

M E S S A G E

October 15, 1956

from

THE PRESIDENT OF THE REPUBLIC

TO

THE NATIONAL ASSEMBLY

Saigon, October 15, 1956.

The President of the Republic
to
The President of the Constituent Assembly

Mr. President, Messrs., the Representatives:

Having studied the text of the Constitution that the Assembly proposes to promulgate, I have the honor to address the following remarks to you concerning that text.

We are of the opinion that the drafting and the promulgation of the constitution are but the first steps toward the edification of democracy. This work requires continuous effort by everyone because democracy implies not merely drafting and promulgating a constitutional text, but also a frame of mind, a way of life.

Take England as an example: though having no written constitution, she possesses strong democratic principles.

In writing the traditional democratic qualities of our nation and the democratic experiences of other countries into a text, we need not work out too detailed a constitution. The legislator will rely upon the principles specified in the Constitution to make complete and proper decisions in conformity with current conditions.

An important consideration is the creation of an efficient national machine, capable of solving the complex problems which occur in the day-to-day life of a progressive nation.

Historical experience in several countries has proved that weak and powerless executive leads to popular unrest which is then exploited with a view to overthrowing the democratic regime and establishing a dictatorship.

An executive, powerful and efficient, which can rapidly solve complex and urgent problems, is a guarantee of democracy.

Infusing in each citizen the spirit of love and respect for freedom and democracy, based on a strong moral foundation and utmost confidence in the glorious and imperishable destiny of the nation, is an essential condition for the realization of an equitable, progressive and harmonious society.

Subsequent to these general considerations, following are my detailed remarks.

1. Remarks concerning the Preamble.

I think that these should be included in the preamble:

- We have faith in the sacred value of man
- The submission of power to reason and morals, and the protection of public security and legitimate human rights are conditions necessary for the defense of freedom.

Therefore, I propose that the Preamble be modified as follows.

PREAMBLE

Having faith in the glorious and imperishable destiny of the State and of the Vietnamese Nation, a destiny which is guaranteed by a history fraught with our forefathers' heroic struggles and the indomitable will of our people,

Having faith in the immortality of the Vietnamese civilization which rests on a spiritual foundation and which all citizens have the duty to diffuse,

Having faith in the transcendent value of man, the free, harmonious and full implementation of which in his capacity as an individual and as a member of the national community, shall be the goal of all the activities of the State,

Considering that the Constitution must fulfill the aspirations of the people from the Point of Ca-mau to the Nam-quan Pass,

Those aspirations being

- the consolidation of national independence, the defense of national independence against imperialism and domination in all their forms,
- the protection of freedom for everyone and for the nation,
- the building of democracy in the political, economic, social and cultural fields on behalf of the entire people, with respect for human dignity,

Considering that the right to enjoy freedom is secure only when power is tempered by reason and good conduct, when collective security is assured and the legitimate rights of men are respected,

Considering that, our country being located at the cross-roads of international communications and migrations, our people are ready to accept the trends of progressive ideas in order to discharge, before the Almighty and before Mankind, their mission, which is to build a humanistic civilization for the protection and the development of man in his entirety,

We, the Representatives of the Constituent Assembly,

After deliberation, adopt the following Constitution:

2. Consideration of Article 3.

The President of the Republic is elected by universal suffrage. The nation - wide character of this suffrage vests the leadership of the people in the President of the Republic, who is at the same time the chief executive and Chief of State.

Practically, popular leadership vested in a responsible organ not only is essential for the effective operation of government agencies, but also "increases the prestige of the nation, internally as well as internationally".

Therefore, I suggest that Art. 3 be modified, and a third paragraph added to it.

Article 3. The people vest executive functions in the President of the Republic who is elected by the people, and legislative functions in a National Assembly which is also elected by the people.

The separation of powers between the executive and the legislative must be clear. The activities of the executive and legislative must be harmonious.

The President of the Republic assumes the leadership of the nation.

