

**JOURNAL NO. 102**

Tuesday and Wednesday , October 7 and 8, 1986

CALL TO ORDER

At 9:57 a.m., on October 7, 1986, the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, called the session to order.

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mr. Vicente B. Foz, to wit:

Lord

We have not forgotten

The common thread that binds the words

The object of the unwritten intent of the

unspoken goal

The happiness and prosperity of our people —

Teachers, students, youth, women, family,

Workers, farmers, fishermen, businessmen,

professionals,

The poor, the weak, the unemployed

And generations yet unborn —

We have remembered them all in writing a

fundamental law.

Lord, we pray that You, under Whose light we

have drafted it, will bless it

An our people, whose interest has inspired us

to write it, will ratify it

And let our nation onward, forward.

Amen.

ROLL CALL

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

Bacani, T. C.  
Bengzon, J. F. S  
Bennagen, P. L  
Bernas, J. G.  
Rosario Braid, F  
Calderon, J. D

Nolledo, J. N.  
Padilla. A. B  
Muñoz Palma, C  
Rama, N. G  
Regalado, F. D  
De los Reyes, R. F

De Castro, C. M  
Colayco, J. C.  
Concepcion, R. R  
Foz, V. B.  
Guingona, S. V.C  
Jamir, A. M. K.  
Monsod, C. S.  
Nieva, M. T. F

Rodrigo, F. A  
Romulo, R. J  
Sarmiento, R V  
Suarez, J. E  
Sumulong, L. M  
Treñas, E. B  
Uka, L. L

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

The following Members appeared after the Roll Call:

A.M.

Abubakar Y. R.  
Alonto. A. D.  
Aquino, F. S.  
Azcuna, A. S.  
Davide, H. G.  
Garcia, E. G.  
Gascon, J. L. M. C.  
Laurel, J. B.

Lerum, E. R.  
Natividad, T. C  
Ople, B. F.  
Quesada, M. L. M  
Tan, C.  
Tingson, G. J.  
Villacorta, W. V.

P.M.

Maambong, R. E  
Tadeo, J. S. L.  
Mr. Rosales was sick.

Villegas, B. M.

#### READING AND APPROVAL OF THE JOURNAL

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

#### REFERENCE OF BUSINESS

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

#### REFERRAL TO COMMITTEES OF COMMUNICATIONS

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

Communication No. 1058 — Constitutional Commission of 1986

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

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

Communication No. 1059 — Constitutional Commission of 1986

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

#### TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 1060 — Constitutional Commission of 1986

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

TO THE ARCHIVES

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

Communication No. 1061 — Constitutional Commission of 1986

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

Communication No. 1062 — Constitutional Commission of 1986

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

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

Communication No. 1063 — Constitutional Commission of 1986

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

Communication No. 1064 — Constitutional Commission of 1986

2) Family Life of Jolo

Communication No. 1065 — Constitutional Commission of 1986

3) Sr. Paciana Gandia of Lipa City

Communication No. 1066 — Constitutional Commission of 1986

3) Sr. Paciana Gandia of Lipa City

Communication No. 1066 — Constitutional Commission of 1986

4) Sr. Pilar Go of Tagbilaran City

Communication No. 1067 — Constitutional Commission of 1986

5) Family Life Ministry

Archdiocese of Cotabato

Cotabato City

Communication No. 1068 — Constitutional Commission of 1986

6) Concerned Citizens of Jolo

Communication No. 1069 — Constitutional Commission of 1986

7) The Carmelite Sisters of Charity Jolo, Sulu

Communication No. 1070 — Constitutional Commission of 1986

8) Family Life Workers

Dipolog City

Communication No. 1071 — Constitutional Commission of 1986

9) Sis. Lydia L. Mendoza

17-C Mabait St. Teacher's

Village Quezon City

TO THE COMMITTEE ON PREAMBLE, NATIONAL TERRITORY AND DECLARATION OF PRINCIPLES  
MANIFESTATION OF MR. GUINGONA

Mr. Guingona informed the Body that the Sponsorship Committee had requested the Secretariat's Computer Section to print about 50 copies of the Preamble and the Articles of the draft Constitution which have already been reviewed by the Committee on Style and the Sponsorship Committee. He stated that some time during the day the Preamble and a number of articles beginning with the Article on National Territory and, possibly, up to the Article on the Executive would be distributed to the Members for review.

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

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

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

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

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

INTERPELLATION OF MR. BERNAS

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

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

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

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

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

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

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

Relative thereto, he inquired whether it is also the intention of the proposed transitory provision to perpetuate the immunity of the PCGG, in reply to which Mr. Suarez stated that the immunity

for the members of the PCGG is not within the contemplation of this proposal and that what is being proposed is the continuation of the authority to issue writs of sequestration as an exception to Section 3 of the Bill of Rights.

On Section 4(b) of Executive Order No. 1 which reads "No member or staff of the Commission shall be required to testify or produce evidence in any judicial, legislative or administrative proceeding concerning matters within its official cognizance", Mr. Bernas inquired whether it is the intent of the proposed transitory provision to constitutionalize said Section 4(b) which, in effect, would make the Commission and its staff an island unto itself, in reply to which Mr. Suarez stated that such is not the contemplation of the proposal submitted by the Committee.

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

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

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

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

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

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

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

INTERPELLATION OF MR. NOLLEDO