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APERTURA DE LA SESION

Se abre la sesion a las 9:30 a.m., ocupando el estrado el Vicepresidente, Hon. Ruperto Montinola, por designacion del Sr. Presidente.

EL VICEPRESIDENTE: Se abre la sesion.

DISPENSACION DE LA LECTURA DE LA LISTA Y DEL ACTA

SR. ESCARE AL: Señor Presidente.

EL VICEPRESIDENTE: Señor Delegado.

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

EL VICEPRESIDENTE: ¿Tiene la Asamblea alguna objecion a la mocion? (**Silencio**,) La Mesa no oye ninguna. Queda aprobada.

MOCIÓN KAPUNAN

SR. KAPUNAN: Señor Presidente.

EL VICEPRESIDENTE: Señor Delegado.

SR. KAPUNAN: Presento la mocion de que despues que se hayan consumido las diez horas, de conformidad con el acuerdo anterior de la Convencion, se siga la discusion del asunto sobre la proposicion Osias, concediendo a todos y cada imo de los que quieran tomar parte en su discusion diez minutos para consumir sus turnos respectivos.

SR. ROXAS: Secundo la mocion.

EL VICEPRESIDENTE: ¿Hay alguna objecion a la mocion? (**Silencio**.) La Mesa no oye ninguna. Queda aprobada.

SR. KAPUNAN: Senor Presidente, cedo diez minutos al Delegado por Negros, Señor Ledesma.

MR. LEDESMA: Mr. President.

THE VICE PRESIDENT: The Gentleman from Occidental Negros has the floor.

SPEECH OF MR. LEDESMA

MR. LEDESMA: Mr. President and Gentlemen of the Convention: If the purpose of the resolution under discussion simply serves as a notice to the Members of this

Assembly that the precepts to be embodied in the Constitution of the Commonwealth may not be so limited in scope as to serve only the purpose of the transition period, but should be broad, so that the people of the free and independent Philippines ten years hence, may at their option deem it wise to continue under the same constitution, as expressed by the Gentleman from Capiz the other day, when I am in favor of the idea. But if the object of the resolution is to have the constitution we shall draft binding on the free and independent Philippines, I beg leave to disagree with said resolution on the following grounds:

The Philippine Republic which will be established at the end of the transition period will be an entirely new legal creation, with a personality distinct from that of the Commonwealth. Unlike its predecessor, the Commonwealth, it will have absolute sovereignty in the true sense of the word, a sovereignty which the Republic itself cannot alienate even to a part of its own organism. If it cannot do this contemporaneously, much less can a body foreign to it, such as we are now, do so prematurely and without any mandate from it. To have the fundamental law of the Philippine Republic prearranged and predrafted for it ten years in advance would be robbing the Philippine Republic of much of its glory. Such an act would be a usurpation of the most transcendental power of an independent state. At this juncture may I remind this august Body that usurpations like this have caused, and perhaps justified, revolutions in many countries. In these countries there were rulers in the past who upset the balance of their constitution by arrogating unto themselves the powers which would have been left to the people.

The scope of the authority of this Convention is defined and limited in very explicit language in Section 1 of the Tydings-McDuffie Law which provides that the delegates to this Convention shall "formulate and draft a constitution for the Government of the Commonwealth of the Philippine Islands ..." I submit that the expression "Commonwealth of the Philippine Islands," as used here refers to that juridical entity which will exist during the transition period. This can be deduced from two facts: First, the expression begins with a capital letter, indicating that it refers to an artificial person, and not to a thing; second, throughout the Tydings-McDuffie Law we come across distinctions made between the Commonwealth of the Philippine Islands as existing during the transition period and the "free and independent government of the Philippine Islands" which shall begin to exist after the transition period. In other words, there is a clear demarcation line between the transition government and the independent government, and the transition government is referred to as the Commonwealth of the Philippine Islands while the independent government simply as the free and independent government of the Philippines, leaving it to us to choose its official name.

