

**2005 CONSULTATIVE COMMISSION
TO PROPOSE REVISIONS TO THE 1987 CONSTITUTION
General Provisions/
Constitutional Commissions/
Amendments and Transitory Provisions**

MINUTES

Tuesday, 29 November 2005

CALL TO ORDER

At 2:19 p.m. Committee Chairman Jose P. Leviste Jr. called the meeting to order.

ROLL CALL

Upon motion of Commissioner Bello, seconded by Commissioner Adamat, there being no objection, the Body dispensed with the roll call.

The following members were present:

Adamat, Ronald L.
Apostol, Sergio A. F.
Bautista, Andres D.
Bello, Jose C. Jr.
Bondoc, Jarius Y.
Leviste, Jose P. Jr.
Matula, Sonny G.
Pedrosa, Carmen N.
Vilar, Antonio T.

The following non-members were also present:

Naval, David C.
Seno, Cecilio T.

APPROVAL OF THE MINUTES

Upon motion of Commissioner Matula, duly seconded by Commissioner Bello and Commissioner Bautista, there being no objection, the Committee deferred the reading and approval of the Minutes of 21 November 2005 Meeting.

INTRODUCTIONS

The resource speakers and guests from the Department of National Defense (DND) and the Armed Forces of the Philippines (AFP) introduced themselves, they were: Com. Carlos Agustin, President of the National Defense College of the Philippines (NDCP) and member of the National Defense Act (NDA) Committee; General Feliciano Gacis Jr., an adviser appointed by the Secretary to the NDA Committee; former Chief-of-Staff General Narciso Abaya, President & Chief Executive Officer of Bases Conversion Development Authority (BCDA), and consultant of the NDA Committee of the DND; Atty. Karina Tanega, a representative from the Office of the Assistant Secretary of Legal Affairs at DND; Atty. Norman Daanoy from the Office of Legal Affairs of the DND; Eng. General Manual Ibanez Jr. of the NDA Committee; Maj. Neptali Violena of the Office of Strategic and Special Studies (OSS) of the AFP; and Col. Caridad Aguilar of the Office of the Judge Advocate General.

INTRODUCTION BY COMMISSIONER BELLO

Commissioner Bello informed the Body that the Committee, headed by Commissioner Matula went through the provisions of Article XVI, Sections 1-12 and had come out with recommendations for the revision of Sections 1-5, although they had yet to propose revisions on the unfinished portions of Section 5 to Section 11.

He said that the Committee had had written various government agencies affected by the General Provisions of the 1987 Constitution, particularly the Department of Defense (DND), the Department of Interior and Local Government (DILG), the Constitutional Commissions especially the Commission on Elections (COMELEC), Commission on Audit (COA) and Commission on Civil Service (CSC), which responded positively. Hence, he said, the DND and AFP representatives were present to consult with the Committee regarding provisions in the Constitution affecting their departments.

Commissioner Bello stated that advanced copies of their proposals had been given as a working draft to the Defense Department.

STATEMENT OF COMMISSIONER MATULA

Commissioner Matula said that the presentation of Commissioner Bello was the update of the Committee activities last time and opened the floor to the presentation of the AFP and DND on their proposals with respect to Article XVI of 1987 Constitution, the General Provisions. He referred the Body to the written proposal presented, which included proposals on the General Provisions and portions of the Executive Department (Article VII).

Commissioner Bautista noted that the coverage of the Committee was limited to Articles XVI, XVII and XVIII of the Constitution.

Upon motion of Commissioner Bautista, seconded by Commissioner Bello, the proposals that were not in jurisdiction of the Committee would be forwarded to the proper Committee.

Commissioner Bello pointed out that Section 16 of Article VII also affects the

AFP. He suggested that the Committee that has jurisdiction over the Executive Department of the Constitution consider this provision.

PROPOSAL OF DND AND AFP

Commodore Agustin asked whether they would only address Articles XVI to XVIII, as they had also submitted amendments to Article II (Declarations of Principles and State Policies), Article VIII (Judicial Department) and Article IX (Constitutional Commissions).

The Chair asked resource speakers to present all their proposals, and those not in the Committee's jurisdiction would be referred to the appropriate committee.

Commodore Agustin said that NDA Committee who had been working on amendments of the National Defense Act for more than six months initially took up the proposal from the DND. When the letter from the Committee reached the Secretary of National Defense, the NDA Committee was likewise tasked to address the provisions in the Constitution concerning the DND and AFP. He referred the Body to the letter of Asst. Sec. Araceli G. Roxas-Rivera attached in agenda distributed.

