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The Presidential Succession of 1943

ROLANDO M. GRIPALDO

In December 1941 the Japanese invaded the Philippines and the National Assembly adjourned after amending on 16 December 1941 the Emergency Powers Act which declared a total emergency. Thereupon Quezon assumed both the executive and legislative powers. In the absence of the Legislature, his executive orders had the effect of legislative acts. On 22 December 1941, for example, he issued Executive Order No. 390 authorizing Roxas to succeed to the presidency should something happen to the president and the vice president. For as long as it was possible for him to run the government he would do so. When he left Australia for the United States, it was because of Roosevelt's invitation dated 31 December 1941, for him to go to the United States and function there as the head of the Commonwealth government-in-exile and to be the "symbol of the redemption of the Philippines."¹

THE EXTENSION OF THE EMERGENCY POWERS ACT

Quezon was a very sick man. In July 1942 he requested President Franklin Delano Roosevelt to allow Vice President Osmeña to repre-

1. C.A. No. 671, 16 December 1941. Sec. C.A. No. 600, 19 August 1940; Quezon wire MacArthur, 5 March 1941; and Quezon to National Assembly, 5 May 1941. See also Don (Quezon's alias) wire MacArthur, 5 March 1941, and Quezon to Roosevelt, 14 and 17 October 1943. All from *Quezon Papers* (hereafter *QP*), ser. V, National Library. Originally Quezon wanted to stay in Australia in order to be near his homeland to accompany MacArthur in his eventual return to the Islands, but Osmeña wanted them to go to the United States in view of Roosevelt's invitation to set up a government-in-exile there. Convinced by Osmeña, Quezon and party left for the United States ten days after Bataan fell. See MacArthur wire George C. Marshall, 29 March 1942, *QP*, ser. V. and Carlos Quirino, *Quezon: Paladin of Philippine Freedom* (Manila: Filipiniana Book Guild, 1971), p. 350.

sent him in the Pacific War Council because he was ill. By early 1943 he was bothered by the question of presidential succession and the expiration on 31 May 1943 of the Emergency Powers Act which authorized the president to promulgate rules and regulations that would have the force and effect of law. This delegation of legislative powers remained in force until the Philippine Congress adjourned in the latter part of May 1943. In a draft letter Quezon requested Roosevelt to make a decision on the possible extension of the Emergency Powers Act because the Commonwealth government would cease to function by June, "unless you decide otherwise." He called Roosevelt's attention to the expiration of his term as president on 31 December 1941 and Osmeña's succeeding him "in accordance with the provision of the Constitution of the Philippines" on 31 December 1945. In another draft letter Quezon believed that the "Emergency Powers Act is valid for the duration of the war until the Philippine Congress may be convened again" and informed the U.S. president that his (Quezon's) term would expire by December 1943 whereby Vice President Osmeña would "automatically take my place."²

It was Osmeña on 12 May 1943 who vigorously argued for the extension of the Emergency Powers Act so that the Commonwealth government-in-exile could continue making disbursements necessary for the discharge of its functions after May 1943. The only limitation of the Act, he said, was that it "shall last until the second adjournment of the Congress of the Philippines," or about the end of May 1943. He contended that the second adjournment of the Philippine Congress should not be the mere lapse of the calendar date, but the "actual and physical meeting of the new Congress, in which case the law will live on until this happens" because the interest of the law was to grant the Philippine president all the powers called for by the emergency while it existed, and the interest of the National Assembly was to make itself the "ultimate judge of the necessities of the situation after the lapse of a specified period of time and this would not be served without an actual meeting." Unfortunately, Congress could not meet for the second session, and as long as it could not do so, it could not adjourn. Even assuming that there was no Emergency Powers Act or that it would lapse in May 1943, the Commonwealth government could still make disbursements in order to continue discharging its functions by virtue of the "law of necessity," whereby a government had "certain inherent powers the exercise of which may be called for and warranted by the rise of extraordinary circumstances,

2. Quezon to Roosevelt, 2 July 1942 and 10 May 1943, *QP*, ser. V.

necessitating even a deviation from the letter of the constitution." Osmeña, however, was silent about the succession issue. Although Quezon disagreed with Osmeña's reasoning because he considered the Philippine constitution inoperative and the only legal source for the operation of the Commonwealth-in-exile was Roosevelt's act of intervention on 31 December 1941 whereby he invited Quezon to go to the United States to function as the head of the Commonwealth-in-exile, the significant thing was their basic agreement that the Commonwealth government-in-exile should continue to function.³