During the transition period of 10 years we will have a wonderful opportunity of storing up a great deal of experience in constitutionalism. The most effective way to turn into account that wealth of experience will be to apply it in the renovation of our constitution at the beginning of the Republic. A wholesome revision of the constitution on a systematic and scientific basis is always preferable to a piecemeal, hit-or-miss amendment thereof. The former has direction, symmetry and proportion; the latter leads to chaos and confusion.

The argument has been advanced that constitutions are usually meant for all time and posterity and not for a determinate period. That is true, because usually there is no new state in sight. But our particular case is different. We anticipate the birth of

a new nation. That new nation should be allowed to shape its own destiny without any fetters.

The most that this resolution can amount to is an expression of opinion. We can pass one thousand resolutions to this effect and yet not bind our people ten years from now for there is no such thing as an irrevocable law. If our people should want a new constitution for the Republic, who would prevent them?

The Gentleman from Batangas said yesterday that the Constitutional Assembly derived all its power from the people. To this I disagree because the constitution to be drafted by this Convention will derive its authority from the people of the Philippine Islands only in a very limited sense because, as everybody knows, it shall require the approval of the President of the United States. However, if we draft an entirely new constitution for the Republic, it will not have to be submitted to any external authority; and only then can we proudly say to the world that our constitution is completely and absolutely the handiwork of our people.

The gentleman from Batangas further said, if I understand him well, that the people may say to us, "You have done so little when you have the power to do more." But the electorate that sent us here is of the belief that we will draft a constitution for the Commonwealth. I am sure that this is the consensus of opinion all over the Islands. For my part, I must confess that I do not have the nerve to go beyond the power and authority vested in me. We have had many cases of envoys and delegates who have been disauthorized by the people who sent them because they have assumed full responsibility, and have disobeyed and gone beyond the instructions given to them. I cannot speak for all of you, but as for myself I want to avoid the humiliation of being disauthorized by limiting myself to what I believe I have authority to do. However, if the people afterwards believe that the piece of work that we have done is good enough to serve for a longer period of time, so much the better. But let them be the judge; therefore, let us not mention in the form of a resolution that the constitution we are drafting now is good and binding for all ages and all times.

MR. ROXAS: I yield fifteen minutes to the Gentleman from Ilocos Sur, Mr. Joven.

SPEECH OF DELEGATE JOVEN

MR. JOVEN: Mr. President and Gentlemen of the Convention: Yesterday, in the course of his speech before this august Body against the pending resolution, the Gentleman from Ilocos Norte, Mr. Ventura, argued against approval because, according to him, there is no necessity for it. He said that the provisions of the Independence Law are very clear; they empower this Constitutional Convention to formulate a constitution that will operate and be in force even beyond the period of the Commonwealth government. So clear are the provisions that there is no need for this Convention to pass the resolution. To me also it is plain from the provisions of the Independence Law that we have the power to draft such constitution.

But, Mr. President, the fact that some Delegates who already spoke have taken the stand and argued that this Convention has power to draft a Constitution that will operate only during the Commonwealth Government, is the best proof that we should act on the pending resolution. When such illustrious Members of this Body as Mr. Francisco of Cavite and Mr. Lorenzo of Zamboanga believe that under the terms

of the Independence Law we do not possess that power to draw up a constitution extensive and operative when the Philippine Islands shall have become completely independent, the necessity now for defining the stand of this Convention on the matter is certainly obvious.

The Gentleman who preceded me contended that by making a constitution that will extend in force and operation even after independence, we bind our future generations, the inhabitants of the free and independent Philippines. I am not in accord with such view of the Gentleman. I believe that even though we draft a Constitution to serve not only for the period of the Commonwealth Government but also beyond it, the people of the Philippine Islands—when they are already independent and sovereign, and the supreme authority of government resides in them—shall always have the right and the authority to amend, change, or abrogate entirely, as they will, the constitution that we drafted. As sovereign people, they will have the right at any time to assert their paramount power and authority.

I am for the pending resolution in principle. I believe that its object or purpose is plausible and well taken. I believe that before we proceed further in the task of formulating a constitution for the nation, we should have a definite idea of its scope. I believe that we should determine now whether the constitution to be drafted by this Convention can and should be made operative after the period of the Commonwealth Government or whether it should extend only during such period. The question should be settled now, in order that we may have a criterion to guide ourselves—the different Members and Committees of this Convention and the Convention itself as a whole—in formulating the various provisions of the constitution.