Commodore Agustin summarized their proposal, as follows:

1. Article 2, Section 3: On Civilian Authority - retain the first sentence and place the second sentence in Article XVI, Section 4
2. Article VII, Section 16: On Confirmation of Officers of the AFP - only the Chief of Staff, AFP, Vice Chief of Staff and Major Service Commanders should be subject to confirmation by the Commission On Appointments;

3. Section 18: On Armed Forces – reference to all generic armed forces should refer specifically to the Armed Forces of the Philippines (AFP);

4. Section 21: On international agreements - certain executive agreements with foreign governments may be entered into as authorized by the Constitution in the interest of national security and welfare

Commissioner Agustin read the original provision and their proposed addition:

1. Article VII, Section 21: No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

They proposed to add:

Provided that the President, may, in the interest of national security and welfare, enter into executive agreements with any foreign government for intelligence and logistics cooperation; short duration military training exercises; humanitarian missions, disaster relief operations; search and rescue operations; protection of the nation's marine and natural resources; and other similar arrangements; Provided, finally, that foreign military bases, troops or facilities shall not be established in the Philippines except under a treaty duly concurred in by the Senate and when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

2. Article IX, Section 2: On deputization of the AFP – specifically limit it to cases of serious armed threats to the election process in line with safeguarding and making the AFP apolitical.

3. Article XVI, Section 4: On the composition of the AFP – insert the provision in Article II, Section 3, transferring the phrase “secure the sovereignty of the State and the integrity of the national territory. It shall be composed...” to the first part of Section 4;

4. Subsequent sections should be specific to Armed Forces of the Philippines rather than armed forces;

5. Reword section on isolation from politics;

6. Provision on retirement should be more specific, not allowing extension of specific officers;

7. Provision for tenure proposal for a term of duty of three years to be removed only for cause;

8. Provision in case of emergency for extension, which appears in all armed forces in other nations.

9. Article XVII – no recommended changes

10. Article XVIII, Section 24 – delete the term Civilian Home Defense Forces (CHDF), which in the previous Constitution was used to stop abuses at the time and retain the entire provision altogether.

COMMENTS AND SUGGESTIONS BY THE COMMITTEE

The Chair opened the floor to comments and suggestions regarding the proposed amendments of the DND and AFP.

Commissioner Bello read Section 8, Article XVI regarding upgrading pensions and benefits of the retirees, and asked whether they had included this in Section 7:

The State shall, from time to time, review to upgrade the pensions and other benefits due to retirees of both the government and the private sectors.

General Abaya said that although Mr. Agustin did not mention it in their working draft, they had actually recommended the retention of Article XVI, Sections 7 and 8, *in toto*.

Commissioner Bautista noted that in the proposal in Article II, Section 3, the third sentence was to be transferred to Article XVI, but that the second sentence, which reads, "The Armed Forces of the Philippines is the protector of the people and the State" was proposed to be deleted.

Commodore Agustin answered that there was considerable debate regarding the deletion, but the consensus was that it would no longer be necessary to state that sentence.

General Abaya said the second and third sentences of Section 3 do not follow the first sentence which states that "*Civilian authority is, at all times, supreme over the military.*" He suggested that if the Committee felt that having a one-sentence provision was a hanging sentence, a general statement to explain what the Constitution meant by civilian authority being supreme over military would suffice.

He said that the second sentence stating "*The Armed Forces of the Philippines is the protector of the people and the State*" was not part of what would be transferred to Article XVI. Section 4 of the Article II states that "*The prime duty of the Government is to serve and protect the people.*" He said that the matter of protecting the people had become very controversial in previous years, thus it was proposed for removal from Section 3. He said that the provision on what AFP is called to do would not be completely removed because Section 4 says that it is the prime duty of government to serve and protect the people.

Commissioner Bautista inquired whether it was the position of the resource persons to propose the deletion of the said sentence because it seemed that it had been misused in the past, to which General Abaya answered that this was the perception during their discussion.

INQUIRY OF COMMISSIONER PEDROSA

Commissioner Pedrosa asked if the proponents considered a change in the form of government when they wrote their amendments. Mr. Agustin said that they did not address the system of government because they were only asked to cover provisions affecting the DND and AFP. He said that the use of the term President refers to the head of government, and it could be changed accordingly.

The Chair agreed that the proposals of the DND and AFP had to fit the total context of the final draft agreed upon. Commissioner Bello added that whatever would be the form of government; the Commander-in-Chief should be specified in the final draft, whether this would be the President or Prime Minister.

General Abaya said that it was not just a matter of who would be the head of government but it would be a question of who would be Commander-in-Chief. He said that the NDA Committee did not discuss these implications of having a President or Prime Minister becoming the Commander in Chief, but proceeded to discuss the provisions in the context of the present form of government.

INQUIRY OF COMMISSIONER BAUTISTA

Commissioner Bautista inquired as to the views of the resource speakers on whether the form of government should be changed from a Presidential to a Parliamentary form, and the structure of the republic from Unitary to Federal. Commissioner Pedrosa added that it was important for any proposal to look at the context in the future.

General Gacis said that the issue of the form of government in relation to AFP merits further study and discussion. He recalled that the Philippines has inherited its system from the American system, including the Commander-in-Chief clause. He said that there was no Chief-of-Staff in the US, only Chief-of-Staff of the Army, Air Force and Navy who report directly to the Secretary of Defense. In the past, the ones providing operational direction to the AFP was the Joint Chiefs of Staff headed by the Chairman. However, this arrangement changed when US Secretary of Defense Rumsfeld placed the Joint Chiefs of Staff directly under the Department.

