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APERTURA DE LA SESIÓN

Se abre la sesión a las 5:17 p.m., bajo la presidencia del Vicepresidente, Hon. Ruperto Montinola.

EL VICEPRESIDENTE: Lease la lista de los Delegados.

SR. ESCAREAL: Señor Presidente, pido que se dispense la lectura de la lista.

EL VICEPRESIDENTE: ¿Hay alguna objeción? La Mesa no oye ninguna. **(Silencio.)** Se dispensa la lectura de la lista. Hay quorum. Lease el acta.

APROBACION DEL ACTA

SR. LIM: Señor Presidente, pido que se dispense la lectura del acta y que la misma se de por aprobada.

EL VICEPRESIDENTE: ¿Hay alguna objeción? **(Silencio.)** La Mesa no oye ninguna. Aprobada.

PROYECTO DE PRECEPTO CONSTITUCIONAL

EL SECRETARIO:

De conformidad con lo acordado por la Asamblea en su sesión anterior, ésta en orden la continuacion de la consideracion de la Resolucion Numero 50.

EL PRESIDENTE: Tiene la palabra el Delegado por Bulacan, señor Sevilla.

DISCURSO DEL DELEGADO SEVILLA DE BULACAN

MR. SEVILLA: Mr. President and Gentlemen of the Convention: Nearly 36 years ago, on September 15, 1888, at the Basilica of Barasoain, Malolos, Bulacan, a group of distinguished Filipinos, forgetting three centuries of oppression in the midst of a great human upheaval against tyranny and with only the love of God and country beating in their hearts, met as a revolutionary Congress and as an expression of the national wish wrote with their genius the immortal Constitution of the Philippine Republic.

In the drafting of this Constitution, however, the Revolutionary Congress met a stern opposition in the person of Apolinario Mabini, who maintained that this Congress was not called to draft a constitution for the Republic but simply to give popular support to Aguinaldo in the prosecution of the war. We saw him contending that the drafting of the Constitution was not the proper task during a time troubled by uncertainty. We saw him advising Aguinaldo to "send a message to the Congress reminding them that they ought not to frame a constitution because they were not a representative assembly."

Calderon thought otherwise, however, and believed that Congress had the authority to draft a constitution for the Philippine Islands. He was sustained by the Congress which finally approved the constitution and promulgated it in January 1899. We know now that the opinion of our Sublime Paralytic, from the point of view of Constitutional Law, was mistaken because he failed to take into account that the Congress, having become part of the Revolutionary Government, thereby acquired the character of a Revolutionary Convention with powers -derived from force or necessity to adopt a constitution.

Today, in the discussion of the present resolution, I see that we have many Mabinis in our midst, doubting the capacity and authority of this Convention to draft and formulate a constitution that shall also serve as the fundamental law after the Commonwealth period. On the other hand, we also have many Calderons who think otherwise believing that because a constitution is supposed to be permanent, there should not be a limitation to its duration.

Mr. President, I myself have always been under the impression and still believe that a constitution, as understood in American political law, is a fundamental law of the state drafted by the people acting thru a special body of men known as a constitutional convention, which law organizes the essential parts of government, defines and limits the powers of the different agencies of the state and prescribes the manner of the exercise of such powers, after which the people can do no act except to amend it or make an entirely new constitution.

In my limited knowledge of constitutional history, I have never come across and will probably never come across any nation or people who undertook upon themselves the singular and unusual task of framing a constitution—as that word is understood in American political history—with a time limit set to it either expressly or impliedly by the framers themselves, except perhaps the Constitution which the Constitutional Convention of the Philippine Islands convened last July 30, 1934, would never have the unique privilege of drafting were the opinion of the opponents of the resolution to prevail.

To those who oppose this resolution on the ground that it is unnecessary and superfluous inasmuch as the provisions of the Tydings-McDuffie Law are clear enough, I have nothing to say because I realize that they are far more convinced that I am of the authority of this Convention to draft a constitution that shall not only survive the Commonwealth period but also operate for the ensuing Republic. I must confess that if all the opponents of this resolution have only this argument as the sole ground of their objection, then they can count my vote with theirs.

The majority of those who oppose the resolution, however, base their main objection upon the argument that same provisions of the Tydings-McDuffie Law, indicate that we are only empowered and authorized to draft a constitution for the Commonwealth. They cited parts of Section 1, Section 2, and notably sub-section 5 of Section 2(b), in support of their contention. Supporters of the resolution, however, have cited provisions of the same Law as showing or tending to show that the Convention is empowered to draft a Constitution not only to serve for the Commonwealth period, but also for the Republic, principally subsections 2 of Section 2 (b), Sections 3, 4, and 10 (a), and even the Title of the Law itself, so I do not wish to repeat here what has already been adduced in support of these cited provisions

of the law. I mention them, not to emphasize the fact that never before has this Assembly been so evenly divided on a question such as this one; but to show that never has such an imposing array of distinguished figures in our political, legal and educational spheres taken sides on a question and swept this Convention with their powerful arguments in the interpretation of a Congressional law.