3. Consideration of order of chapters

In view of the reason expressed in (2), I suggest the following change in the order of chapters.

CHAPTER THREE. THE PRESIDENT OF THE REPUBLIC.

CHAPTER FOUR. THE NATIONAL ASSEMBLY.

4. Consideration of Article 4

The duty of preserving freedom, democracy, the republican form of government, and public order, is the duty common to all government agencies and not particular to the judiciary. Therefore, I suggest Art. 4 be modified as follows.

Article 4. The Executive, the Legislative and the Judiciary have the duty to defend freedom, democracy, the republican form of government and the public order.

The Judiciary shall have such status as will guarantee an independent character.

5. Consideration of Article 5

a. First consideration: paragraph 1. The principle of equality between man and woman, which has been approved by the Assembly, is a very important principle which must be specified in an article of the constitution. Therefore, I suggest that paragraph 1 of Article 5 be changed thusly:

Article 5. (paragraph 1) All citizens, whether male or female, are born equal in dignity, in rights and in duties, and must act toward each other in a spirit of brotherhood and solidarity.

b. Second consideration: paragraph 3. The guarantee to everyone of equal opportunities and necessary conditions for the enjoyment of their rights and the performance of their duties requires an unceasing effort from the nation and the people. The provisions of the Constitution should be realistic in order to be executed, and the above provision cannot be implemented at once.

Therefore, I suggest that Article 5, paragraph 3, be changed as follows:

Article 5. (paragraph 3) The State endeavors to provide everyone with equal opportunities and the necessary conditions for the enjoyment of their rights and the performance of their duties.

6. Consideration of foot-notes

At the end of Article 5 and of several subsequent articles, there are foot-notes

To conform to the principle, I propose that they be recorded

in the minutes of debates, wherein it will be specified that these notes have been approved by the Assembly. To avoid unwieldiness, the constitutional text will not include foot-notes.

The legislator, when studying and interpreting articles of the constitution, will have to rely on the minutes of debates. Of course, the foot-notes approved by the Constituent Assembly will have more authority than other ideas expressed during the debates but left unapproved.

7. Consideration of principles of international law

The first chapter of the Constitution should contain an article dealing with our position vis-à-vis the international community, in order to voice the Vietnamese people's love for peace and freedom.

I propose that the following article be added at the end of chapter 1.

Article 9. The Republic of Vietnam recognizes and respects the principles of international law.

The State endeavors to build and preserve international peace, as well as to maintain and develop friendly relations with other people on a basis of freedom and equality.

8. Consideration of Article 10.

For those persons accused of felonies or misdemeanors who cannot afford an attorney, the law should provide for forms and conditions under which counsel is to be designated for them.

I suggest that a third paragraph be added to Art. 10.

Article 10. (paragraph 3). In the forms prescribed by law, those accused of felonies or misdemeanors have the right to choose counsel or to demand that counsel be designated for them.

9. Consideration of Article 13

The right to freely journey abroad can be limited not only for reasons of security, national defense, economy and finance, but also for reason of public interest.

Therefore, I suggest that Article 13, paragraph 2, be changed as follows:

Article 13. (paragraph 2) Every citizen has the right to freely journey abroad, except when limited by law for reasons of security, national defense, national economy, finance, or public interest.

10. Consideration of Article 15.

Freedom of the press is included in freedom of expression. Therefore I suggest that freedom of expression be dealt with only in Article 16; Article 15 will be:

Article 15. Every citizen has the right to freedom of thought and opinion, and, within limits prescribed by law, to freedom of association and assembly.

11. Consideration of the right to freedom of expression
-and press (Art. 16)

a. First consideration. The citizen has the right to freedom of expression, but should not use it for false accusations, slander, injury to public morals, incitation to civil disturbance, or for overthrowing the republican regime.

b. Second consideration. Because of its mission of leading opinion, the press has furthermore a constructive duty. Therefore, I suggest that Article 16 be changed as follows.

