

2005 CONSULTATIVE COMMISSION
To Propose the Revision of the 1987 Constitution
Committee on General Provisions / Constitutional Commissions /
Amendments and Transitory Provisions

Minutes of Meeting No. 2
Monday, 14 November 2005
RCBC Building, Makati

CALL TO ORDER

At 3:20 p.m., Committee Co-Chairman Jose C. Bello Jr. called the meeting to order.

ROLL CALL

Upon suggestion of the Chair, there being no objection, the Committee dispensed of the roll call. The following Members were present:

Acevedo, Anthony Y.	
Adamat, Ronald L.	
Apostol, Sergio A. F.	
Bautista, Andres D.	
Bello, Jr., Jose C.	
Bengzon, Ma. Romela M.	4:20 p.m.
Bondoc, Jarius Y.	
Cariño, Noel M.	
Chua, Francis	5:00 p.m.
Espina, Gerardo Sr., S.	
Lorenzana, Lito Monico C.	3:51 p.m.
Matula, Jose Sonny G.	4:35 p.m.
Peña, Fernando O.	
Rodriguez, Oscar S.	4:45 p.m.
Varela, Miguel B.	3:37 p.m.
Vilar, Antonio T.	3:41 p.m.

APPROVAL OF MINUTES

Upon motion of Commissioner Apostol, there being no objection, the Committee approved the Minutes of the Committee meeting on October 12, 2005.

Upon motion of Commissioner Apostol, there being no objection, the

Committee approved the Minutes of the Executive Committee meeting on November 2, 2005.

BRIEFING BY THE CHAIR

Co-Chairman Bello stated that he was requested to preside over the meeting by Chairman Leviste, who was in China with former President Fidel V. Ramos.

The Chair informed the Committee that an Execom meeting was held last November 2, 2005 for the purpose of discussing which resource persons the Committee would invite. The letters of invitation were finalized for the ten persons listed in the Minutes of that meeting, and were sent out on the same day.

The Chair noted that there has been no response to the invitations until this time, except for DND Secretary Cruz and AFP Chief General Senga.

Commissioner Acevedo said that CSC Chairman David had accepted the invitation but she would be available on November 21 or 22. He noted that the Committee did not invite the resource person he suggested, COA Commissioner Orsal, who is retired and therefore free to give information. The Chair said the Committee had taken note of the suggested resource persons.

The Chair said that there has been a reaction from Malacañang on the inclusion of Sen. Honasan and Ret.

General Dominguez in the list, although they have not yet responded to the invitation. It asked the Committee to decide on whether or not to still include them. Commissioner Bondoc said that the original decision of the Committee to include them should be honored.

Noting that the date of the guests' appearance was not specified in the invitations, Commissioner Espina suggested sending another invitation with a definite date, to which the Chair agreed.

In the meantime, Commissioner Espina suggested that the Committee discuss the proposals on the table, and the decisions could be sent to the invited persons for their comments. Commissioner Bondoc noted that the Co-chairman asked specifically for deferment of any action on provisions pertaining to the military until they have heard the sentiments of that sector. Co-chairman Bello asked for three days to follow up the invitations to the representatives of the military sector.

Commissioner Bondoc then suggested prioritizing the CSC Chairman, who had already indicated acceptance of the invitation, and requested the Secretariat to finalize a date of consultation with the CSC Chairman.

ARTICLE XVI

Commissioner Apostol moved for the review of Proposed Amendments to Article XVI of the 1987 Constitution (General Provisions). A matrix report prepared by the Subcommittee on General Provisions was distributed.

Section 1:

The flag of the Philippines shall be red, white and blue, with a sun and

three stars, as consecrated and honored by the people and recognized by law.

Section 2:

The Congress may, by law, adopt a new name for the country, a national anthem, or a national seal, which shall all be truly reflective and symbolic of the ideals, history, and traditions of the people. Such law shall take effect only upon its ratification by the people in a national referendum.

Commissioner Bautista moved for the deletion of Section 1, stating that no other Constitution in the world provides a definition of its flag. Commissioner Espina seconded the motion. Commissioner Apostol proposed that the major points of Section 1 be refined and incorporated into Section 2.

Commissioner Bautista warned that by leaving the section as is, they are giving a signal to Congress to try to change the flag. However, Commissioner Adamat said that retaining Section 1 would effectively prevent Congress from making changes. Commissioner Bondoc pointed out that the Committee would be providing a rationale for any proposed amendment.