Presently, he noted, in the US system now, the Secretary of Defense provides operational direction to the US armed forces, without the presence of a Chief of Staff, which differs from the Philippine practice. He said that in other countries, like Australia and UK, there is no Chief of Staff, only Chief of the Defense Forces who is part of the staff of Minister of Defense. He

said that the configuration of the hierarchy of the armed forces in a parliamentary system of government deserves further study, as it has implications on Chief of Staff of the AFP and the Commander in Chief clause.

Commissioner Pedrosa said that the members of the Consultative Commission were hoping to be guided by people who understand the repercussions of the provisions regarding AFP. She said that what General Gacis shared was consistent to the provision on civilian authority being supreme over the military. She said that it seemed to be the guiding principle of the way other countries had adopted not having a Chief of Staff but a Joint Chief of Staff under the Ministry of Defense, which she said was an important article concerning the armed forces. She inquired whether this was something that the DND and AFP would like to see in the amended Constitution.

SUGGESTION OF COMMISSIONER APOSTOL

Commissioner Apostol stressed that the proposal submitted was based on the presidential system. He inquired whether the AFP and DND were willing to submit proposals in case of a change in the form of government or structure of the republic to a Parliamentary system, Federal system or Federal-Unitary system so that the Commission would be guided accordingly on how to treat the affected agencies.

General Gacis reiterated that the proposal was based on present form of government and did not take into consideration any alternative forms because it was not within the NDA Committee's mandate.

Commissioner Apostol suggested that proposals be prepared based on a Parliamentary and Federal System of

Government, where the AFP has operational control and is not divided.

Based on observation of other countries, General Gacis said that in a Parliamentary system, the three major services of the Army, Air Force and Navy would remain, but the powers and configuration of the general headquarters where the Chief of Staff is in relation to DND, would have to be rearranged.

Commissioner Apostol said that in the event of a shift to a Parliamentary system, the Secretary of Minister of Defense would be a member of the Parliament. This would have political implications unless they could come up with a proposal to “shield the armed forces from the intrusion of politicians.” He said that the Committee was interested in the matter because the political color would change if the head of the armed forces is a politician.

Mr. Agustin said there was a need to differentiate the terms Chief of State from the Head of Government. In all countries, he said, there is a Chief of State and a Head of Government, while in some authoritarian countries, there could be only one person representing both of these titles; the armed forces report to the Chief of State; for royalties, the armed forces reports to the King, while for empires, they report to emperors as defined in the Constitution. He pointed out that In the US, the President is both Head of Government and Chief of State. He said that in case the Philippines becomes Parliamentary, the Committee has to define who would be the Chief of State to whom the armed forces would report. He said that no matter who the Prime Minister would be, the AFP should not be politicized. He said that this was the way in democratic parliamentary countries where the Prime Minister has little control over the armed forces; it is the Congress that controls thru its power regarding budgets, policies and other aspects in the government.

Commissioner Apostol, seconded by Commissioner Pedrosa, then moved for a suspension of the discussion pending the submission of DND and AFP’s proposals taking into context the tendency to shift to a parliamentary form of government and a federal system.

Attorney Tanega explained that the NDA Committee had discussed the present proposed amendments to the 1987 Constitution under the assumption that it would be under the present presidential form of government. She said that they could not give a particular stand at the moment as to which form of government the AFP and DND preferred. She said that the proposed amendments were arrived at by resolution and consultation of the DND and AFP together. She said that they would be willing to propose amendments under the parliamentary form of government. However, she said that there were numerous and varied forms of parliamentary governments as seen in the different parliamentary countries practicing this. She said that if the Committee could provide specific information into the kind of parliamentary form of government they were talking about, the AFP and DND would be willing to submit their proposals to it.

CLARIFICATION BY COMMISSIONER PEDROSA

Commissioner Pedrosa clarified that the issue was not a matter of preference or choice between presidential or parliamentary form of government. She inquired whether in the event of a shift, the proposed amendments would apply to both systems. She stressed the need for two sets of proposals so the Committee would be guided accordingly.

General Abaya recalled what Secretary Gacis said earlier regarding most provisions concerning the armed forces as being copied from the US models. He said that in the event of a shift to a form of government

other than the presidential form modeled after the US, they could even forego with the “Commander in Chief clause”. He said that they had gone to the extent of checking the proceedings of the 1986 Constitutional Commission regarding the said clause and did not find sufficient material as to its intention.

He said that there was also a dearth of discussion in the deliberations of 1986 Constitutional Commission regarding the sentence on civilian authority being supreme over the military [Art 2, Sec 3 (1)]. This was the basis for their proposal to add an explanatory sentence following the said provision on what was meant by supreme authority. He stated that present politicians thought that certain congressmen, for example, have supreme authority over military commanders in their area and including the disposition of forces. He observed that there were politicians who interpreted the provision according to what suited their best interests.

He agreed that a further study into the matter would be needed and what they were presenting was neither exhaustive nor complete.

Commissioner Apostol stated that the Committee would accept the recommendations but would request the resource speakers to submit a separate proposal on the alternative systems or forms of government.

COMMENT OF GENERAL ABAYA

General Abaya gave the observation that in the US model, the command goes from the president to the defense secretary to the commander in chief of the military. He said that in the case of the Philippines, the command line goes directly from the president to the chief of staff. He remarked that there had been discussions on whether

the country's defense secretary is considered part of the command line.