Article 16. Every citizen has the right to freedom of expression. This right may not be used for false accusations, slander, outrage to public morals, incitations to civil disturbance or for overthrowing the republican form of government.

Every citizen has the right to freedom of the press, with a view to creating a correct and constructive opinion which the State shall protect against all acts aimed at distorting the truth.

12. Consideration of Article 17

Paragraph 2 of this Article is not essential because paragraph 1 already guarantees the right to freedom of conscience, freedom of religious practice, freedom of religious preaching.

I suggest that paragraph 2 be cancelled, and Art. 17 be

as follows:

Article 17. Every citizen has the right to freedom of conscience, freedom of religious practice, and freedom of religious preaching so long as the exercise of this right is not contrary to morals and good habits.

13. Consideration of Articles 18 and 19.

The purposes of Articles 18 and 19 are indentical. I suggest that they be combined.

Article 18. Every citizen has the right to participate in the direction of the affairs of the country, either directly or through representatives elected under the forms and conditions prescribed by law.

Article 19. (cancelled)

14. Consideration of Article 24.

Because of the particular importance of paragraph 1 of footnote 3 under Article 24, I suggest that this paragraph be incorporated in Article 24.

Article 24. The right to freely form labor unions and the right to strike are recognized and are exercised under the forms and conditions prescribed by law.

The right to strike is not recognized for workers in those branches related to national defense, public security, or to those needs indispensable to collective life.

15. Consideration of Article 25.

If "social insurance" implies that the community should care for the needs of the citizen in his individual, familial and professional life, we are aware that such an arrangement cannot be realized in the near future because of the economic level of our country.

In order that all the provisions of the Constitution may be carried out, as I have pointed out in 5-b, I propose that Article 25 be changed.

Article 25. Within the limits of its economic capacity and development, the State shall determine effective measures of rendering assistance in cases of unemployment, old age, illness, disasters, or other misfortunes.

16. Consideration of Article 27.

a. Paragraph 1. For the same reason as given in 5-b, I propose that paragraph 1, Article 27 be changed.

Article 27. (paragraph 1). The State endeavors to provide for each citizen a basic education which shall have a compulsory and free character.

b. Paragraph 4. I propose that the words "and teachers" be deleted because the idea is contained in the words "choose the schools", paragraph 4, Article 27 will be:

Article 27. (paragraph 4). The State recognizes the right of parents to choose the schools of their children, the right of associations and private persons to establish schools under the conditions prescribed by law.

c. Paragraph 5. In order to be officially recognized, private Universities and Superior Technical Colleges should meet all the conditions set up by the State; one of the conditions is the forms in which diplomas are awarded and the control of these awards.

The State may recognize diplomas awarded by accredited schools.

Therefore, I propose Article 27, paragraph 5 be changed as follows, and foot-note 1 be deleted.

Article 27. (paragraph 5). The State may accredit those private Universities and Superior Technical Schools which fulfill all the conditions prescribed by law. Diplomas awarded by those schools may be recognized by the State.

17. Consideration of Article 31.

a. First consideration. The electoral law will fix the number of Representatives. It is too inflexible and unrealistic to set up maximum and minimum limits in the Constitution.

b. Second consideration. The electoral law will determine the constituencies.

Therefore, I propose that Article 31 be modified as follows:

Article 31. The electoral law shall fix the number of Representatives in the National Assembly and determine the electoral districts.

18. Consideration of Article 33.

The first condition for eligibility in the National Assembly concerning recovery and acquisition of Vietnamese nationality is too severe.

I propose that the time requirements be reduced to 3 and 5 years, and changes be made in Article 33, paragraph 1 (section 1) and paragraph 2, as follows:

Article 33. Paragraph 1 (section 1)

1. have retained Vietnamese nationality without interruption since birth, or have acquired Vietnamese nationality for at least five years, or have recovered Vietnamese nationality for at least three years, except those who have re-acquired their Vietnamese nationality prior to the promulgation of the Constitution.

