

JOURNAL NO. 126

APERTURA DE LA SESION

Se abre la sesión a las 4:10 p. m. ocupando el estrado interinamente el Delegado Hon. Mariana Cuenco, par designacion del Presidente.

EL PRESIDENTE INTERINO: Se abre la sesión.

DISPENSACION DE LA LECTURA DE LA
LISTA Y DEL ACTA

SR. GRAFILO: Señor Presidente.

EL PRESIDENTE INTERINO: Señor Delegado.

SR. GRAFILO: Pido qué se dispense la lectura de la lista y del acta, y qué esta se de por aprobada.

EL PRESIDENTE INTERINO: ¿Hay alguna objeción a la moción? (*Silencio.*) La Mesa no oye ninguna. Queda aprobada.

DESPACHO DE LOS ASUNTOS QUE
ESTAN SOBRE LA MESA DEL PRESIDENTE

EL PRESIDENTE INTERINO: Leanse los documentos recibidos.

EL SECRETARIO:

PETICION

Petition submitted by several residents of Maramag, Bukidnon, protesting the plan to change the present political status of the Province of Bukidnon. (P. No. 215.)

THE ACTING PRESIDENT: To the Committee on Sponsorship.

CONTINUACION DE LA DISCUSION DEL
PROYECTO DE CONSTITUCION

EL PRESIDENTE INTERINO: Está en orden la continuacion de la consideracion del proyecto de Constitucion.

SR. BUSLON: Hay una enmienda presentada por el Señor Perez y su servidor, de qué se suprima todo el Titulo 2.

EL PRESIDENTE JNTERINO: Está en orden dicha enmienda.

¿Hay algun Caballero qué desee hacer uso de la palabra en apoyo de la enmienda?

SR. ARUEGO: Pido la palabra.

EL PRESIDENTE INTERINO: Tiene la palabra Su Señoría.

DISCURSO DEL SR. ARUEGO

MR. ARUEGO: Mr. President and Gentlemen of the Convention: I presented my amendment for the suppression of the article on declaration of principles about three months ago after the Committee of Seven had submitted to the Convention its report. That amendment, therefore, was based, to a large extent, on the contents of the articles on declaration of principles. I see, however, that the SubCommittee of Seven has presented a revised article on declaration of principles. But notwithstanding these revised provisions on the declaration of principles, I think that the reasons which impelled me to present my amendment remain the same. I don't see, frankly speaking, any reason for any article on the declaration of principles in a Constitution. If we were trying to separate ourselves by force from the mother country, there may be a necessity for putting a declaration of principles wherein we enunciate certain philosophies of our people. But we are called upon to draft a Constitution for the Philippines, and. . .

MR. PEREZ (J.): I wish to direct a question to the Chair. Does the disapproval of this amendment mean that we cannot present any more amendment to suppress any section of this article?

THE ACTING PRESIDENT: The Gentleman may submit his amendment later.

MR. ARUEGO (*Continuing.*): I do not see any reason for the existence of a declaration of principles in our Constitution. I understand by principles to mean the philosophy of the Constitution. By the philosophy of the Constitution, I mean simply the thought upon which the Government provided for in the Constitution is based. If we examine the Constitution we have just approved, we find that it contains many philosophies. There is, for instance, the fact that the Government we are providing for is republican in character. We also find, as one of the principles of the Constitution, that the Government that we shall have is a unitary government. That is an amendment being presented by Delegate Francisco. We may also say as one of the principles of the Constitution the fact that our form of government is presidential or semi-parliamentary. We may likewise add that we are maintaining in our system of government the doctrine or principle of separation of powers.

Whether or not we make a summary of these principles of the Constitution, the principles are there. So long as we provide for a plan in accordance with definite philosophies, and I am sure that those so far approved are based on certain defined principles. . .

MR. GRAFILO: Do I understand that the Gentleman from Pangasinan does not object to having a provision in the Constitution which will express a philosophy of the unitary form of government?

MR. ARUEGO: As I said, whether or not we provide in the Constitution a statement to the effect that we are providing a government that is unitary, we have already established a unitary system of Government. Whether or not we include a statement to that effect, we have here a unitary form of government because all powers of

government are fused in the Central Government.

MR. GRAFILO: Does that answer demonstrate a principle embodied in the Constitution?

MR. ARUEGO: Yes.

MR. GRAFILO: What about the principle which refers to renouncing war as a national policy?

MR. ARUEGO: I wish first to continue my speech on the declaration of principles.

MR. GRAFILO: Will the Gentleman object if we embody in some parts or provisions of the Constitution the enunciation of the principle?

MR. ARUEGO: My main point is that the enunciation of this principle in the Constitution is unnecessary because it is already there.

MR. GRAFILO: So the principle is indispensable, whether it is placed under a separate article or in some part of this Constitution?

MR. ARUEGO: It is indispensable, whether we place it in a separate article or in the latter part of the Constitution.

MR. GRAFILO: It being indispensable, would it not be proper to set aside this declaration of principles as we have now in the draft?

MR. ARUEGO: I believe that whether we set aside this declaration of principles or place it in a separate article, the inclusion of the article will add to this already voluminous draft.

MR. GRAFILO: One more question. In the course of the Gentleman's speech, he stated that the inclusion of this article is not necessary. Is that a fact?

MR. ARUEGO: I was speaking of the fact that the declaration of principles is more of a declaration of independence rather than a constitutional precept.

SR. ABRIGO: Para unas preguntas al orador.

EL PRESIDENTE INTERINO: Puede contestar el orador, si lo desea.

MR. ARUEGO: Yes, sir.

SR. ABRIGO: Tengo entendido qué Su Señoría ha dicho qué estos principios contenidos en el "draft" no coinciden con los qué ya hemos aprobado.

