

2005 CONSULTATIVE COMMISSION
Committee on Preamble, National Territory,
Declaration of Principles and Policies
Citizenship, Bill Of Rights, Political Rights
MINUTES

Monday, November 28, 2005

CALL TO ORDER

At 10:36 a.m., Committee Chairman Francis Chua called the meeting to order.

ROLL CALL

Upon suggestion of the Chair, there being no objection, the Body dispensed with the roll call.

The following members were present:

Abueva, Jose V.
Abueg, Alfredo Jr. E.
Adamat, Ronald L.
Chua, Francis
Dee, Donald G.
Lambino, Raul L.
Matula, Jose Sonny G.
Ortiz-Luis Jr., Sergio R.
Varela, Miguel B. (Co-Chairman)

Attorney Job M. Ambrosio from the Puyat, Jacinto and Santos Law Office (PJS Law Office) was also present as a guest resource person.

OPENING REMARKS OF THE CHAIR

Committee Chairman Francis Chua stated that the proposed changes of the Constitution from the Preamble to Article V on Citizenship have been circulated to the Body, so that it can go over the copy and call attention in case of any specific changes for the Committee's deliberation. According to the Chair, so far he had received a letter only from Commissioner Abueg whose concern would be the main item on the

meeting's agenda. Since nobody among the rest of the members complained on the proposed changes, it presumed that the rest of the members equally approved of the proposed changes.

**COMMISSIONER ABUEG'S
CONCERN ON THE ISSUE OF
NATIONAL TERRITORY**

Considering that Presidential Decree 1596 created the municipality of Kalayaan, Province of Palawan, which is named after the Kalayaan Island group, part of the Spratly Islands, Commissioner Abueg proposed retaining Kalayaan as a recognized part of the Philippine territory. The Commissioner mentioned that a proposal was submitted already which aimed at the identification of Kalayaan as part of Western Philippines. He further stated that the definition of its area should be included in the discussion.

As suggested by Commissioner Abueg, the word "actual" should be inserted between the words "or" and "jurisdiction" so that Article 1, National Territory, would read as "...those territories over which the Philippines has legal or historic claim, and all other territories over which the Philippines has sovereignty or *actual* jurisdiction..."

But Chairman Abueva stated that if the word "actual" is placed before "jurisdiction," then the issue is raised whether "sovereignty" is also actual or not.

Commissioner Dee asked whether the word “de facto” instead of “actual” would make a difference. Commissioner Abueg stated that the “de facto” is subject to question.

Commissioner Matula averred that the word “actual” would run contrary to the actual exercise of jurisdiction in other territories which might be excused later on, to the country’s detriment. He suggested retaining the wording in the proposal so as not to jeopardize the country’s interest in areas where the country is not exercising effective jurisdiction.

Commissioner Matula stated his understanding of Commissioner Abueg’s interest which is to cover the areas where the country has effective local government units. The Chair, however, pointed out that Commissioner Abueg’s intention was to call the attention of the Committee not only on the aspect of local government but that the Philippines should not forego the areas where it has jurisdiction, where there are residents and local government operating in such areas.

Commissioner Abueg explained that the reason for using the word “actual” is to show country’s position in its Constitution that the municipality of Kalayaan is part of the country’s jurisdiction. Commissioner Ortiz-Luis suggested creating another classification and using “sovereignty” and “jurisdiction” without limitations to it.

At this point, the Chair reported his conversation with a representative from the Embassy of China about the issue of Kalayaan; the latter saying that China’s position is not to claim the Spratly Islands, but China also hopes that the Philippines and Vietnam do not file their claim unilaterally and instead, discuss it among the claimants. With these, the Chair recommended to modify the

suggested proposal of Commissioner Abueg and use general rather than specific terms. The Chair objected to the specific use of names such as Kalayaan or Sabah, and instead suggested referring to them as “any area that the country has actual possession”.

Commissioner Abueg said that the purpose in broadening the word “legal” in the 2005 Constitution is to include the protection of the Kalayaan municipality. However, he agreed with Chairman Abueva to remove the word “actual” provided that there is an understanding that the word “legal” in Article 1 refers also to the country’s present occupation, claim, and jurisdiction exercised over the municipality of Kalayaan. But Commissioner Ortiz-Luis said the understanding of the word “legal” would appear only in the records of the Commission and that it would be formally documented in the matrix as part of the explanation, but would not appear in the provisions of the Constitution.