Article 33, Paragraph 2. However, in special cases, those who have acquired or recovered their Vietnamese nationality and who have rendered exceptional service to the Fatherland may be, by presidential decree, exempted from the above-mentioned five or three year requirements.

19. Consideration of Article 34.

The term of office of the representatives, like the President's (see No. 28), should not be too long, in order that the executive as well as the legislative may reflect the ideas and wishes of the people.

I propose that the term of office of the Representatives be reduced to 3 years, and Article 34, paragraph 1 be changed as follows.

Article 31. (paragraph 1) The term of office of the Representatives shall be three years; they may be re-elected.

20. Consideration of Article 35.

The organization of the election of Representatives requires

a long time, for the concerned agencies as well as for the candidates.

Therefore, I propose that the term for initiating the election be 4 months, and that Article 35, paragraph 1, be changed as follows:

Article 35. (paragraph 1) When a Representative resigns, dies, or terminates his office for any reason whatsoever, the election of a replacement shall be effected within 4 months.

21. Consideration of foot-note under Article 36.

The details contained in the foot-note under Art. 36 will be determined by the status of civil servants. I suggest that this foot-note be deleted.

22. Consideration of Article 38.

To use the same term as in Article 58, I propose "chuân-y" be used instead of "châp-thuận".⁽⁺⁾

Article 38. The National Assembly votes the laws. It approves international treaties and agreements.

23. Consideration of Article 42.

The period specified in Article 41 is also the one specified in Article 40. I propose that Article 42 be changed.

Article 42. If, within the period set forth in Article 40, the President of the Republic neither promulgates nor returns to the National Assembly a text which it had earlier approved, that text shall become law.

24. Consideration of Articles 43 and 66.

Articles 43 and 66 do not foresee the case of the return of a budgetary law for reconsideration. The problem is this.

The budgetary law has been approved by the National Assembly

(+) These two terms can be both translated as "to approve".

before December 31. The text of this budgetary law is returned by the President of the Republic to the National Assembly for second reading, but the latter fails to definitively vote on it on or before December 31. In such a case, from the beginning of the new fiscal year (1st January) until the final ruling of the National Assembly, there will be neither budgetary law nor budgetary law-decree because neither Article allows the President of the Republic to sign a budgetary law-decree. To avoid this situation, I propose that the budgetary law be signed before 31st December. Article 43 and paragraph 1 of Article 66 will be as follows.

Article 43. Budget proposals shall be forwarded to the Secretariat of the National Assembly before the 30th of September. The Budget shall be definitively voted on before the 31st of December.

Article 66. (paragraph 1) In case the budget should not be definitively voted by the National Assembly within the period prescribed in Article 43, the President of the Republic may sign budgetary law-decree for the following fiscal year.

25. Consideration of Article 46.

Besides the two regular sessions, the National Assembly may meet in extraordinary sessions, if necessary.

Therefore, I propose that each regular session shall not last longer than 3 months.

Article 46. Each year, there shall be two regular sessions: one beginning on the first Monday of April and one beginning on the first Monday of October. Neither regular session shall last longer than 3 months.

26. Considerations of Article 53.

First consideration. The clause "The Executive is vested in the President of the Republic" is unnecessary because this idea has been expressed in Article 3.

Second consideration. The nation-wide character of the presidential election should be mentioned in this article.

Third consideration. The Constitution only sets forth the principle; a law shall determine the conditions of the presidential election.

Article 53. (paragraph 1) The President of the Republic shall be elected through universal suffrage, by direct and secret ballot, in an election in which all voters throughout the nation may participate. A law shall determine the modalities of the Presidential election.

27. Considerations of Article 54.

First consideration. The first condition (Vietnamese origin) for running for presidential office is unnecessary and too severe. I propose that the candidate for the Presidency should be born in Vietnamese territory, have retained Vietnamese nationality without interruption since birth. This condition is already sufficiently safe.