In the midst of such honest divergence of interpretations and confusion of opinions, I respectfully invite the attention of this Body to two rules of statutory construction for the determination of the real intent of a law or statute in cases of ambiguity or doubt. One rule says that "when different constructions of a provision are otherwise equally proper, that is to be taken which is most favorable to the party in whose favor the provision is made." No one here can deny that the Tydings-McDuffie Law was especially passed by the American Congress for the benefit of the Filipinos in recognition of their peaceful clamor for independence that was carried and sustained thru 34 years of abiding faith in the altruism of the American people; consequently, the provision authorizing and empowering the Philippine Legislature to convoke a constitutional convention to draft the fundamental law and form of government for the Philippine Islands, could only mean that we are empowered to draft a constitution that shall span not only the gap of 10 years during the Commonwealth, but also continue for an indefinite length of time after the transitional epoch, because this construction is most favorable to our people in order to insure permanence and stability to our institutions and laws, in order to safeguard the rights and liberties of our citizens at the dawning of the final and complete withdrawal of American sovereignty.

The second rule of statutory construction in cases of ambiguity says: "When a statute is equally susceptible of two interpretations one in favor of a natural right and the other against it, the former is to be adopted." Gentlemen of the Convention, I ask you, what right is more natural than for a people to be able to draft not merely a constitution for a decade alone, but an imperishable document that shall perpetuate for posterity the fruition of a great and glorious struggle for emancipation; a document that shall preserve the sweet blessings of a great libertarian movement unique in the annals of man's magnanimity to man; a document that shall soon announce to the world the birth of a new republic to salute with gratitude a great and unselfish nation whose altruism has brought the happiness of freedom and the high result of civilization and progress of the Filipino race?

Mr. President, I shall vote in favor of this resolution because I believe it enunciates the true mission for which this Convention is gathered here today. I shall vote for it because I believe in the natural right of the Filipino people to adopt and frame a Constitution that shall withstand the adversities of fortune and the uncertainties of the unknown future. I shall vote for this resolution because I refuse to become one of the Pontius Pilates in this Convention who, even now, are beginning to wash their hands from any responsibility as to what the period after the lapse of 10 years may bring upon their people. I shall vote for this resolution because we who belong to the youth of the Philippines have an abiding faith in the sense of responsibility of the members of this Convention to draft a Constitution that shall not be an odious symbol of fear for the consequence of the future but a shining diadem of the genius of our race that shall go in more refulgence and luster upon the advent of our final political resurrection.

SR. KAPUNAN: El siguiente orador es el Delegado por Cebu, Señor Niere.

EL VICEPRESIDENTE: Tiene la palabra el Delegado por Cebu.

DISCURSO DEL SR. NIERE

SR. NIERE: Señor Presidente y Señores Delegados. Me levanto en este momento para emitir mi opinion en contra de ésta Resolucion. Es mi humilde parecer que la Resolucion no debe ser aprobada por las razones siguientes: Que la aprobacion de la Resolucion Osias es innecesaria; que no éstamos obligados a aprobarla; y que, segun he inferido o deducido del articulo 4 de la Ley Tydings-McDuffie, la aprobacion de la Resolucion Osias seria una usurpacion del derecho del pueblo filipino y, al mismo tiempo, una violacion directa del mencionado articulo; que no es la intencion del Congreso de los Estádos Unidos que redactemos una Constitucion para la Republica Filipina, porque, segun he deducido de los articulos de la Ley Tydings-McDuffie, el Congreso de los Estádos Unidos ésta dudando de nuestra capacidad; y que el Gobierno de los Estádos Unidos duda de que el pueblo filipino quiere la independencia. La aprobacion de la Resolucion Osias, para mi, seria una demostracion palmaria de falta de sentido comun de nuestra parte. Señores Delegados, refiriendome a una de las razones que he dicho, creo que no hay necesidad de aducir muchos argumentos para probar que la Resolucion de la Ley Tydings-McDuffie nos indica que éstamos obligados a aprobarla. He dicho que la aprobacion de esa Resolucion constituiria una usurpacion directa del derecho del pueblo filipino, porque en el articulo 4 se dice que el pueblo filipino tendra el derecho de expresar su voluntad suprema mediante un plebiscito en el que dira si quiere o no quiere la independencia. Si redactamos una Constitucion para la Republica Filipina sin consentimiento ni conocimiento del pueblo filipino, usurparemos ese derecho que la misma Ley Tydings-McDuffie confiere al pueblo y, al mismo tiempo, seria una violacion directa de este articulo que, como digo, confiere al pueblo filipino el derecho de expresar su voluntad suprema, si quiere o no quiere la independencia.