OSMEÑA AS ACTING PRESIDENT

Once the problem of the Emergency Powers Act was settled, Quezon wrote Interior Secretary Harold L. Ickes that on the advice of his doctors, he needed several months of complete bed rest. As soon as Osmeña, who had had an appendectomy at the Doctor's Hospital was well, he "would act for me with full powers." He prepared a memorandum to Resident Commissioner Joaquin Elizalde and Secretary to the President Arturo Rotor that until his health improved and Osmeña could act for him, Elizalde would take charge of the Commonwealth. On 9 June he informed Pres. Roosevelt that unless directed otherwise he would designate Osmeña, who was presently ill, "to act in my capacity during my confinement as soon as his own health is completely restored," and in the meantime Resident Commissioner Elizalde would be in charge of the affairs of the Commonwealth. On 12 June Osmeña acknowledged receipt of Quezon's letter designating him as acting president during Quezon's illness. Three days later Osmeña informed Roosevelt that in a few days he would take up his duties as acting president and he would execute with fidelity Quezon's policies. By the end of June Osmeña cabled Quezon that he was ready to assume the duties entrusted to him and would take an oath of office as acting president sometime in the following week as soon as Justice Frank Murphy returned to Washington. After taking his oath he would inform Pres. Roosevelt, Secretary Cordell Hull, Sec. Stimson, and Sec. Ickes of his assumption to the duties of acting president. Quezon thought Osmeña was thinking of replacing him. So he cabled Osmeña not to communicate his plans to anyone yet until he heard from Quezon. Colonel Manuel Nieto would be dispatched to see Osmeña. In a letter of 2 July Quezon informed Osmeña that his health

3. Osmeña's "Memorandum" for Roosevelt, 12 May 1943. Osmeña sent this to Quezon who did not forward it to Roosevelt, for he disagreed with Osmeña. See Quezon to Osmeña, May 1943. Both from *QP*, ser. V.

had improved greatly and that he was "fully capable" of discharging the duties of his office. When he designated Osmeña as acting president he was not relinquishing the powers and duties of his office. Osmeña would preside over the Cabinet, supervise the ordinary work of the office under the president, and represent the president in any required official or social function, but matters of policy or of great importance to the government or the Filipino people should be submitted to Quezon for final decision. When Osmeña replied he would wait for Col. Nieto, Quezon reiterated to Osmeña that he was "fully capable of discharging the duties" of his office.⁴

Osmeña then expressed his pleasure that Quezon felt he could resume the functions of his office, and Quezon told him that what worried him was the effect in the Philippines of Osmeña taking an oath as acting president. Osmeña agreed that the effect in the Philippines of any step they might take should be weighed very carefully. He would hold everything in abeyance until they could reach the best agreement in the interest of the Filipino people. On the same day Osmeña wrote Quezon that in his June letter to Roosevelt he "intended only to act on your behalf during the short period of your temporary incapacity." On 9 July Quezon authorized the payment of Osmeña's salary equal to that of Commonwealth president, effective 12 June 1943, for performing the duties of the president in accordance with Quezon's letter to Roosevelt on 9 June 1943. Only after the misunderstanding was straightened out did Osmeña assume the duties of acting president without taking an oath. Quezon agreed with the legal opinion of Sebastian Ugarte, the legal counsel of Commissioner Elizalde, who was consulted by Osmeña himself, that the vice president should not take the oath unless he would assume the office of the president in which case Quezon would cease to be president after Osmeña had taken the oath. After reading Quezon's letters to Roosevelt, Osmeña, and Elizalde, Ugarte opined that Quezon did not relinquish his powers and duties as president but merely delegated to the vice president, during his absence from Washington (Quezon was in New York, first at the Doctor's Hospital and later at Camp McMartin, Saranac Lake) some presidential powers and functions.⁵

4. Quezon to Ickes, 8 May 1943; Quezon to Elizalde and Rotor, 8 May 1943; Quezon to Roosevelt, 9 June 1943; Osmeña to Quezon, 12 June 1943; Osmeña to Roosevelt, 15 June 1943; Osmeña wire Quezon, 30 June 1943; Quezon wire Osmeña, 30 June 1943; Quezon to Osmeña, 2 July 1943 (see also Quezon wire Osmeña, 30 June 1943 and Quezon wire Hernandez, 16 July 1943); Osmeña wire Quezon, 2 July 1943; and Quezon wire Osmeña, 2 July 1943. All from *QP*, ser. V.