Commissioner Gonzales asked if any of the Members had objection to the present flag. If there was none, she suggested retaining Section 1.

Commissioner Naval said that the Committee should analyze whether the retention of Section 1 would have any effect on the authority of Congress, which can still enact changes since this is inherent in the legislative powers of Congress. Commissioner Apostol disagreed.

Commissioner Bondoc clarified that what is not in the Constitution does not necessarily mean that there is no basis for any branch of government to act;

however, whatever is stated in the Constitution is no longer a subject of contention. Commissioner Bautista agreed that Congress could legislate anything except when it is prohibited by the Constitution.

Commissioner Peña reminded the members of the mandate of the Commission, and suggested that they leave the minor matters untouched as a tactical move since there would certainly be controversy over the major issues.

Commissioner Espina opined that the present Constitution has been very much criticized, and it is important to take this opportunity to improve it without losing focus on the main issues.

Commissioner Bondoc noted that if they would delete this section in the Constitution, they would give Congress an opening to change the present name, anthem or seal. He said that these had already been provided for in the past Constitutions. The Chair noted that if the Committee decides to delete it, they would need to put the rationale behind such a decision.

Commissioner Bautista pointed out that the Committee should retain the current flag, anthem, seal and name, if they had no objection to the ones being presently used.

Thereafter, Commissioner Espina proposed the deletion of Section 2. Commissioner Bautista proposed its retention but with the modification that the name of the country should be "The Republic of the Philippines."

Commissioner Soriano inquired why this still needed to be stated. She said there was no need to put Section 2 if the Committee wished to retain the name. She said putting in such a statement would leave Congress open to adopting a new name.

Commissioner Varela said that the records should show that the intent was not to delete but to shorten the provisions.

Commissioner Bondoc pointed out that there was a pending motion from Commissioner Bautista to delete the paragraph, and succeeding motions to retain it and to revise it. He suggested settling the matter through a vote.

Submitted to a vote, and with eight (8) votes in favor and five (5) against, the motion for the deletion of Section 2 was approved by the Committee.

SECTION 3:

The State may not be sued without its consent.

Upon motion of Commissioner Apostol, seconded by Commissioner Bautista, there being no objection, Section 3 was retained in the General Provisions.

Section 4:

The Armed Forces of the Philippines shall be composed of a citizen armed force which shall undergo military training and serve, as may be provided by law. It shall keep a regular force necessary for the security of the State.

Commissioner Apostol moved for the deletion of Section 4.

Commissioner Bondoc noted that the concept of the AFP had previously been that of a citizen army and the regular force is just part of the citizen's army. He said that the provision states that the citizen army shall undergo training, the basis for ROTC.

The Chair stated that the AFP wished to have a small regular force and a big reserve force, which will become

part of the citizen reserve forces. To Commissioner Soriano's inquiry whether the two forces are the same, the Chair replied in the negative.

Commissioner Bengzon commented that not all people read Commonwealth Act No. 1 of 1935, which pertains to Section 4.

Commissioner Lorenzana pointed out that the Philippine Constitution is 10 times wordier than the US Constitution and 15 times wordier than the German Constitution. He mentioned that some countries like England do not even have Constitutions. He suggested taking off the unnecessary words, as he believed that specifics as to whether the reserve force has to be trained or not should not be part of the Constitution's General Provisions. According to him, for purposes of efficiency, it would be better to remove words from the Constitution, than to add more.

Commissioner Bondoc said that the Filipinos' lack of knowledge of the past and present laws, including the Commonwealth Acts, should not be a reason to write in more words in the Constitution.

Commissioners Apostol and Bondoc proposed the revision of the Section to read as follows: "The Armed Forces shall be composed of a citizen armed force. It shall keep a regular force necessary for the security of the State." Commissioner Bautista also suggested changing the term "composed" in the provision.

However, upon the Chair's suggestion, the Committee decided not to amend Section 4 and just referred it to the Style committee.

Commissioner Lorenzana reminded the Body that in the Committee on Style, matrix designed for proposing changes has to indicate the rationale behind the

changes, amendments and deletions. previously.

Section 5(1). All members of the armed forces shall take an oath or affirmation to uphold and defend this Constitution.

The Chair pointed out that this Section is subsumed under Article IX-B under the Civil Service Commission, and upon his suggestion, there being no objection, Section 5(1) was recommended for deletion.

Section 5(2). The State shall strengthen the patriotic spirit and nationalist consciousness of the military, and respect for people's rights in the performance of their duty.