Attorney Job M. Ambrosio stated that the word “legal” also includes former President Marcos’ Presidential Decree 1596 which has not yet been amended or repealed, and which therefore will strengthen the claim of the Philippines. He noted that the phrase “including those territories over which the Philippines has legal or historic claim” as used in the decree would encompass coverage of exercise of sovereignty and jurisdiction.

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AMENDMENTS TO THE PREAMBLE

The Chair noted the proposed amendments to the Preamble, so it would read:

*“We, the sovereign
Filipino people, imploring
the aid of Almighty God, in
order to build a just and*

humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, responsibly and sustainably develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution."

Commissioner Adamat said that in the previous meeting, there occurred a passionate discussion on the retention of the word "conserve" which, in the present draft, has been deleted in place of the adverbs "responsibly and sustainably". The deletion of this term means that the aspect of conservationism is now absent in the Constitution, he said.

Commissioner Ortiz-Luis said that the word "conserve" was deleted because it implied that natural resources could not be made use of. Therefore, it was better to replace "conserve" with words that mean "to take care of but not necessarily to prohibit use of".

Commissioner Adamat replied that this definition is too extreme, restrictive and protective. Conserve, he said, simply means that one must always think of the next generation in terms of developing and utilizing natural resources. Although at first glance the concept appears to be already covered by the words "sustainable" and "responsible", he said these terms could not convey the very real need for conservation.

Commissioner Adamat added that while the writers of the 1987 Constitution did not explain the rationale for using the word "conserve," he believed that there was a strong and convincing reason for placing it there. Conservation, he said, is very necessary even if there now exists the intention to liberalize the ownership of natural resources in order to spur development in the country.

Commissioner Lambino said that the Preamble of the Constitution only serves two major purposes: 1) to show who authored the Constitution – in this case the Filipino people – and 2) to shed light on the provisions of the Constitution by providing means for the construction and interpretation of these provisions.

In the case of the term "conserve," Commissioner Lambino said that this word was used in many debates particularly in the passage of different laws regarding national forestry. The words "conserve and develop" were also frequently cited even in the laws for the protection and the establishment of forest areas that are not open for exploitation or exploration. In addition, its inclusion in the Preamble of the 1987 Constitution has often been used to demonstrate that the establishment of these protected areas was in accordance with terms provided by that Constitution as means of legislature. In this case, he said, the Preamble also serves as a declaration of principle and a means of explaining the intentions with regards to other provisions, particularly in the economic areas. However, removing the word "conserve" would not significantly change anything, he said.

Commissioner Ortiz-Luis added that in certain instances, the inclusion of the word "conserve" in the Preamble could pose a problem. For example, if the Philippine Eagle was found to be a

carrier of bird flu, it has to be protected by law; it is for this reason that the word has no place in the Constitution. Commissioner Ortiz-Luis averred that the concept of conservation is covered in “responsibly and sustainably” and specific laws must be passed to deal with different situations.

Commissioner Lambino said that to develop the country’s patrimony would include the intention to conserve it, because to develop means to encourage growth and maintain resources. The word “develop” is comprehensive, he said, and also means to improve, maintain, even increase. He said that it is alright to delete the word “conserve” and that even “responsibly and sustainably” can be removed.

Chairman Abueva pointed out that development could be destructive or sustainable. The concept of sustainable development was invented to include conservation in an active way, and therefore it was probably acceptable to retain the words “responsibly and sustainably”. He added that “conserve” means that a protected resource cannot be touched or utilized, but to responsibly develop, on the other hand, means to make the best use for the present generation as well as protect the rights of future generations.

The Chair pointed out that there are specific laws concerning protected areas, so that there are laws regulating and prohibiting mining, logging and other activities, and these laws fulfill the functions of conservation.

Commissioner Adamat said that he had no problem with the deletion as long as the rationale was clear.

Commissioner Lambino proposed the deletion of the phrase “under the rule of law and a regime of truth, justice,

freedom, love, equality and peace.” He said that this has been covered in the previous passage which speaks of the blessings of independence and democracy. There was therefore no need to overemphasize the significance of democracy, otherwise there would be no end to the addition of highfaluting words in the Constitution. He suggested that the passage read as follows:

“... under the blessings of independence and democracy, do ordain and promulgate this Constitution.”

Chairman Abueva agreed that the current Constitution is verbose, however he warned that to remove the phrase might be interpreted as symbolic of the current Concom’s rejection of the 1987 Constitution as a whole. He said that the passage does not hurt anyone and advised against the deletion in order to avoid controversy. He pointed out that this would be the only Constitution in the world that recognizes love as a value.

