does not mean blind adherence to precedents.

SUSPENSION OF SESSION

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

It was 4:27 p.m.

RESUMPTION OF SESSION

At 4:37 p.m., the session was resumed.

RESUMPTION OF CONSIDERATION ON THE ARTICLE ON ACCOUNTABILITY OF PUBLIC OFFICERS

Upon resumption of session, Mr. Sarmiento moved for voting, on Second Reading, on the Article on Accountability of Public Officers.

Ms. Aquino, however, moved for reconsideration of the voting on the provision in Section 14 which included the Judiciary in the prohibition from the availment of loans and guarantees from government-owned or controlled banks or financial institutions, stating as a reason therefor the overwhelming reaction against it from the senior Members of the Commission.

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

AMENDMENT OF MS. AQUINO

Thereupon, Ms. Aquino moved to reword Section 14 of the Article on Accountability of Public Officers, the read:

NO LOAN, GUARANTY OR OTHER FORM OF FINANCIAL ACCOMMODATION FOR ANY BUSINESS PURPOSE MAY BE GRANTED DIRECTLY OR INDIRECTLY, BY ANY GOVERNMENT-OWNED OR CONTROLLED BANK OR FINANCIAL INSTITUTION TO THE PRESIDENT, VICE-PRESIDENT, MEMBERS OF THE CABINET, MEMBERS OF CONGRESS, MEMBERS OF THE SUPREME COURT, MEMBERS OF THE CONSTITUTIONAL COMMISSIONS AND THE OMBUDSMAN OR TO ANY FIRM OR ENTITY IN WHICH HE HAS CONTROLLING INTEREST, DURING HIS TENURE.

Mr. Monsod accepted the amendment on behalf of the Committee.

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

MANIFESTATION OF MR. MONSOD

On Section 11, page 5, line 21, Mr. Monsod likewise adverted to the inadvertent omission of Mr. Suarez' approved amendment to insert the phrase IN APPROPRIATE CASES between the words "shall" and "notify" so that the clause would read "shall in appropriate cases notify the complainants of the action taken and the results thereof."

Thereupon, the Chair directed that the correction be made.

MOTION FOR RECONSIDERATION OF MR. MAAMBONG

On motion of Mr. Maambong, there being no objection, the Body reconsidered its approval of Section 3(3) of the proposed Article on Accountability of Public Officers.

AMENDMENT OF MR. MAAMBONG

Thereafter, on motion of Mr. Maambong, there being no objection, the Body approved the amendment of the Section 3(3) of the Article on Accountability of Public Officers, to read:

A VOTE OF AT LEAST ONE-THIRD OF ALL THE MEMBERS OF THE HOUSE SHALL BE NECESSARY EITHER TO AFFIRM A RESOLUTION WITH THE ARTICLES OF IMPEACHMENT OF THE COMMITTEE OR TO OVERRIDE ITS CONTRARY RESOLUTION. THE VOTE OF EACH MEMBER SHALL BE RECORDED.

MOTION OF MR. TINGSON

At this juncture, Mr. Tingson manifested that he had a prepared speech on the reasons why the Sandiganbayan and the Tanodbayan should not be abolished, which because of time constraint, he was moving for its insertion into the records.

There being no objection, the Chair directed that it be so inserted in the Record of the Commission.

REMARKS OF MR. BENNAGEN

At this juncture, Mr. Bennagen, for the record read part of the debate that he would have delivered in the previous day's session concerning the amendment to Section 12 on the Article on the Accountability of Public Officers, which amendment, he informed, was a consolidated amendment authored by Messrs. Jamir, Sarmiento, Natividad and himself.