5. Osmeña wire Quezon, 5 July 1943; Quezon wire Osmeña, 5 July 1943; Osmeña wire Quezon, 5 July 1943; Osmeña to Quezon, 5 July 1943; Quezon "Memorandum" to

THE SUCCESSION QUESTION

In April 1943 Quezon was looking for someone to be sent on a secret mission to the Islands and Lieutenant Colonel Emigdio Cruz, his physician, volunteered. One of the items of his mission was to sound out the Filipino leaders about the question of presidential succession. Quezon thanked General Douglas MacArthur "deeply for authorizing the trip of Dr. Cruz." Cruz arrived by submarine in Negros late in June 1943 and left for Australia on 12 February 1944. In the United States he reported to Quezon that Rafael Alunan wanted Osmeña to succeed him, while Jose Yulo and Manuel Roxas wanted him to remain president.⁶

When Osmeña visited Quezon in May 1943 in the Adirondacks of New York, they discussed the issue of presidential succession, with Quezon arguing that the Philippine constitution was inoperative in view of the Japanese occupation. Osmeña was willing to present a united front with Quezon with regard to the issue of presidential succession, provided he could "conscientiously agree with him." He believed, however, that the constitution was operative, that the government-in-exile was not an interim, but a legitimate government, and that they spent the people's money in accordance with the Commonwealth constitution. He suggested that the matter be referred to the Department of the Interior, the Attorney General's Office, or the State Department.⁷ But at this time both Quezon and Osmeña were more interested in the extension of the Emergency Powers Act.

The succession issue did not resurface until the later part of 1943 when the American press began to talk about it.⁸ In August 1943 Quezon received through MacArthur's headquarters a cable from Lieutenant Colonel Claude Fertig, the commanding officer of the Panay District Engineers (guerrilla group):

Your strong leadership and good counsel is (*sic*) needed desperately. The enlisted men, officers and civilian population and officials of the 10th Military District all are joined in a wish for your quick return to the beloved

Auditor General Jaime Fernandez, 9 July 1943; Osmeña to Ickes, 12 July 1943; Quezon to Hernandez, 19 July 1943; Quezon to Osmeña, 19 July 1943; and Osmeña to Quezon, 22 July 1943. All from *QP*, ser. V.

6. Teodoro Agoncillo, *Fateful Years*, 2 vols. (Quezon City: R. P. Garcia Publishing Company, 1965), 2:792-94 and 808. Quirino, *Paladin*, pp. 366-68; and Quezon to MacArthur, 2 May 1943, *QP*, ser. V.

7. Frederic S. Marquardt, "Osmeña and Quezon," *Philippines Free Press*, 15 December 1962.

8. Vicente Albano Pacis, *Sergio Osmeña*, 2 vols. (Manila: Phoenix Press, Inc., 1971), 2:183.

Philippines and your good health. May the beginning of the end of your exile be marked by this your birthday.⁹

On 1 September Secretary of the Interior Ickes wrote Pres. Roosevelt about the rumor that, though Quezon's term would expire on 15 November, "elements attached to President Quezon may work to avoid the legal succession, and worse, to maneuver you into responsibility for setting the Commonwealth constitutional provisions." He suspected that army authorities would advise him to take this step on "asserted grounds of military advantage." He suggested that the Philippine constitution be upheld, because failure to do so would be a "serious blow to the cause of future representative government in the Philippines" and would be adversely used by the Japanese in their propaganda in the Islands. They would say that apparently the Americans had suspended the Commonwealth constitution to continue to hold Quezon as their puppet. On 8 September Secretary of State Hull wrote Roosevelt that plans were reported to make Quezon succeed himself. The latest plan was that Osmeña would become president on 15 November with the understanding that Osmeña would make Quezon president of the Council of State. But another unconfirmed plan held that since the Commonwealth government-in-exile was a de facto government in view of the Japanese occupation, Quezon, at an appropriate time before 15 November would request Roosevelt as the head of government who exercised de jure sovereign rights in the Philippines to appoint an administrator of Philippine affairs and Quezon, it was surmised, "might hope" to be appointed administrator. Hull notified Pres. Roosevelt that the alteration of the right of presidential succession would have an unfavorable reaction and "would be looked upon as a contravention of democratic principles of government."¹⁰