Second consideration. The second condition (age) is also too severe; the age requirement should be reduced to 35.

Third consideration. The fourth condition (being not deprived of the right to vote and to stand for elections) should mention "the right to vote for, and to stand for election of representatives in the National Assembly", because the conditions implied by the right to vote and to stand for elections differ from one office to another.

For the preceding reasons, I propose that Article 54, paragraph 1, be changed as follows and the foot-note on Vietnamese origin be omitted.

Article 54. (paragraph 1) Those citizens shall have the right to be candidates for the office of the President or Vice-President of the Republic, who fulfill the following conditions:

1. Be born in Vietnamese territory with Vietnamese nationality uninterrupted since birth.
2. Be at least 35 years of age.
3. Be not deprived of the right to vote for, or to stand for election of, Representatives in the National Assembly.

28. Consideration of Article 55.

For the same reason as given with regard to the Representatives' term of office, I propose that the terms of office of the President and Vice-President of the Republic be reduced to five years and their re-eligibility be limited as follows.

Article 55. The terms of office of the President and Vice-President of the Republic shall be five years. The President and Vice-President of the Republic may be re-elected twice.

29. Consideration of Article 56.

Article 56, (paragraph 1) should be changed as follows in order to agree with Article 55.

Article 56. The terms of office of the President and Vice-President of the Republic shall expire at noon on the last day of the 60th month from the date of taking office and the mandate of the new President and Vice-President of the Republic shall begin at that time.

30. Consideration of Article 58.

I propose that paragraph 1 of Article 58 be omitted because the idea of "representing the Nation" is contained in paragraph 3 of this Article.

31. Consideration of Article 59.

The condition requiring two thirds of the membership of the National Assembly for the approval of war declarations and treaty conclusions is unnecessary and too stern.

I propose the reduction of the quorum from 2/3 to 1/2; Article 59 will be:

Article 59. With the approval of one-half of the membership of the National Assembly, the President of the Republic declares war or concludes treaties of peace.

32. Consideration of Article 52.

I propose that the President of the Republic be allowed to participate and to take the floor in sessions of the National

Assembly, and that a second paragraph be inserted in Article 62 as follows.

Article 62. The President of the Republic communicates with the National Assembly by means of messages.

He may participate in the sessions of the National Assembly and make statements before it.

Each year at the beginning of the second regular session and whenever he deems it necessary, the President of the Republic shall communicate with the National Assembly on the internal situation of the country and on domestic and foreign policies.

33. Consideration of Article 63.

I propose that, not only when there is disagreement between the Executive and the Legislative but also whenever it is necessary to consult the people, the President of the Republic organize a referendum with the consent of the National Assembly. Article 63 will be:

Article 63. With the consent of the National Assembly, the President of the Republic may organize a referendum of the people. The results of the referendum shall be respected by the President of the Republic and the National Assembly.

34. Consideration of Article 68.

I propose that the oath of office of the President be modified so as to be more significant.

Article 68. On taking office, the President of the Republic shall take the following oath:

"I solemnly swear that I shall to the best of my ability attempt to discharge the duties of the office of the President, respect, preserve and defend the Constitution, loyally serve the Fatherland and devote myself to the public interest."

35. Consideration of Article 70.

The President of the Republic being the head of the Executive,

the organization and operation of the Government are effected by him. Therefore, Article 70 is superfluous; I propose its deletion.

36. Consideration of Article 71.

As I have proposed with regard to Article 62 (under No. 32), the President may participate in the sessions of the National Assembly. The Secretaries and Under-Secretaries of State, if attending the sessions, shall do so in the capacity of representing the President and not in their own capacity. In order to facilitate the work of the legislative, the Secretaries and Under-Secretaries of State may meet with the President, Vice-President and Committee Chairmen of the National Assembly to clarify questions related to law-making.

I propose, therefore, the modification of Article 71 as follows.