General Abaya said that when he was chief of staff, he worked on the assumption that the command line goes directly from the president to him. However, he noted that there is also that thinking that the defense secretary—being a cabinet member and a department secretary and therefore an alter-ego of the president—is also part of the chain of command.

COMMENT OF MR. IBAÑES

Mr. Ibañes noted that one of the primary characteristic of an armed forces is that it is structurally monolithic, such that it could adapt to any form of government. He said that what is important is to ensure that the armed forces would be insulated from partisan politics. He stated that the Commission should come up already with a model form of government—as a starting point—in order to position the armed forces.

QUERY OF COMMISSIONER NAVAL

Commissioner Naval referred to the proposed amendment in the Constitution where the president or the prime minister in the new form of government will be the one to appoint the chief and vice chief of staff of the Armed Forces of the Philippines—as opposed to the current practice of the president appointing officers with the rank from colonel to naval captain. He asked, aside from the abovementioned heads of the armed forces, what officer ranks the president or the prime minister could appoint.

Mr. Agustin said that in order to insulate the armed forces from partisan politics, it would be better if the confirmation process of the Commission on Appointments (CA) be limited only to major service commanders, the vice and the chief of staff. He remarked that the process is also disruptive in the operations of the armed

forces because the officers will have to prepare documents and personally appear before the CA to be promoted.

Commissioner Naval asked about the basis for classifying AFP officers as generals, colonels, etc. Mr. Agustin replied that there are many laws guiding the determination of rank of officers in the AFP, the primary of which is R.A. 291 including the amendments to it. The Act, he said, includes various provisions on personnel management of the AFP.

General Abaya noted that the 1987 Constitution, particularly Section 16, Article VII, allows the President, “with the consent of the Commission on Appointments,” to nominate and appoint heads of the executive departments, ambassadors, other public ministers and consuls, and officers of the armed forces from the rank of colonel to naval captain. He said that the titles—other than those mentioned for the armed forces—are positions and not ranks.

General Abaya said that the primary reason for their recommendation to limit appointive officers facing confirmation was that position is different from rank. He said that only certain positions—namely the chief of staff, the vice chief of staff and the commanders of the major services of the AFP (army, navy and air force)—should be the only positions confirmed by the CA.

But in the case of foreign service officers, General Abaya noted, the officers are confirmed both for rank and position, starting from FSO4 (Foreign Service Officer 4). This is also the case in the confirmation of an ambassador (position) who may either be Chief of Mission 1 or 2 (rank), he added.

Thus, General Abaya noted that in the AFP, the only one confirmed in the same fashion is the chief of staff who is a four-star general. He said that when he was confirmed as a three-star general, it was not an automatic confirmation as either TDCS or Southcom Commander, which were the

positions he held concurrent with the confirmed rank.

He further explained that in the case of the Philippine National Police (PNP), the CA does not even confirm the Director General, which holds the equivalent of a four-star general in the military. General Abaya thus wondered why the 1987 Constitution subjects only the armed forces to a rigorous confirmation process.

Finally, General Abaya noted that in the United States, although its commission on appointments confirms military ranks, the confirmation process is merely ministerial. The commission, he explained will only summon low-ranking officers of the armed forces if they face an issue.

COMMENT OF THE CHAIR

The Chair expressed his personal support to the proposed amendments to the Constitution regarding the appointment of lower-ranking officers of the military. He explained that such amendments will insulate them from patronage politics. He favored the proposals of General Abaya and the other members of the resource panel.

Commissioner Bello explained that the 1987 Constitution does not provide for the appointment of the PNP officers because the PNP Law was only approved in 1990. This law, he said, provides for a confirmation procedure for the director general. But in the 1987 Constitution, he explained, there is no such provision that is why the CA does not subject the PNP director general to confirmation proceedings.

Reverting to Commissioner Naval's previous query, Commissioner Bello said that in the armed forces, there are promotion boards in various levels. All promotions recommended by the AFP through the defense department shall be the subject of approval by the President of the Republic, he explained.

INQUIRY OF COMMISSIONER NAVAL

Commissioner Naval asked what proposal the resource person was favoring, as he cited the second proposal providing for the prime minister or the president, as the case may be, to appoint generals and flag officers of the armed forces of the Philippines.

General Abaya said that they favor the first proposal, where only the chief of staff, the vice chief of staff and the commanders of the major services of the AFP would be subject to confirmation. The other proposal, he explained, was only a “contingency position,” where the CA confirms only the star-rank officers of the armed forces.

Commissioner Naval asked General Abaya about the generals and flag officers that are to be confirmed as distinguished from the positions of chief of staff, vice chief of staff and commanders of the major services of the armed forces.

General Abaya reiterated his previous proposal on the distinction between the position and the rank.

INQUIRY OF COMMISSIONER APOSTOL

Commissioner Apostol asked General Abaya how many generals the country has at the moment. The latter replied that R.A. 9186 calls for a 1.125 percent of the officer corps; in absolute figures, the AFP has 135-136 General Officers (one-star to four-star), of this, there are about 50-60 one-star generals, 30+ two-star, 13 three-star, and only one four-star general.