Digo que no es la intencion del Gobierno americano que redactemos una Constitucion para la Republica Filipina, dudando de nuestra capacidad para gobernarnos a nosotros mismos. Digo que ésta dudando, porque para mi, las disposiciones transitorias de la Ley Tydings-McDuffie éstablecen un periodo durante el cual hemos de cumplir ciertas condiciones, y despues de haberlas cumplido se nos dara la independencia. Para mi, este periodo es un periodo probatorio, un periodo de prueba. Si el Gobierno de los Estádos Unidos nos somete a una prueba para que demostremos que sabemos gobernarnos a nosotros mismos, esto indica que el Gobierno de los Estádos Unidos ésta dudando de nuestra capacidad para gobernarnos a nosotros mismos. Digo que no es la intencion del Gobierno americano que redactemos una Constitucion para la Republica Filipina, porque precisamente ésta dudando si el pueblo filipino quiere o no quiere la independencia. Del Artículo 4 se deduce el objeto del Gobierno americano de sondear la voluntad del pueblo filipino, si quiere o no quiere la independencia. El mero hecho de que el Gobierno americano sondee nuestra voluntad, si queremos o no queremos la independencia, indica de un modo palmario que el Gobierno de los Estádos Unidos ésta dudando de la voluntad del pueblo filipino. Por otra parte seria una usurpacion del derecho del pueblo americano de poseer las Islas Filipinas, derecho adquirido mediante conquista, derecho que solamente puede aquel renunciar mediante la Ley Tydings-McDuffie es decir, si podemos cumplir las condiciones y requisitos de dicha

Ley. Al redactar una Constitucion para la Republica Filipina, hemos de sentir, hemos de presumir que somos libres e independientes, porque no se puede redactar una Constitucion donde se proclamen los derechos y los principios de un gobierno libre si no hemos de sentir que somos libres e independientes. Este acto constituiria para mi una usurpacion del derecho del pueblo americano de concedernos la independencia; no se puede concebir que redactemos una Constitucion donde se proclamen los derechos y principios de un gobierno libre e independiente si despues vamos a someter esa Constitucion a otro Gobierno para que sea ratificada.

EL VICEPRESIDENTE: Ha terminado el tiempo del orador.

SR. KAPUNAN: Pido el consentimiento de la Asam-blea para que se le concedan diez minutos mas.

EL VICEPRESIDENTE: ¿Hay alguna objeción? **(Silencio.)** Puede continuar el Caballero de Cebu:

SR. NIERE: **(Presiguiendo.)** Y no se puede redactar una Constitucion si despues vamos a someter esa Constitucion a otro Gobierno, porque entonces seria una Constitucion redactada sin sentir que somos libres e independientes. La Constitucion de Malolos se redactó cuando la bandera filipina ondeaba ya entonces. Es decir, la Constitucion de la extinta Republica Filipina fue redactada bajo la bandera filipina que ya ondeaba entonces. Pero nosotros vamos a redactar una Constitucion para un gobierno libre e independiente, mientras estamos aun bajo la bandera de un soberano extraño. Eso para mi no se puede explicar, no se puede concebir. Podran decir los americanos y los demas pueblos que nos falta sentido comun. **(Aplausos.)**

MR. REYES (J.): Mr. Chairman, the next speaker will be the Delegate from Samar, Mr. Bocar.

EL VICEPRESIDENTE: El Delegado por Samar, Señor Bocar, tiene la palabra.

DISCURSO DEL SR. BOCAR

MR. BOCAR: Mr. President and gentlemen of the Convention: When the Osias resolution was presented, I was against it. It was my honest conviction then that the resolution was unnecessary and superfluous, and should not have been presented, because it was seeking an official pronouncement by the Convention on the matter which I had thought was generally agreed upon. But I heard every respectable gentleman in this Convention, particularly the Delegates from Manila, Laguna, Tayabas and Cavite, who, in standing before this Convention to oppose the resolution, have stated that the Convention could draft no constitution other than for the Commonwealth only, I was confronted with the revelation that the disagreement was not merely on the point of necessity but that it involved different fundamentals of legality and authority. To be consistent with myself I had to change my opinion and now I am convinced that the resolution is not only necessary but also very imperative. **(Applause).**

Frankly, speaking, I did not become a Delegate to help draft a constitution to last only for ten years. When I presented my candidacy for this position, I told the people that the Convention will draft a constitution first for the Commonwealth and then for the Republic. When I told the people those things I was neither fooling nor