In late September Quezon received two cables from MacArthur dated the twenty-sixth and twenty-seventh, reassuring him of MacArthur's "unflinching stand for immediate independence" and his old resolution to devote the rest of his life in insuring the "future military security of the Philippines, which of course is also the security of the United States in the Pacific." In reply, Quezon told MacArthur that though he had written him several months ago regarding his retirement on 15 November 1943, he had reconsidered: ". . . it is not only my right but my duty to remain as president of the Philippines until we shall have reestablished a constitutional government there." He said he was certain this would be in accordance with

9. Fertig wire Quezon, [19] August 1943, *QP*, ser. V.

10. Ickes to Roosevelt, 1 September 1943 and Hull to Roosevelt, 8 September 1943. Quoted by Agoncillo, *Fateful Years*, 2:796-97.

the Philippine constitution, and that he had "two years" after his reinstatement in Manila by the U.S. forces and the reconvening of the Philippine Congress and the Supreme Court.¹¹ His apparent initial logic was that the Philippine constitution was inoperative from January 1942 to December 1943, so that after his reinstatement he would still have two years as Commonwealth president. Aware of the press discussion on the succession issue, Quezon who was in Saranac Lake, New York, went to Washington in October 1943.

On 8 October Quezon informed Osmeña that since 15 November was fast approaching, it was necessary for them to reach a definite agreement as to the issue of presidential succession in the interest of the public. Osmeña had no objection to continuing the existing setup provided there would be a legal way to do so.¹²

QUEZON'S LETTERS TO ROOSEVELT

Six days later Quezon wrote Roosevelt that the succession issue was being discussed in the press and that the American president alone had the power to resolve the issue. He told Roosevelt that he went to the United States, despite his desire to be with his people or to be near them, on the strength of Roosevelt's request to him to go to the United States "to act as the head of the Government of the Commonwealth-in-exile and be the symbol of the redemption of the Philippines." Now as an exile in America, he was "being insidiously attacked and misrepresented in the press." He was accused of "using devious means" to keep himself in office. Insinuations that would raise doubts as to his loyalty to America were brought out, and in one article it was said that men in his administration, such as Jose P. Laurel, Sr., were serving the Japanese administration, when in fact Laurel was "in the opposite camp in the last major political struggle of my life." He assured Roosevelt that if the law were against him, he would not want the presidency, but "bearing in mind that the Japanese invasion destroyed all semblance of constitutional government and its institutions in my country" and that he was the symbol of Philippine redemption, it would seem that legally he should remain in office until returned by the sovereign power of the United States to the seat of government in the Philippines, and until in fact and in law he would be able to exercise jurisdiction over the entire archipelago with the Philippine Legislature and courts "reestablished and functioning

11. See Quezon to MacArthur, 1943 (probably September), *QP*, ser. V. MacArthur's cables were cited in this letter.

12. Cited by Pacis, *Sergio Osmeña*, 2:182-83.

normally under the constitution adopted by the Filipino people but now a shambles." Quezon argued that the Philippine independence act authorized the American president to intervene when constitutional government was bound to collapse, and under international law the United States had the responsibility to reestablish constitutional government and processes in the Philippines. Quezon anticipated that whatever decision arrived at on the succession issue would be taken advantage of by the Japanese in their propaganda against America. But the important consideration would be the effect upon Filipino unity in the fight against the enemy and not what the Japanese and their puppets might say. Although Vice Pres. Osmeña disagreed with him "as to what the law is," Quezon said, both of them were "in accord that the best interest of our people is paramount." He suggested that Osmeña be heard "before a decision is made."¹³