He stated that members of the Philippine Social Science Council have been deeply involved in the effort to link up the Council with efforts to arrive, at the very least, at a modicum of ethics and efficiency in the public service and consequently has addressed itself to government. The Council's experience, he noted, had proven that government, in particular the last Batasang Pambansa, was unresponsive to the efforts of the Philippine Social Science Council. By way of an illustration, he recalled that in 1984 the Council launched a public forum series to set up some kind of a working relationship between the Council and the Batasang Pambansa, and that the first of these monthly fora was attended by eight legislators, which number dwindled down to one eventually. Thereafter, he said, the Council directed its efforts to people's organizations and set up resources for a people's program so as to allow social scientists to work directly with these organizations. He stated that one of the main concerns of the group is that those in the public service should maintain high standards of ethics and efficiency. In relation to Section 12(7) which is concerned with efforts to make recommendations for the observance of high standards of ethics and efficiency, he opined that the root causes of inefficiency are red tape, mismanagement, frauds and corruption in the government. He observed that functions of the Tanodbayan or Ombudsman are reactive and corrective in character. He added that it was their thinking that the provision should allow for anticipation and hence, preventive of bureaucratic corruption. He stated that the provision fails to underscore the fact that bureaucratic corruption cannot be isolated from the larger problems of society. Thereafter, he adverted to a study of bureaucratic corruption in Asia, which reads:

"The major lacuna in the anti-corruption policies adopted by all of these countries — meaning; several countries in Asia — is that they seem to view the problem of governmental corruption in very myopic terms — in isolation from other forms of white-collar crime. Underlying most anti-corruption policies, there is the assumption that the problem of corruption in government has very little to do with the other form of white-collar criminality. This in fact accounts for a sizeable part of the ineffectiveness of their anti-corruption policies or strategies. As a matter of fact, corruption in public bureaucracy and government-as will be shown below — constitutes a part of the wider area of white-collar crimes. White-collar crime in every sense is real crime. It has been overlooked and underplayed far too long"

Thereafter, he read the definition of white-collar crimes by the United States Department of Justice, to wit: "Those classes of non-violent, illegal activities which principally involve traditional notions of deceit, deception, concealment, manipulation, breach of trust, subterfuge or illegal circumvention."

He stated that the main point is, we should not isolate efforts at combatting bureaucratic corruption from the larger crimes which occur in the larger society. He stressed that part of the duties of the Ombudsman would be to anticipate and make necessary corrections with respect to bureaucratic corruption.

APPROVAL ON SECOND READING OF RESOLUTION NO. 456, AS AMENDED

Thereafter, Mr. Sarmiento moved that the Body approve, on Second Reading, Proposed Resolution No. 456, entitled:

Resolution proposing to incorporate in the 1986 Constitution an Article on Accountability of Public Officers.

With 35 Members voting in favor, 1 against and 1 abstention, the Body approved, on Second Reading, Resolution No. 456, as amended.

CONTINUATION OF THE PERIOD OF INTERPELLATIONS ON THE ARTICLE: ON THE EXECUTIVE DEPARTMENT

On motion of Mr. Sarmiento, there being no objection, the Body resumed consideration of the Article on the Executive Department.

INTERPELLATION OF MR. BENNAGEN

On line 1 of Section 16, Mr. Bennagen observed that the clause ". . . vest the appointment of inferior officers in the President alone, in the courts or in the heads of departments" used the word "inferior" while the Article on the Judiciary used the words "lower courts". He noted that Congress cannot appoint "inferior" officers in terms of a certain kind of quality but rather in terms of ranks unless such is the intent of the provision.

Mr. Regalado, in reply thereto, stated that the provision was taken from Section 10(3), Article VII of the 1935 Constitution and partly from Section 12 of the 1973 Constitution which used the word "inferior" and asked whether Mr. Bennagen had a more appropriate term. Mr. Bennagen stated that his proposal shall be made at the proper time. Mr. Bernas clarified that the term "inferior" would mean one lower in rank, or one lower than the officer mentioned above.

On Section 19 on the use of the word "shall", Mr. Bennagen stated that he had been informed that the word used in the Constitution can either be directory or mandatory and that in the context of the over-all provision, it would have a directory sense because of the use of the word "may" in the next sentence. Mr. Regalado stated that under the rules of statutory construction when the word "shall" is used alone there would be instances when it may be considered as "may" but when used in the negative as in "shall not", then it would be mandatory.

Mr. Bennagen queried as to whether the word "may" in the second sentence would also be mandatory, to which Mr. Regalado answered in the affirmative.