MR. ARUEGO: I was underscoring the point that if we ever admit in the Constitution this article on the declaration of principles, we might as well make that article comprehensive and not merely confine it to other articles of the Constitution. I think we can. enumerate twenty or thirty principles in the Constitution.

SR. ABRIGO: ¿Quiere decir Su Señoría qué no debe la Constitucion contener una

declaracion de principios?

MR. ARUEGO: Yes, I believe that the Constitution should not contain a declaration of principles.

SR. ABRIGO: ¿Cree Su Señoría qué esto qué aparece aquí puede ponerse en las Disposiciones Generales, o sea, qué es cuestión nada más de sitio?

MR. ARUEGO: I think some principles may be placed, and some need not. In other words. . .

SR. ABRIGO: Con respecto al Artículo tercero, ¿cree Su Señoría qué se podría muy bien poner lo qué en el aparece en las Disposiciones Generales?

MR. ARUEGO: Yes, we may have a place for that under the general provisions.

(*Continuing.*) Mr. President, I think this time we are agreed that we should limit the Constitution to a statement, to an important provision regarding the definition of the government and the setting up of the machinery of our Government. Therefore, we should strive, by all means, not to include in the Constitution anything that is not absolutely necessary in order to make the Constitution as brief as possible. As I have said, if we are going to include this declaration of principles, we might just as well include all the principles that we find in the Constitution.

With respect to the Constitutions of other states, I do not think we are a state at the present time; we will not be until after we are independent. From the point of view of international law, we may have other forms of government, but we are drafting a Constitution that will serve not only for the Commonwealth, but also for the Republic.

Article II provides that the Philippines renounces war as an instrument of national policy. The spirit behind the provision might be very good, but I doubt if it is proper to us to include that in the Philippine Constitution. The idea of renunciation of war was borrowed by the members of the committee from the Kellogg-Briand pact signed by 69 states of the world. I admit that it may also be found in the Spanish Constitution, but if you examine the Kellogg-Briand pact you will find that Spain is one of the signatory powers. Moreover, renunciation of war as an instrument of national policy is not exactly embodied in the provisions of the Kellogg-Briand Pact, or the Pact of Paris. I have here a text on the Kellogg-Briand Pact. Article II says: (*Reading citation.*)

Commentators on international law, although they consider important the first part of Article II, say that the article is not important because it is a complementary provision of the Kellogg-Briand Pact. Renunciation of war as an instrument of national policy is not as yet in perfect form. As a matter of fact, the United States is only at its experimental state and was even among the signatories with respect to the national policy in its relation with one another. Some say that "war" refers to defensive war; others say it is aggressive war. As a matter of fact, if we examine the document on this treaty, we will find that the signatory powers adhere to the Pact of Paris under varying conditions, and it is the opinion of international law experts that if a question arises as to the interpretation of the Kellogg-Briand Pact, the conditions under which a nation signed that pact will be taken into consideration. Now we are

proposing to have in the national Constitution the statement that the Philippines renounces war as an instrument of national policy. Suppose in the future the country is involved in war, the same supporters may deem it wise to pass a law requiring all able-bodied citizens to join the war. As a result, the Government will be violating the provisions of the Constitution.

When we handled the Legislative Department, we authorized the National Assembly to declare war. As a matter of fact, in the third part. Section 3, there is a statement that the defense of the state is the prime duty of government, and that in the fulfillment of this duty all citizens may be required by law to render personal, military or civil citizen service. Even among the signatory powers of the Kellogg-Briand Pact, there is a difference of opinion as to whether "war" means offensive or aggressive war.

A Japanese philosopher, Mr. Nitobe, was asked to comment on the participation of Japan in the Manchurian question. The attention of the Japanese Government was invited, I think, by Secretary Stimson to the fact that Japan was violating the Pact of Paris in the Manchurian, imbroglio. Dr. Nitobe answered that, while Japan signed the pact to the effect that renunciation of war was an instrument of national policy in relation to one another, this was not a case of war being an instrument of national policy but of national defense. In the documents exchanged between Secretary Kellogg and Foreign Minister Briand of France, there was some question regarding the meaning of the word "war." The French Government claimed that the pact should be made to refer only to the aggressive party, but Sec. Kellogg said that the word "aggressive" should be deleted so that the pact would state only that the contracting powers would agree to renounce war as an instrument of national policy.

Mr. President and Gentlemen of the Convention, we see that even among the signatories of the Pact of Paris, there arose some questions regarding the compatibility between the obligations of nations adhering to the Pact of Paris and the obligations of the same as members of the League of Nations. According to the covenant of the League of Nations, when a certain member refuses to come to terms, the contradicting nation will have the power to use war to compel that member to observe a certain agreement. According to the covenant of the League, a state may be called upon in an aggressive war to punish an erring state, There is therefore an incompatibility between the Pact of Paris and the Covenant of the League of Nations, to which two documents the adhering states are signatories. This question was brought before the League of Nations and it appointed a committee to make a study of the covenant so as to make it comply, more or less, with the provisions of the Pact of Paris. This committee, which has been working at it for some time, has not yet come to an agreement regarding the provisions of the Covenant of the League of Nations.

I have already pointed out, Mr. President, the fact that even among the adherents of the Pact of Paris, there is still disagreement regarding the wisdom of these provisions, particularly their incompatibility with the provisions of the covenant. Why should we then state in the Constitution at this stage, before we have to become an independent state, a provision that is still a point of controversy even among its adherents? There is a difference in having this provision in a treaty and in having it in a Constitution. If this were a treaty it should not be hard to decide whether we would adhere to the treaty or not. We could simply renounce the pact, particularly its provision about denunciation of war. But we cannot withdraw it once it is