The Chair asked whether General Abaya’s group preferred the original version of proposed amendments to the Constitution, and not the alternative proposal. He further clarified that this position follows the theory that the less the military go through the CA, the less political interference there would be in the military.

General Abaya clarified that other provisions of their proposal even discourage

AFP being deputized during elections, unless in conditions where “extreme, serious armed threat” exists. He noted that the Constitution singled out the AFP as the only agency that should not practice partisan politics. Thus, he said, any measure that will reduce the temptation of armed forces officers from becoming partisan is most welcome.

COMMENT OF COMMISSIONER PEDROSA

Commissioner Pedrosa said she did not agree to the view that it is immaterial whether a president or a prime minister has direct command to the military. She said that is in fact central to the problem. Commissioner Pedrosa noted that the AFP sways political power—where the military is, so the political power will be.

Thus, Commissioner Pedrosa expressed her view that configuring the military in a parliamentary setup is a dilemma—where the military could gravitate either around the head of state or the head of government.

Commissioner Apostol noted that Commissioner Pedrosa’s question had already been answered in a book by Chairman Abueva, which explained that the prime minister nominates the appointee, and the head of state makes the appointment.

In response to the question of Commissioner Pedrosa, Commissioner Bello enumerated a few parliamentary models in relation to command over the military:

1. France – the “strong” president is officially designated as commander in chief of the armed forces; the president commands the military, not the prime minister.

2. Great Britain – the king or queen is the commander in chief of the armed services, but he/she coordinates with

the prime minister as far as the employment or use of armed forces is concerned.

3. Japan – although a unitary government, the commander in chief during the Meiji era is the emperor. In the transition during the time of McArthur, the command comes from the prime minister but in coordination with the emperor.

4. Malaysia – a federal form of government, the nine sultanates has a king who is the chief of state, and the prime minister is the chief of government. The king is the commander in chief of the Royal Malaysian Forces.

Therefore, Commissioner Bello explained that the matter of command over the military would depend on how a parliamentary government would be treated—whether to have a strong president or a strong prime minister.

QUERY OF COMMISSIONER ADAMAT

Commissioner Adamat asked General Abaya if in the past he had any conflict about the chain of command in relation with the president and the secretary of national defense. He also asked if the former chief of staff could recommend a better system.

General Abaya said that the issue was not just a matter of communication, but a question of command responsibility as well. He said he has no qualms including the defense department in the chain of command, adding that that will even enhance civilian supremacy over the military.

ADDITIONAL INPUT OF COMMISSIONER MATULA

Commissioner Matula added that in the case of the German Constitution, it provides that in time of peace, the commander in chief is also the Minister of defense; it is

only in time of emergency where the commander in chief is the chancellor.

Commissioner Adamat asked if the body could expect a proposal from the resource persons on the structure of the armed forces vis-à-vis a parliamentary-federal type of government.

The Chair remarked that it would abide by the decision of the majority but was hesitant to impose such a requirement from the AFP and the Department of National Defense. It said that maybe the appropriate committee that could solicit such proposal would be the Committee on the Form of Government. He explained that the resource persons came in prepared by virtue of the committee's invitation only on about proposed revisions on the 1987 Constitution and not on the Consultative Commission's proposed charter.

Commissioner Pedrosa said that the issue is not about asking the armed forces to come up with any proposal. Rather, she elaborated, it would be to the advantage of the AFP if it could come up with two sets of proposals so it would be better places in case changes would be done on the present Constitution and form of government, or a new charter would be created and the country shifts to a parliamentary form of government and structure of the republic.

The Chair agreed with Commissioner Pedrosa's suggestion, but nonetheless desisted from making any formal requirement.

REPLY OF GENERAL ABAYA

General explained that the defense secretary had already formed a committee that will come up with a national defense act, which will essentially address the issues on the structure of the AFP. This committee, he clarified, was formed even before proposals to change the form of government have arisen. Nonetheless, he

agreed to take into consideration the sense of the Consultative Commission that the country would most likely need to shift to a parliamentary form of government, inputting the same to the National Defense Act being crafted.

General Abaya added that because the committee was about to go into Item 4B of the Agenda, and that they have several proposals on some items on the same (specifically Article 16, Sections 7 and so forth), he asked if the panel could be allowed to stay on and be part of the discussions.

The Chair replied in the affirmative and welcomed the intent of the resource panel. He then asked the Co-chair to introduce Item 4B of the agenda.

SUSPENSION OF MEETING

At this juncture, the meeting was suspended.

It was 3:45 p.m.

RESUMPTION OF MEETING

At 4:04 p.m., the meeting resumed.

PROPOSAL ON ARTICLE XVI, SECTION 5(5)

Co-Chairman Bello resumed the discussion of the DND-AFP proposal, taking off from Section 5, paragraph 5, of Article XVI, which was recommended by the Committee to be retained as is, which means that there would be no extension of services of retired military officers.

Commissioner Apostol reminded the Body about his proposal concerning the non-appointment of retired members of the Armed Forces to any civilian position two years following their retirement, and asked General Abaya about his views on this.