On 15 October MacArthur cabled Quezon that he had always envisioned the latter at his side "when we commence to return." After two days, Quezon wrote Roosevelt more extensively, saying that the press discussed the succession issue "with such ignorance of the facts" and "misconception of the law" that in the public interest a decision on the matter should be made public as soon as possible. Quezon argued, among other points, that Japan overthrew the Commonwealth constitutional government; that officials believed elected in the last general elections failed to assume office on 30 December 1941; that Congress, under section 2, article VII of the constitution, failed to convene to count the election returns and declare the winners for the presidency and the vice presidency; that Quezon and Osmeña took the oath of office on 30 December 1941 on Corregidor as president and vice president, respectively, without having been duly declared elected by the Congress of the Philippines; that Roosevelt invited Quezon while on Corregidor to go to the United States "to function . . . as the head of the Commonwealth government-in-exile and as the symbol of the redemption of the Philippines"; that despite Washington's knowledge of Osmeña's presence on Corregidor, the latter was not invited; that it was Quezon's own decision to invite Osmeña to go with him; that in inviting Quezon, Roosevelt knew Quezon's term of office would end on 15 November 1943 while the Philippines could not possibly be liberated by that time; and that it was Quezon who led the Filipino people to fight to the bitter end at the side of the United States. In view of the above Quezon believed that the constitution was inoperative, but because Pres. Roosevelt

13. Quezon to Roosevelt, 14 October 1943. Cf. unsent letter of Quezon to Roosevelt, 13 October 1943. Both from *QP*, ser. V.

intervened to save the Commonwealth government under the terms of section 2, subsection (14) of the Tydings-McDuffie Act as embodied in the ordinance attached to the Commonwealth constitution, the Commonwealth government-in-exile was a *de jure* government. Since Roosevelt invited him to head that government and to function as the symbol of Philippine redemption, then Quezon felt legally bound to serve the government-in-exile for the entire duration of the war and until such time as the Commonwealth constitution would again be in force, when he would relinquish his position in favor of Osmeña. He frankly stated to Roosevelt that in honestly believing he would continue in office in accordance with the law and policy of the latter, he had given "assurances to the Filipino people, through broadcasts, and to guerrilla commanders, by means of radiograms sent through the War Department and Gen. MacArthur's headquarters, that I would return to the Philippines in triumph with the liberating forces of the United States." In case his concept of the law and interpretation of Roosevelt's wishes were wrong, Quezon would abide by Roosevelt's decision. The next day, Quezon sent Osmeña a copy of his letter to Roosevelt.¹⁴

OSMEÑA'S POSITION

Osmeña replied on 19 October saying he agreed with Quezon that it was the latter who led the Filipino people to fight at the side of the United States to the bitter end and that the presidential succession issue should be considered with the best interest of the country in mind. In view of this he would support any plan the authorities would finally decide upon to be in the best interest of the Filipino people, "provided it meets the requirements of law." He enclosed his letter of 18 October to Quezon where he clarified his position. He said either the Commonwealth constitution was operative or inoperative. If operative then the Commonwealth government-in-exile was a *de jure* government, in which case he would succeed Quezon on 15 November 1943; if inoperative, then the government-in-exile was a "*de facto* organ functioning under the toleration of the president of the United States." In that case the question of presidential succession would not arise. Although Osmeña believed the Philippine constitution was operative, he suggested that the advice of the U.S. president be sought.¹⁵ Quezon forwarded Osmeña's letter to Roosevelt. On 20

14. MacArthur wire Quezon, 15 October 1943; Quezon to Roosevelt, 17 October 1943; and Quezon to Osmeña, 18 October 1943. All from *QP*, ser. V.

15. Osmeña to Quezon, 18 and 19 October 1943, *QP*, ser. V.

October Quezon insisted that the Commonwealth government-in-exile was not a *de facto* but a *de jure* government and it was the Japanese military regime in the Islands which was the *de facto* government. He refused to submit the succession issue to Congress which Osmeña had suggested because the issue was not to "nullify or suspend the effects of any or all the provisions of the Philippine constitution," but that the constitution was inoperative and the legality of the government-in-exile was grounded on the fact that under the Tydings-McDuffie Act, the American president was authorized to intervene to save the Commonwealth government, as he did intervene by inviting him (Quezon) to head the government-in-exile in the United States. The presidential intervention, according to Quezon, was "in accordance with and not in violation of the constitution of the Philippines."¹⁶