INTERPELLATION OF MRS. ROSARIO BRAID

Mrs. Rosario Braid stated that in reference to Section 13, on the powers of the President to contract foreign loans, she concurred with the other Members that there should be a more specific provision, not necessarily in the Article on the Executive Department, and that the Committee on National Economy and Patrimony could come up with specific criteria and mechanisms which would broaden membership of the Monetary Board to include those in the social sector as well as ensure its independence.

On Section 17, Mrs. Rosario Braid observed that the last sentence, which reads "However, the power to grant executive clemency for violations of corrupt practices law may be limited by legislation" was not in the previous Constitutions and asked the Committee as to what would be the rationale for the inclusion of the provision.

Mr. Regalado, in reply thereto, stated that the provision is an addition to the pardoning power of the President. He stated that the Committee took into account those crimes which are of such magnitude as to affect both the political and economic systems. He cited as an example, violations of electoral offenses for which the President cannot grant pardons without the favorable recommendation of the Commission on Elections because such violations affect the very political system. Frauds referred to in the provision, he noted, also require pr shall be subject to legislation insofar as the pardoning power of the President is concerned, and so are violations of corrupt practices law which affect the economic life of the country. Mr. Bernas added that the last sentence is a

compromise between those who wanted to adopt the original proposal which provides that violations of the anti-graft law should not be given pardon without the recommendation of the convicting court and those who felt that the pardoning power of the President should not be further limited.

Mrs. Rosario Braid inquired whether in the light of the recognition of women's equal rights, the Committee would consider recommending to the Committee on Style the rewriting of some phrases so as to minimize the use of the masculine gender when referring to public officials. In reply, Mr. Regalado stated that under the rules of statutory construction "he" may mean "she" or "she" may mean "he." Mrs. Rosario Braid suggested some other words instead of "he" or "she", to which Mr. Regalado noted that Mr. Rodrigo, as Chairman of the Committee on Style, would be asked to look for a more appropriate substitution.

On page 3, Mrs. Rosario Braid proposed to delete lines 24 to 27 inasmuch as the salaries cannot be specified due to the fluctuating value of the peso. Mr. Regalado informed that upon the suggestion of Mr. Monsod, the formulation for salaries used in the Article on the Judiciary shall also be used in the Articles on the Executive and Legislative Departments.

INTERPELLATION OF MR. SUAREZ

Upon inquiry of Mr. Suarez, Mr. Regalado affirmed that "in joint public session" would be the equivalent of "in joint session assembled" as stated in the 1935 Constitution.

Adverting to the Section which states that "the Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President", Mr. Suarez asked if this would not be giving enormous work to the Supreme Court especially when it is directed to sit en banc on such election contests. Mr. Concepcion explained that the function was discharged by the Supreme Court twice and the Body was able to dispose of each case within one year as provided by law. He stated that he would not know how the present Supreme Court would react in such circumstances but added that there is also the question of who else would hear the election protests.

Mr. Suarez clarified that between lines 23 and 25, there are no rules provided for the hearings and there is no time limit or duration for the election contest to be decided by the Supreme Court. In view of the historical background of such contests, he stated that when Republic Act 1973 was promulgated on June 21, 1957, which organized the Presidential Electoral Tribunal, at least three famous election contests were presented and two ended up in the withdrawal by the protestants out of sheer frustration. He stated that these cases involved Carlos Garcia vs. Diosdado Macapagal, in 1961; Gerardo Roxas vs. Fernando Lopez in 1965 which ended up in the withdrawal of Senator Rosas because of the delay in the resolution of the vice-presidential contest; and, Sergio Osmeña vs. Ferdinand Marcos in 1969.

In answer thereto, Mr. Concepcion replied that he could not answer for what the protestants had in mind. He recalled that the protest of Senator Roxas was withdrawn when the results were already available and that the results were not what he expected. He noted that Senator Roxas withdrew rather than have a decision adverse to his protest. The same thing happened in the case of Osmeña vs. Marcos, when the withdrawal took place when the results were already about to be announced.

As to whether Mr. Concepcion would not have any objection to vesting in the Supreme Court the power to resolve such electoral contests, Mr. Concepcion said he would personally have no objection.