General Abaya said he was not agreeable to the proposal, saying that there is no such thing as a “military mindset,” and that military officers are just as qualified for any government position as any civilian. He added that about 90% of military generals have masters’ degrees, and not just military training.

Commissioner Bondoc shared the same view as General Abaya, saying that the Apostol proposal unnecessarily bars fresh military retirees from government positions, which they might be the most, qualified to hold.

Likewise, Commissioner Chua agreed, saying that in his experience as a businessman, ex-military men proved to be better managers than those coming from the private sector.

Commissioner Vilar said that the proposal discriminates the military from serving the country and that instead of being rewarded for their service, the proposal will be a punishment to them.

At this point, Commissioner Bondoc appealed to the proponent to withdraw his proposal. Commissioner Vilar seconded the motion.

Chairman Leviste said that the appointing power should be given free rein to pick the best and most qualified applicant, whether military or civilian.

Commissioner Apostol defended his proposal, saying that people have been talking about an increasingly militarized government. He said that his proposal was in line with the provision that says there will be no extension of service of retired military officers.

Commissioner Bondoc responded by saying that the talk of the people that Commissioner Apostol referred to has no scientific basis, and that they should look

beyond the present and far into the future on how such a ban on the immediate hiring of retirees of the Armed Forces will tie down the hands of the government and future chief executives.

Chairman Leviste said that there's also the opposite side of the coin, which is the "politicization" of government bureaucracy, and yet there is no ban on former senators being appointed to heads of government corporations, even if they are beyond the age of appointment.

Commissioner Bello said that having heard several views on the Apostol proposal, the matter will be decided on later. He then read the DND-AFP proposal on the same section, as follows:

Unless otherwise provided in the Constitution, laws on retirement of military officers shall not allow extension of their service of specific officers.

Commissioner Apostol said that there is a recommendation from the DND-AFP that military officers shall be compulsorily retired upon the completion of 30 years of active service, instead of reaching the age of 56 years. He proposed the rewording of the proposed amendment as follows:

All military officers who have rendered 30 years of service shall be retired compulsorily without extension.

General Abaya said that there is no need to put it in the Constitution since it is too specific.

Commodore Agustin said that he agreed to the retention of the provision since it would remove the flexibility of the President to extend the service of an individual officer who is ready to be compulsorily retired, except if the law provides tenure in position. He said that the issue of retirement should be left to Congress and that the latter can determine when an officer should retire.

PROPOSAL TO DELETE ARTICLE XVI, SECTION 5(6)

Commissioner Bello said that the Committee was proposing the deletion of Section 5(6), Article XVI but the DND was for its retention.

General Gacis said that the provision asserts that the Armed forces is a unifying factor in the national life, where all provinces are joined in an organization that will support the state under strict regimentation.

Commissioner Bautista said that the Committee decided on the deletion of the provision because it was formulated as a reaction to the Martial Law years, which was an aberration rather the norm, and that the phrase "as far as practicable" is vague and should not be included in the Constitution. He suggested that the appointing power should be given much leeway in hiring military men.

General Abaya said that the principle behind the provision is to get a fair representation from each region or province to give meaning to the provision that the AFP shall be a citizen armed force. He said that each of the different divisions is given quota to give equal opportunity to everybody.

Commissioner Naval commented that the present recruitment of officers, which requires the nomination of Congressmen from their respective areas, runs counter to the provision that the AFP shall be insulated from partisan politics.

Commissioner Bondoc asked the AFP officers present what the ultimate criterion for recruitment of officers and soldiers is: their congressional district, their region, or their aptitude for soldiery. General Abaya said that it is aptitude for soldiery.

Commissioner Bondoc then expressed support for Commissioner Bautista's proposal to delete the provision, since it appears that the recruitment of officers and soldiers is not by congressional district or by region but by their aptitude for soldiery. He added that the Constitution should be as short and concise as possible.

Commissioner Bello said that the rationale behind the deletion of the provision is that this is already provided in the National Defense Act, that regular force and the regular officers shall be recruited proportionately from the provinces and congressional districts.

PROPOSAL ON ARTICLE XVI, SECTION 5(7)

General Abaya said that they were contemplating on giving a fixed term to the Chief of Staff, but it does not mean extension of service, even if one is already beyond retirement age. He said that the NDA was also contemplating on going back to the old retirement system, where after serving for 30 years, one is compulsorily retired unless he is appointed to the next higher rank where there would be a fixed term, and if he gets appointed again to another star, there will be another term that he has to serve.

Commissioner Naval observed that that the phrase "for cause" in the first sentence of the proposed revision to the said section means that if the removal of the Chief of Staff is not "for cause," then he cannot be removed by the President. He suggested the deletion of the phrase "for cause" so that the President or the Prime Minister will have the authority to change the Chief of Staff at any time that s/he loses confidence in the Chief of Staff.

General Abaya said that in order to professionalize the Armed Forces and in order to make the position of Chief of Staff non-partisan and apolitical, they should not

serve under the pleasure of the appointing authority. He said that the AFP, in general, and the Chief of Staff, in particular, should be insulated from politics. But as it is, he noted, the Commander-in-Chief has the last say.