Osmeña regretted Quezon's refusal to accept his proposition to submit the succession issue to Congress and there secure an authorization to allow the latter's continuance in office after 15 November "notwithstanding the prohibition of the constitution." Osmeña believed this "legal formula" would settle the question of presidential succession. Since Quezon admitted that the Philippine government in Washington was a *de jure* government and that he would continue to be president only as long as under the Philippine constitution he had the right to be president, then, Osmeña declared, such a *de jure* government "should operate and, in fact, has been operating all along, under the provisions of the constitution. Thus, the problem of the presidential succession resolves itself into this: Read the constitution and follow it. This is what I am going to do."¹⁷

Earlier Osmeña had made a distinction between the legal and the political aspects of the succession issue. Legally Osmeña believed the constitution was operative and should be upheld, but politically he admitted Quezon was needed in the war effort to preserve the unity and boost the morale of the Filipinos in the Islands. He was willing to extend Quezon's tenure for political considerations, but the legal requirements of the law should not be sacrificed. When Quezon rejected his proposal to submit the issue to Congress in order to secure the necessary extension or suspension of the constitution, Osmeña was constrained to fight back and withdraw his proposition.¹⁸

Sotero Laurel, who advised Osmeña on the legal and political distinction involved in the issue of succession, reported that Quezon invited him to the Shoreham Hotel and asked his legal opinion. When

16. See Quezon to Roosevelt, 20 October 1943, *QP*, ser. V.

17. Osmeña to Quezon, 25 October 1943, *QP*, ser. V.

18. *Ibid.* See Osmeña to Quezon, 18 October 1943, ser. V.

Laurel frankly told Quezon about what he legally believed about the issue, Quezon retorted: "But this is an emergency and we are at war and in exile! Isn't the constitution suspended in its operation?" Politically yes, Sotero countered, but not legally.¹⁹

The legal opinion of Attorney Ugarte on the succession issue was that since the Commonwealth constitution as a republican constitution was indivisible, i.e., to be taken as a whole or not at all, and since section 2, article VII of the constitution was suspended when Quezon and Osmeña took their oath of office on 30 December 1941 without having been officially declared elected by Congress, then the Commonwealth constitution was paralyzed and in that sense became inoperative. Because the executive branch assumed the legislative functions, then from the standpoint of a republican government with three co-equal branches, the executive government was a dictatorship without judicial or legislative checks. But the constitutional foundation of the Commonwealth government-in-exile rested on a number of statutes, viz., the United States constitution, the Tydings-McDuffie Act, the Commonwealth constitution, some portions of the Jones Law, and any relevant law that Congress may later enact. So even if the Philippine constitution was inoperative by the imperatives of war, it was not fatal to the constitutional existence of the Commonwealth government-in-exile, which was a *de jure* government, "actually cut off from power or control of Philippine territory, but a government established according to a constitution and lawfully entitled to recognition and supremacy." Under the Tydings-McDuffie Act the American president had the power to intervene by proclamation in Philippine affairs in order to preserve the Commonwealth government. President Roosevelt in effect did intervene, although without proclamation, when he invited Quezon on 31 December 1941 to head the Commonwealth government-in-exile in the United States. In the final analysis, Ugarte believed that the question of presidential succession was political in nature, and should be decided on the basis of what was best for the interests of the Philippines.²⁰

Osmeña believed, however, that the U.S. president's power of intervention was limited to internal disturbances and not to foreign aggressions. So Roosevelt's intervention in Philippine affairs did not fall within the purview of the Tydings-McDuffie Act but within the "general duty of the United States to defend its national domain," of

19. Sotero H. Laurel, "A Laurel Remembers Osmeña," *Manila Times*, 10 September 1962.

20. Ugarte's "Memorandum" for Commissioner Elizalde, 20 October 1943, *QP*, ser. V. See sec. 2, subsec. (15) of the Tydings-McDuffie Act.

which the Philippines was a part. Attorney Henry Bates whom Quezon consulted said that the U.S. president intervened in Philippine affairs as commander-in-chief of the army and navy and in that capacity he may intervene with or without issuing a proclamation.²¹