Article 71. The Secretaries and Under-Secretaries of State may confer with the President or Vice-President of the National Assembly and its committee chairmen to clarify various matters related to legislation.

37. Consideration of Article 72.

The law will determine the branches of the judiciary; the Constitution should not concern itself with the details of judicial organization. Therefore, I propose the deletion of paragraph 2, Article 72.

38. Consideration of Articles 75 and 76.

Article 75, when specifying the various court levels, gives the present judicial organization a constitutional status which will prevent the legislators from effecting changes in this organization when circumstances are favorable to an improvement of the judiciary.

For the time being, we are faced with a shortage of judges. For personnel reasons, the Constitution should not rigidly define the High Council of the Judiciary.

The Constitution has only to mention the principle of the establishment of this organization, and the legislative will properly determine the various details.

I propose the modification of Article 75 as follows and the cancellation of Article 76.

Article 75. There shall be established a High Council of the judiciary the organization, operation and powers of which shall be determined by law.

39. Consideration of the term "Supreme Court".

The term "Supreme Court" indicates the highest Court having jurisdiction over inferior courts. Used here, this term is not appropriate.

I propose that "Special Tribunal" be used to be more correct, in Article 56 and throughout Chapter VI, from Article 77 to Article 84.

40. Consideration of Article 77.

I propose that the "Special Tribunal" have the power to try the President of the "Court of Cassation" and the President of the Constitutional Commission as well. Article 77 will be:

Article 77. The Special Tribunal shall be a court competent to judge the President and Vice-President of the Republic, the President of the High Court of Appeals, and the President of the Constitutional Commission in cases where charges of treason or high crimes are brought against them.

41. Consideration of Article 78.

I propose that the following second paragraph be inserted in Article 78.

Article 78. (paragraph 2). When the President of the High Court of Appeals is the accused, the President of the Constitutional Commission shall sit as President of the Special Tribunal.

42. Consideration of Article 85.

Considering the organization of Economic Councils in other countries, I propose that the majority of the members of the National Economic Council be chosen from among professional associations and various branches of economic activities, and that the smaller proportion of its members be chosen from among various

branches of social activities related to economy, and from among economists.

Membership in the Council cannot be held jointly with membership in the National Assembly.

Article 85 would be changed as follows:

Article 85. The National Economic Council shall have as its function the initiation of, and the rendering of its opinion on, economic projects and plans.

The members of the National Economic shall be chosen from among various professional associations, branches of economic activities, organizations of social activities with economic aspects, and from among economists.

The duties of a member of the National Economic Council are incompatible with those of a Representative in the National Assembly.

43. Consideration of Article 97.

I propose that Article 97 be changed as follows in order to mark a historical date:

Article 97. The Constitution shall be promulgated on the Twenty Sixth of October, Nineteen Hundred and Fifty Six.

44. Consideration of Article 98.

In order to enable the second Legislative Assembly to meet on the date set forth by Article 46, I propose that the mandate of the first Legislative Assembly be terminated on September 30, 1959.

Article 98, paragraph 2, will be:

Article 98. (paragraph 2). The mandate of the Legislative Assembly shall begin as of the date of the promulgation of the Constitution and shall end on the 30th of September 1959.

45. Consideration of Article 99.

45. Consideration of Article 99.

In order that

- the new President of the Republic may have time to prepare new budgetary proposals

- every fifteen years, the dates of the elections for the President of the Republic and for the members of the National Assembly should not be too close to each other,

I propose that the term of office of the President of the Republic end on April 30, 1961. Article 99, paragraph 2, will be as follows.

Article 99 (paragraph 2) The term of office of the President of the Republic shall begin as of the promulgation of the Constitution, and shall end on the 30th of April 1961.

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Messrs. the Representatives,

By virtue of Article 12, Ordinance No. 8 of January 30, 1956, I have the honor to request the National Assembly to deliberate on the various points submitted above.

THE PRESIDENT OF THE REPUBLIC OF VIETNAM.