As to whether such powers would violate the doctrine of separation of powers, Mr. Concepcion replied that Mr. Bernas explained that it is a contest between two parties and that the power would be a judicial one.

Mr. Suarez noted that it would be practically giving the Judiciary the right to declare who will be President of the country, which is a political action, to which Mr. Concepcion stated that there are legal rights which are enforceable under the law and these are essentially justiciable questions.

As to whether such contests would occupy all the time of the Supreme Court sitting en banc in view of the election returns and millions of votes which have to be reviewed, Mr. Concepcion answered that he had no experience insofar as contests of other offices are concerned and stated that the time consumed or to be consumed in such contests would be dependent upon the key number of teams of revisors, even if the Supreme Court is mandated to sit en banc.

He explained that the steps involved in such contests would be: first, the ballot boxes are opened before three teams - a representative of the court, a representative of the protestant, a representative of the protestee. He noted that it is all a question of how many teams should be organized and the process can be expensive regardless of the court chosen. He noted that there were times when the Supreme Court with 50 teams working at the same time would classify the objections and the kind of problems, and the court would have to go over the objected votes on which the parties could not agree. He noted that it would not be as awesome as it appears and added that what is awesome would be the cost of the revision of the ballots because each party has to appoint a representative for every team which would involve a big amount.

As to what would be the reasonable period for the election contest to be decided, Mr. Concepcion answered that insofar as the Supreme Court is concerned, it has managed to dispose of a case in one year.

On the intent of Section 9 with respect to the Acting President, Mr. Regalado stated that he shall be chosen from among the elected representatives of the people. Mr. Regalado expressed willingness, however, to consider amendments at the proper time to make this provision very clear.

On a situation where the President is in no position to submit a written declaration of inability to discharge the powers and duties of his office as contained in Section 11, Mr. Bernas stated that Section 11(2) would apply.

Mr. Regalado also stated that the second paragraph comes into play whenever the President is capable of making a written declaration but he refuses to do so, or he is willing to make the declaration but he is incapable of doing so, in which case, the initiative shall be taken by the majority of the Members of the Cabinet.

Mr. Bernas also affirmed that no time limit is provided within which the President should transmit the written declaration.

On the omission of the words "or indirectly" on line 29 of page 8, Mr. Regalado expressed willingness to consider amendments at the proper time.

On the suggestion to restore the phrase "The President shall be immune from suit during his tenure", Mr. Bernas stated that the President under existing jurisprudence, is immune from suit during his tenure, and there is no need to express it in the Constitution.

INTERPELLATION OF MR. TINGSON

In reply to Mr. Tingson's suggestion to upgrade the Office of the Vice-President so as to make him an effective leader once he assumes the presidency, Mr. Bernas expressed willingness to consider amendments at the proper time.

With respect to the phrase "That the Vice-President may be appointed as a member of the Cabinet", Mr. Bernas pointed out that this could not be made mandatory because of the nature of the presidential system, stating that a

member of the Cabinet is an alter ego of the President, such that under the principle of qualified political agency, an act of a Cabinet member is an act of the President unless specifically repudiated by him. In this connection, he maintained that a Cabinet member is somebody whom the President absolutely trusts and, therefore, the Constitution could not impose Cabinet members on him. He manifested, however, his willingness to consider amendments at the proper time.

INTERPELLATION OF MR. GUINGONA

In reply to Mr. Guingona's query on the intent of Section 9(2), Mr. Bernas stated that Congress shall by law provide for the selection of the person who shall serve as President.

On the intent of the word "shall" in Section 10, Mr. Bernas stated that it is mandatory in nature.

With respect to Section 10 providing that no special election shall be called if the vacancy occurs within seventy days before the date of the next presidential election, Mr. Guingona observed that seventy days is too short considering that the Constitution requires that an election shall be held not earlier than forty-five days from time of call. On the assumption that sixty days elapsed from the time Congress shall call the election, he contended that there would only be about ten days before the date of the next presidential election. In this connection, he pointed out that, considering that the person elected in the special election would only serve for the unexpired term, he would only be serving for a month or two.

Replying thereto, Mr. Maambong stated that the observation was well taken and that the Committee would be willing to accept amendments at the proper time.