From the logical point of view, the 1939 amended constitution would be inoperative on 31 December 1941, because Congress failed to convene and declare the winners of the general elections in accordance with section 2, article VII of the Philippine constitution. But by virtue of section 1, article XIX (Transitory Provisions) of the 1939 amended constitution, officers elected under the original constitution (adopted on 8 February 1935), "shall continue to act until the elections and qualification of their successors" under the amended constitution, and "shall exercise all the powers and perform all the functions" conferred upon them by the 1935 constitution, "including the power to enact legislation necessary to give effect to the amendments herein provided." The intention of this section, however, was to enable the 1935 elected officials to effect the smooth transition from the 1935 constitution to the 1939 constitution and in no case should they go beyond 30 December 1941. Therefore, from Pres. Roosevelt's point of view, the terms of office of both Quezon and Osmeña would terminate at the end of six years, or at noon of 30 December 1941. So on that afternoon and on the following day, the *de jure* Commonwealth government would be dissolved and might continue as a *de facto* government with hold-over officials. In order to remedy or prevent such eventuality, Roosevelt as commander-in-chief of the army and navy, intervened in accordance with the U.S. constitution to preserve the *de jure* Commonwealth government by inviting Quezon on 31 December 1941 to go to the United States to head the Commonwealth government-in-exile and to be the symbol of Philippine redemption. In view of this interpretation, it may be true that had Osmeña insisted in becoming president "Roosevelt would have proclaimed an executive order abolishing the Commonwealth government-in-exile." He would then let Gen. MacArthur act as military governor of the Philippines until the restoration of the civil government.²²

ROOSEVELT'S INVITATION OF OSMEÑA

On 17 October Quezon notified Osmeña that the White House did not even acknowledge the letter he had sent about two weeks ago. He

21. Osmeña to Roosevelt, 27 October 1943 and Henry Bates, "Memorandum Concerning the Constitutional Status of the Philippines and the Powers of the President of the United States in the Present Situation," undated, 1943. Both from QP, ser. V.

22. See Benvenuto R. Dino, "The Reluctant Partners," *Historical Bulletin* 22 (1978):72.

suspected that the authorities would want to get rid of him. Osmeña consoled him by saying that no one was trying to get rid of him and that in case Osmeña would succeed him to the presidency he would appoint Quezon head of the Council of State with headquarters at the Shoreham. Osmeña likewise told Quezon he was informed that the American president's invitation to come to the United States included him (Osmeña) and the members of the War Cabinet. Although Osmeña may not have seen the communication, the information may have been based on the second cable of General George C. Marshall to MacArthur dated 2 January 1942, after Quezon had expressed on 1 January his willingness to do whatever the U.S. government might think would be "more helpful for the successful prosecution of the war." This was Quezon's response to Marshall's first cable, dated 31 December 1941, stating that Pres. Roosevelt, together with Resident Commissioner Elizalde and Secretary of War Stimson, had invited him to go to America to function as the head of the Commonwealth government-in-exile and as the symbol of Philippine redemption. Marshall's second cable, however, would not materially alter Quezon's argument since if the Philippine constitution was inoperative then both Quezon and Osmeña would have to continue as president and vice president, respectively, during the duration of the war and the issue of presidential succession would not arise. Quezon erroneously insisted in his letter to Osmeña that there were only two relevant telegrams on the matter. The first referred to the invitation extended to him alone to go to the United States and the second referred "to our trip to the Visayan provinces."²³

Several days later Quezon in his own handwriting reiterated some items of his conversation with Osmeña, especially that even if he would accept the position of president of the Council of State, he would vacate the apartment he was currently occupying to give way to the Commonwealth president and later on to the Filipino minister or ambassador; that it would be improper to create the presidency of the Council of State "only to give me a position"; and that his health would not allow him to "work regularly, at least during office hours" as to justify his accepting any position in the government, whereas as Commonwealth president he could limit himself to matters related to national policy, without abandoning his duty. President Woodrow Wilson in fact had continued being president "when he could not even leave the bed." Quezon then argued that, as he told Osmeña many times, he would leave the presidency if he could do so "with-

23. Agoncillo, *Fateful Years*, 2:802. The three cables are published in this book, 2:778-79. See Quezon to Osmeña, 28 October 1943, QP, ser. V.