Also upon suggestion of the Chair, there being no objection, Section 5(2) was recommended for deletion.

Section 5(3). Professionalism in the armed forces and adequate remuneration and benefits of its members shall be a prime concern of the State. The armed forces shall be insulated from partisan politics.

No member of the military shall engage directly or indirectly in any partisan political activity, except to vote.

The Chair suggested that the first sentence of the section be retained, while the second sentence on the insulation of armed forces from partisan politics be deleted.

Commissioner Espina proposed the shortening of the provision further by removing the first sentence regarding remuneration and benefits of its members. He said that if they retained this statement, they would have to put the same provision for all employees of the government. Commissioner Bautista explained that the basis for placing this was that the AFP was often

forgotten when it comes to salary increases.

Commissioner Bengzon objected to the use of words “prime concern” to refer to the benefits of the armed forces. She argued that there are other matters like education that should be the prime concern of the State. Commissioner Bondoc agreed to the observation.

Thereupon, on motion of Commissioner Espina, there being no objection, the Committee recommended the deletion of the first paragraph of Section 5(3) and the retention of the second paragraph thereof.

Section 5(4). No member of the armed forces in the active service shall, at any time, be appointed or designated in any capacity to a civilian position in the Government including government-owned or controlled corporations or any of their subsidiaries.

Commissioner Bengzon said that the statement should include “unless provided for by law.” The Chair suggested the retention of the provision for further clarification.

Section 5(5). Laws on retirement of military officers shall not allow extension of their service.

The Chair proposed the revision of the provision by adding the phrase “except the Chief of Staff, AFP and Major Service Commanders who shall be allowed to complete their tour of duty.”

Commissioner Bondoc objected to the exemption of the AFP Chief of Staff in the same manner that Section 5(7) gives the President leeway for extending the tour of duty of the Chief of Staff.

The Chair explained that Chiefs of Staff are sometimes appointed before the mandatory retirement age of 56, and they still have to complete their terms despite the compulsory age of retirement.

Commissioner Bondoc asked what is wrong in appointing Chiefs of Staff who are younger, for example at age 52. He said that challenging the present seniority system would reform the armed forces and convince older officials to retire early. He cited a “conveyor belt syndrome” which has led to the promotion of the older, senior officials -- a strategy that “promotes incompetence in the military.” He also questioned the minimum age requirement for appointment as Chief of Staff.

The Chair clarified that age and seniority are not the only considerations; the Board of Generals also study the performance of different officers. But Commissioner Bondoc contended nevertheless that it is still one of the primary considerations.

Commissioner Lorenzana pointed out the difficulty of separating the civilian from the military mindset. He said it was necessary to understand the military operations at the time the Constitution was crafted.

Commissioner Bondoc commented that it would be difficult to change the military mindset after retirement. He said few in the civilian sector would have the rare experience of leading a force of 10,000 men. He proposed the retention of the original subsections (5) and (7).

Commissioner Lorenzana objected to the proposal, saying that this would be subsumed to one administration.

Commissioner Bengzon agreed with Commissioner Bondoc that not much discipline has been instilled.

Commissioner Adamat clarified that subsection (5) provides that laws on retirement of military officers shall not allow extension. He went back to Commissioner Lorenzana's point that the transition from military to civilian work needed to be settled first, even as he agreed that there should be no extension.

Upon suggestion of the Chair, there being no objection, subsection (5) was retained.

POINT OF ORDER BY COMMISSIONER BENGZON

Commissioner Bengzon asked whether the Committee should continue deliberating on these matters, and be allowed to change their minds later on after listening to the different resource speakers from the military.

Commissioner Bondoc noted that they would have four resource speakers from the military, who had been given copies of the proposed revisions the previous week.

QUESTION OF QUORUM

At this juncture, Commissioner Bengzon inquired if there was a quorum. Commissioner Espina stated that generally, the presence of a quorum is presumed unless it is questioned.

Thereupon, Commissioner Apostol called the roll, which showed that of the 34 members of the Committee, only 16 were present.

Commissioner Naval suggested that the Commissioners who are non-members be considered substitutes for the absent members. The Chair said there was no rule on this.

Commissioner Bengzon said that a quorum is material when there is voting, but its absence does not preclude the discussion of issues.

ADJOURNMENT OF MEETING

Upon motion of Commissioner Apostol, there being no objection, the meeting was adjourned.

It was 5:16 pm.

Certified correct:

Com. Jose C. Bello, Jr.
Committee Co-Chairman

_____ November 2005