Commissioner Adamat said that the DND-AFP proposal would fit well in a parliamentary system, since the Prime Minister can be ousted any time by vote of loss of confidence.

Commissioner Naval said that his proposal was to make the tenure of the service of the Chief of Staff dependent upon the wish and will of the Commander in Chief. He said that the close coordination between the Chief of Staff and the Commander in Chief is a big factor in the efficient service of the Armed Forces.

General Gacis said that it is a matter of policy, and that the chief of staff has no alternative except to obey, otherwise, ethics demands that he step aside if he cannot obey legal orders. He added that chemistry between the Chief of Staff and the Commander-in-Chief is another matter altogether. He asked which should take precedence: chemistry between two persons or trying to minimize a greater evil, which is subjecting the Armed Forces, especially its head, to political pressure.

PROPOSAL OF COMMISSIONER NAVAL

Commissioner Naval proposed the deletion of the phrase "for cause" as contained in the proposed amendments of the Committee in Sec 7, Art. XVI, in order to make the tenure of the Chief of Staff of the AFP dependent upon the Prime Minister, or the President. He cited that both the Prime Minister and the Chief of Staff may be charged upon committing violations so the Prime Minister would be discreet in the exertion of that discretion.

General Abaya expressed his disagreement to the statement of Commissioner Naval. He noted that the common practice of the armed forces of other countries is to give a fixed term for the head of the armed forces.

STATEMENT OF COMMISSIONER BONDOC

Commissioner Bondoc stated that the apprehension regarding the crucial phrase “for cause” is whether this is subject to judicial review or if this is automatic. He suggested the need to clarify the matter or to search for better words. He then expressed his concurrence with the resource persons regarding the need to insulate the Chief of Staff, the highest-ranking uniformed officer, from politics.

Commissioner Bondoc added that the Commander-in-Chief or the Prime Minister should be discreet in maintaining good relations with the Chief of Staff and that the Chief of Staff should also maintain good relations with the duly elected Prime Minister, otherwise, that would be in violation of the constitutional provision on civilian supremacy.

Chairman Leviste noted that the Committee would decide on the particular provision at a later time. He proposed the commencement of discussion on Sec. 6, as he informed the Committee that the representatives from the Department of Interior and Local Government (DILG) are not present to give their recommendations. He informed the Members of the Committee that the DILG would submit their position and recommendation concerning this particular provision soon.

MOTION OF COMMISSIONER BONDOC

As proposed by Commissioner Bondoc, there being no objection, the Body approved the deferment of discussion on Sec. 6 to maximize the presence of the resource

persons, and proceed with the discussion on Sections 7 and 8

INQUIRY OF COMMISSIONER BONDOC ON SECTION 7

Chairman Leviste noted that the Committee proposed the retention of Section 7.

Commissioner Bondoc asked Chairman Leviste if there had been a case wherein a retired officer is given due consideration as regards the disposition of agricultural lands of the public domain and the utilization of natural resources.

Chairman Leviste replied that there were retirees who have been granted homestead and the opportunity to make a livelihood out of their retirement in various locations all over the country.

General Abaya explained that a case in point is the Apo Bai, which was classified as an agricultural land of public domain but the mandate of the Apo Bai entailed subdividing portions of that military camp as public domain. Chairman Leviste informed the Committee that the Apo Bai is a village which has been partitioned for the retirees.

Commissioner Bondoc asked if there is an enabling law that provides for veterans to be among the first in line for the utilization of natural resources as “a way of benefiting them.” Chairman Leviste replied that he was not aware if such a law exists.

Chairman Leviste noted that there has been a substantial backlog in the payment of the benefits of the veterans and retirees. He added that there have been suggestions from members of AGFO that the settlement of pensions should be given priority over the settlement of international and even national debt. He expressed doubt over the feasibility of such a suggestion but reiterated that the payment of pensions of the veterans had been delayed for so long.

RECOMMENDATION OF ATTORNEY NORMAN DAANOY

Lawyer Norman Daanoy imparted the experience of veterans in obtaining different forms of assistance. He noted that in practice, war veterans cannot go alone or as an individual when requesting for assistance; they needed to come as part of a corporation or an association. He explained that the specific constitutional provision is vague or silent as to dealings of veterans who have formed associations.

Attorney Daanoy recommended that the Commission should study the provision concerning the inclusion or exclusion of corporations solely formed by war veterans.

Chairman Leviste noted that some of the veterans' associations include the Veterans Federation of the Philippines, which have real property scattered all over the Philippines, and the Philippine Veterans Development Corporation in Cagayan de Oro.

Attorney Daanoy cited that some veterans' corporations also plan to deal with government arsenal especially the disposal of scrap or equipment. He noted that there is a question in the DND as to whether these private corporations are entitled to such privilege. He reiterated his proposal to include corporations formed by war veterans in the provision.

Chairman Leviste noted Attorney Daanoy's proposal for the inclusion of corporations of war veterans as beneficiaries.

PROPOSAL OF CHAIRMAN LEVISTE

As proposed by Chairman Leviste, there being no objection, the insertion of the word "veteran" in Section 8, Article XVI was approved by the Committee.