out becoming guilty of abandoning the position at a critical epoch in the life of our people" and he would absolutely refuse to remain in the position even if Pres. Roosevelt would desire it if he was convinced that the constitution continued to be in force. Quezon believed only Pres. Roosevelt could decide whether he should remain as president or not, because the Japanese military occupation of the Philippines extinguished the Commonwealth constitutional government and Roosevelt intervened to set up a government-in-exile. He contended that the de facto government of the Philippines was the one Japan established in the Islands, while the de jure government was the existing U.S. government, "whose sovereignty over the Philippines was not affected by the Japanese military invasion and occupation." The Commonwealth government-in-exile would not have juridical personality unless the American president grant it and designate and recognize its officers. To be sure, many Filipinos residing in the United States were influenced by the critical American press and wanted Osmeña to succeed Quezon.²⁴

SUBMISSION OF THE SUCCESSION ISSUE TO CONGRESS

On 2 November Quezon cabled MacArthur that his term of office would end on 15 November. In the draft of the cable he cancelled the clause "unless a joint resolution is passed by Congress continuing the present set-up of the Commonwealth Government which I am assured will easily pass if I should join in the request that such Congressional action be taken." He wrote Judge Samuel Rosenman, who was assigned to study the succession case for the White House, that the attorney general had not considered all the facts and legal points of his 17 October letter to Roosevelt, especially section 2, article VII of the Philippine constitution, which provided that the Legislature would count the votes for the president and vice president and declare the winners elected. The Japanese invasion prevented the Philippine Legislature from convening and therefore no counting of votes and no declaration of elected president and vice president took place. Despite the failure of the Legislature to declare him president, Quezon believed he had been legally and constitutionally functioning as Commonwealth president by virtue of Roosevelt's recognition of him as Commonwealth president, when on 31 December 1941 Roosevelt invited him to the United States to head the Commonwealth government-in-exile. Quezon was willing to submit to the American Con-

24. Agoncillo, *Fateful Years*, 2:803-06 and 808.

gress the legality of his status as president, including the legal status of the vice president, in light of the noncompliance of section 2, article VII of the Commonwealth constitution, to leave no doubt as to the legality of the acts of the government-in-exile and its future status after 15 November 1943.²⁵

Since Osmeña only wanted the legal aspect settled, he consulted Secretary of State Stimson who emphasized the political aspect of the question. He told Osmeña that the unity of the Filipinos should be the primary goal of the Filipino leaders in Washington. He hoped that both Quezon and Osmeña could help. He considered MacArthur and Quezon as "essential in the reconquest of the Philippines." Osmeña talked with Rosenman who suggested that Quezon and Osmeña petition Congress to act on the succession issue. Osmeña agreed, provided Roosevelt make a request to this effect. Roosevelt should be involved because of the earlier letter of Osmeña, requesting Quezon to consult Roosevelt on the succession question.²⁶

Rosenman later informed Osmeña that the letter had been prepared by his staff for the signature of both Osmeña and Quezon. When Osmeña learned that the letter he expected, i.e., Roosevelt's letter asking him and Quezon to submit the matter to Congress, was different in that it was a letter from both Osmeña and Quezon requesting Congress to act on the succession problem, Osmeña refused to sign it. To resolve the issue, Quezon called a cabinet meeting. It was only when Quezon expressed his disgust with the meeting in view of Auditor General Jaime Fernandez's refusal to make a direct comment on the succession issue that Osmeña decided to work for the extension of Quezon's term of office. On 12 November 1943 Congress passed Joint Resolution 95 authorizing the Philippine president and the vice president to "continue in their respective offices until the President of the United States shall proclaim that constitutional processes and normal functions of government shall have been restored in the Philippine Islands."²⁷

25. Quezon wire MacArthur, 2 November 1943 and Quezon to Rosenman, 2 November 1943. Both from *QP*, ser. V.

26. Agoncillo, *Fateful Years*, 2:808. Frederic S. Marquardt, "Quezon and Osmeña: Their Last Battle," *Historical Bulletin* 22 (1978): 79-81. See Osmeña to Quezon, 18 October 1943, *QP*, ser. V. Quirino said that Osmeña did not want to give the impression to posterity "as [being] a man who was afraid to stand up for his rights." See *Paladin*, pp. 373, 375-77. It is important to note that Roosevelt's involvement here was unnecessary and a moot point because Quezon agreed with Osmeña in settling the succession issue legally by Congress, a position that Osmeña had long held.

27. Public Law 186, 78th Cong., 1st sess., 1943. For an extensive discussion of the passage of this law, see Agoncillo, *Fateful Years*, 2:812-22 (see also 2:810-11).