This, as I understand it, is merely and plainly the aim of the pending resolution. Should the Convention decide that the constitution is to operate only during the period of the Commonwealth Government—the transition period—then its provisions will be so framed that they will be effective only during that period. If, on the other hand, the Convention should determine that the constitution is to operate even after the transition period, then the provisions thereof will be worded accordingly. As there are Members of this Body who believe that this Convention is without power to draft a constitution that will operate or be in force even after the transition period, while other Members, like myself, maintain that it possesses such power and should avail itself of it, common sense dictates that it is at this stage of our deliberations when the provisions of the projected constitution are in the process of conception that the question must be definitely decided one way or the other.

I stand squarely on the proposition that this Constitutional Convention is empowered to draft and formulate a constitution that will operate not only during the period of the Commonwealth government but also thereafter, and that this Convention should draft and formulate such constitution.

The other day, a Member of this august Body who spoke on the resolution under consideration—he did not state whether he was really for or against the resolution — made a statement, if I understand him correctly, to the effect that it would be a source of pride on his part, on the part of the youth of this country, and on the part of future generations, if the constitution we are to draft will serve the Commonwealth Government and also a completely independent Philippine Government.

But it is not in this spirit, Mr. President, that I rise today to give expression to my sentiments favoring the resolution in its object and purpose. It is not the desire to enhance the powers, the importance, and the prestige of this Convention or of ourselves that has motivated me to take the stand that the constitution to be made can and should be extended in force and made operative beyond the period of the Commonwealth Government. I have so much respect for the majesty of the law that I would not, even for self-elevation, entertain for a moment the idea of arrogating unto this Convention powers that it did not have and of imposing upon it responsibilities not given to it. On the other hand, if we have the power, if we are charged with the duty and responsibility of formulating a constitution that will extend in operation beyond the transition period, no consideration of the difficulties that are likely to arise in drafting the provisions of the constitution will deter us from utilizing the power, from discharging and assuming the duty and responsibilities. To act otherwise would be a dereliction of duty. It would be cowardice.

But does this Constitutional Convention possess the power to draft a Constitution intended to operate and be in force even after the transition period? The Delegates who have already spoken against the resolution maintain that it does not possess the power. Others maintain that, even if given such power, nevertheless it should not express itself as possessing the power, for that is not necessary and because the Convention will thereby commit itself to a graver and more difficult task and responsibility which it may not satisfactorily fulfill. These are the two points I am going to discuss—that this Constitutional Convention has the power, and that it should and must make use of it.

I do not quite agree with the Gentleman from Capiz, former Speaker Roxas, when he said that a constitutional convention in the United States is not a sovereign body or that it has only limited powers. True, American authorities are not wanting who hold that a constitutional convention has only such powers as are expressly conferred, and such other powers as may be necessarily implied from those expressly granted. But the weight of American authority is to the effect that a convention, when in session, is a fourth branch of the government, and it can even enact and promulgate a constitution without the approval of the people, although it is not a good policy to do so,

However, even if we were to adopt here the first view—what I may call the narrow view, that is, that a constitutional convention has only such powers as are expressly conferred by the legislative act under which it is assembled and such other powers as are necessarily implied from those expressly granted—I believe that this Convention is empowered to draft a constitution extensive and operative beyond the transition period. In the Act or law passed by the Philippine Legislature providing for the election of Delegates to this Convention, it did not prescribe the powers which the Convention would have, contenting itself with making a reference to the Independence Law passed by Congress; and rightly so, for it could not have enlarged the powers conferred upon the Convention by that Independence Act. Therefore, in determining the powers of this Convention and the extent thereof, I believe that we have to consult only the Independence Law. The law, to my mind, is the only yardstick by which the powers of this Convention should be measured. I believe that the point regarding sovereignty brought up in the discussion of the resolution is not germane to the question of whether we can draft a constitution that will operate and be in force even beyond the transition period. The point is, under