RECOMMENDATION OF COMMISSIONER BONDOC

Commissioner Bondoc stated that as far as the civilian retirees are concerned, there has not been much controversy over pension payment because of the existence of the GSIS, which "is very liquid at this point." Where veterans are concerned, Commissioner Bondoc noted that there is a question regarding the liquidity and viability of the Retirement and Separation Benefit System (RSBS) and the backlog in pension payment. He added that the backlog has grown because there is no corresponding upgrade in the pension of the veterans when salaries of those in active service are upgraded. He informed the Committee that the backlog has grown to P30 billion at present. He recommended that the Committee should find an appropriate provision in the Constitution as a way to prevent such huge backlog from happening again in the future.

Chairman Leviste informed the Committee that presently, it is the appropriation of the AFP that provides pension for the retirees. He added that the Philippine Veterans' Affairs Office also provides a portion of the pension for the retirees but the budget has never been adequate.

Chairman Leviste expressed his hope that the RSBS would also be able to fulfill a portion of that pension payment requirement. He noted that the RSBS would never be able to attain its mandated mission of providing pension for the retirees. He cited the several proposals made such as issuing bond certificates to pay for the veterans, taking a portion of the income from the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Gaming Corporation (PAGCOR) and other income-generating agencies for the pension payment of veterans but up to now, these points have not gone beyond the Committee level in the Lower House and Senate.

**RETENTION OF SECTION 9,
ARTICLE XVI OF THE CONSTITUTION**

Upon motion of Commissioner Leviste, there being no objection, the Committee approved the retention of Section 9, Article XVI of the Constitution.

SUSPENSION OF MEETING

The meeting was suspended.

It was 5:18 p.m.

RESUMPTION OF MEETING

At 5:59 p.m., the meeting resumed.

**PROPOSAL ON ARTICLE XVI, SECTIONS
9 AND 10**

Commissioner Bondoc reiterated the proposal of Chairman Leviste that Section 9 should be retained. He suggested that the Committee move Sections 9 and 10 to the Article on State Policies, if the Committee votes to retain them.

Commissioner Adamat said that he sees no problem in transferring the two Sections to the Article on State Policies.

**AMENDMENTS TO ARTICLE XVI,
SECTION 11(1)**

Chairman Leviste said that the Committee's position was to delete the first paragraph of Section 11(1) of Article XVI, in conformity with the liberalization stance as recommended by the Committee on National Economy and Patrimony.

**AMENDMENT TO ARTICLE XVI,
SECTION 11(1), PARAGRAPH 2**

Chairman Leviste said the Committee was proposing the retention of the second paragraph of Section 11(1).

Commissioner Matula suggested removing the provision on commercial mass media, since Section 19 of Article XII is a prohibition on monopolies in general, not only on commercial mass media. The first sentence would thus read: "The Congress shall regulate or prohibit monopolies when the public interest so requires."

As proposed by Commissioner Matula, there being no objection, the amendment was accepted.

**RETENTION OF ARTICLE XVI, SECTION
11(2), PARAGRAPH 1**

Chairman Leviste said that the Committee had approved the retention of the paragraph in the previous meeting.

**DELETION OF ARTICLE XVI, SECTION
11(2), PARAGRAPH 2**

Chairman Leviste said that the Committee decided to delete the second paragraph of Section 11(2) of Article XVI, as discussed in the first session of the Committee on General Provisions, and also as recommended by the Committee on National Economy and Patrimony. There being no objection, the paragraph was deleted.

**DELETION OF ARTICLE XVI, SECTION
11(2), PARAGRAPH 3**

Chairman Leviste said that the Committee decided to delete the third paragraph of Section 11(2) of Article XVI, with the same rationale given for paragraph 2 above. There being no objection, the paragraph was deleted.

**RETENTION OF ARTICLE XVI, SECTION
12**

Chairman Leviste said that the Committee's recommendation, with his endorsement, was to retain Section 12 of

Article XVI. There being no objection, the section was retained.

the next meeting on the morning of Monday, December 5, 2005.

It was 6:11 p.m.

OTHER MATTERS

Commissioner Bello suggested the inclusion in the General Provisions Commissioner Bautista's proposal of a restriction on dynasties, because there were suggestions in other Committees that it should be deleted.

Certified correct:

Com. Jose P. Leviste, Jr.
Committee Chairman

Chairman Leviste said that additional Sections that might be incorporated as a recommendation of other Committees of the Commission, as well as proposed amendments submitted by the COMELEC, and the unfinished business in the Transitory Provisions, would be tackled in the next meeting.

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Commissioner Matula moved for the deferment of the discussion on these matters.

Commissioner Adamat said that he has a proposal on the ordinance of the Constitution, specifically the districting of political areas, and that at a proper time he would come up with a resolution along that line.

Chairman Leviste requested Commissioner Adamat to put his proposal in writing in time for the next meeting.

Commissioner Bello suggested that the discussion on hiring/banning of retired military officers be taken up again in the next Committee meeting. Chairman Leviste said that the issue shall not be discussed and voted upon in front of their guests so as not to embarrass anyone.

ADJOURNMENT OF MEETING

Upon motion of Commissioner Matula, duly seconded and there being no objection, the Committee meeting was adjourned until