INTERPELLATION OF MR. JAMIR

On Mr. Jamir's query relative to the interpretation of lines 20 to 22 of page 2 where two or more candidates for President obtain an equal and the highest number of votes, Mr. Regalado stated that the canvassing of votes for President and Vice-President is done in a joint public session of the Senate and the House of Representatives, such that in case of a tie, the same Members of Congress shall choose the President by a majority vote of all the Members in joint public session assembled.

With respect to Section 6, on the observation that no mention is made in regard to the Vice President taking his oath, Mr. Regalado opined that he would take the same oath as the President.

Mr. Regalado pointed out that there are actually three situations contemplated therein where there can be an Acting President. He recalled that the oath-taking of the Vice-President was not contained in the 1935 and 1973 Constitutions because of the assumption that he would also take the same oath but in his capacity as Vice-President.

Finally, Mr. Regalado opined that it would not do any harm to specify in Section 6 that the Vice-President should take the same oath, to which Mr. Jamir stated that he would propose an amendment at the proper time.

INTERPELLATION OF MR. PADILLA

In his interpellation, Mr. Padilla stated that without the restrictions or limitations that were inserted, Section 15 which is a provision on the President being the commander-in-chief is basically a copy of both the 1935 and 1973 Constitutions. He noted, however, that while the Committee correctly distinguished between a state of martial law and the suspension of the privilege of the writ of habeas corpus, the second sentence thereof joined together the suspension of the writ and the proclamation of martial law. He then inquired whether the Committee would

consider dividing the second sentence so that the first would refer to the suspension of the writ while the other would refer to the proclamation of martial law, to which Mr. Regalado stated that the Committee would consider the proposed amendment at the proper time.

On the required concurrence of the majority of the Members of Congress before the President could suspend the privilege of the writ of habeas corpus or proclaim martial law, Mr. Padilla inquired whether the Committee would agree to a suggestion to give the President some leeway so that he could suspend the writ or proclaim martial law without prior concurrence of Congress but subject to a limited period unless there is a subsequent concurrence. He opined that the required concurrence might unduly delay the suspension of the privilege of the writ of habeas corpus or the proclamation of martial law, in reply to which, Mr. Regalado stated that Mr. Padilla could present an amendment at the proper time so that it could elicit further reactions from the Body.

On Section 17 on the power to grant executive clemency for violations of corrupt practices laws, on Mr. Padilla's suggestion to expand its coverage so that it would include Republic Act 1379 and other existing laws, Mr. Regalado stressed that the phrase "violations of corrupt practices laws" is generic so that it includes violations of the Anti-Graft and Corrupt Practices Act, Republic Act 1379 which is the law on the forfeiture of illegally acquired wealth or those under Title VII of the Revised Penal Code.

He stated for the record that it is not the intention of the Committee to make specific reference to a special law.

Mr. Padilla observed that Section 9 mentions "death, permanent disability or resignation" but it - does not mention "removal" which is one of the four causes for a vacancy in the Office of the President or even of the Vice-President, to which Mr. Regalado explained that what is being contemplated in Section 9(2) is the death, disability or resignation of the Acting President.

Finally, on the suggestion of Mr. Padilla to simplify, as a matter of style, Section 5 to minimize the use of the word "beginning" which, as proposed, has been mentioned three times, Mr. Regalado stated that the Committee would be amenable to a simplification, pointing out, however, that Section 5 was taken from the provisions of the 1935 and 1973 Constitutions.

INQUIRY OF MR. SUAREZ

On Section 15, relative to Mr. Suarez' query regarding the use of the term "judicially charged", Mr. Concepcion affirmed that this would not refer to cases pending before the fiscal's office or before the Prosecution Department of the Ministry of Justice, adding that as soon as a person is apprehended, he must be turned over to a court for such actions as may be necessary regardless of whether the privilege of the writ of habeas corpus is suspended or not.

TERMINATION OF THE PERIOD OF SPONSORSHIP AND DEBATE

Thereafter, on motion of Mr. Sarmiento, there being no objection, the Body closed the period of sponsorship and debate.

ADJOURNMENT OF SESSION

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

It was 6:26 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 July 30, 1986

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