Commissioner Lambino said that the word “love” should not be included in fundamental law, particularly as the word has different interpretations and definitions. He strongly recommended the removal of the word “love.”

Chairman Abueva replied the word “love” as used in the Preamble probably denotes Christian love or Muslim love, and so it is a basic human value, whatever its meaning in different countries.

Commissioner Lambino said retention of the passage in question might not do any foreseeable harm at present, but might have negative consequences in the long term.

**COMMISSIONER MATULA'S
PROPOSED AMENDMENT ON THE
ISSUE OF HISTORIC AND LEGAL
RIGHTS**

"The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, including those territories over which the Philippines has legal or historic claim, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines."

Commissioner Matula observed that the amendment uses the phrase, "legal or historic claim" while the 1973 Constitution speaks of "historic claim or legal title." He requested that the correct phrase be used.

Commissioner Lambino said that the correct phrase used in the 1973 Constitution was "historic rights or legal title."

Chairman Chua clarified that the intention of the Committee was to copy the wording of the 1973 Constitution but that a typographical error had occurred.

As proposed by Commissioner Matula, duly seconded and there being no objection, the Committee restored the phrase used in the 1973 Constitution, which reads:

"The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, including those territories over which the Philippines has historic rights or legal title...."

**COMMISSIONER ABUEG'S
PROPOSED AMENDMENT ON
THE NATIONAL TERRITORY**

Commissioner Abueg suggested that the word "marine" be inserted just before the phrase "and other submarine areas." He said that the original phrasing connotes that the Philippines is claiming only the submerged areas covered by the term "submarine", but that the term "marine" comprises the entirety of the waters, both surface and submerged areas.

Commissioner Lambino pointed out that the passage in question lacks depth because it has omitted the item "continental shelf", which was also not included in the Constitutions of 1935, 1973 and 1987. He noted that the U.N. Convention on the Law of the Sea recognizes the continental shelf as referring to the landmass that may extend even up to the territorial sea, the exclusive economic zone; the insular shelf, on the other hand, refers only to the shallower portion of the sea extending from the coast. Palawan, he cited, is an example of a continental shelf extending towards the sea.

Commissioner Lambino suggested the following rephrasing:

“... including the territorial sea, the seabed, the subsoil, the continental shelf, the insular shelf and the other submarine areas....”

Commissioner Abueg inquired as to whether the term “insular shelf” might be substituted for “continental shelf.” Commissioner Lambino replied that this would not be advisable since the terms refer to different areas: the insular shelves are narrower, similar to beaches, while the continental shelves are the submerged part of the landmass that extend deeper towards the sea and may include portions of the seabed that may or may not be navigable by big boats. He reiterated that Palawan, for example, is a creation of the natural movement of the earth’s crust that includes a continental shelf extending to the Sulu Sea. He explained that because it is still part of the continent, the continental shelf is a continuity of the island formation but submerged by water.

The Chair inquired whether it is possible for a continental shelf to belong to two countries. Commissioner Lambino replied in the affirmative; however, he said that international law establishes the boundaries of states divided by seawater. For instance, the Convention on the Law of the Sea establishes that a country’s territorial sea extends 12 nautical miles from its shoreline, the contiguous zone is 12 nautical miles from the border of the territorial sea, and the exclusive economic zone is 12 nautical miles from the border of the contiguous zone.

Commissioner Lambino further clarified that the continental shelves include portions of the seabed within

and beyond the territorial sea, reaching even to the contiguous zone and the exclusive economic zone. The best example of a continental shelf is Tubattaha Reef, which is found within 12 nautical miles of the Philippine shoreline and is therefore within the territorial sea of the Philippines, he said.

Commissioner Ortiz-Luis inquired whether the 12 nautical miles that define the territorial sea begin at the end of the land. Commissioner Lambino clarified that the 12 nautical miles is measured on sea surface from the shoreline.

Commissioner Lambino added that the definition of the national territory is only binding in the Philippines and not in any other country. This has been pointed out as a major flaw in the Constitution, however the definition of national territory serves three important purposes: 1) it binds Filipinos as a united nation with one territory; 2) it is important for the preservation of patrimony and natural resources; and 3) it helps establish the determination of proper territorial limits against adjacent neighboring countries. These, he said, are the only purposes of defining national territory in the Constitution. With these in mind, it would be redundant to include all the items already embodied in international treaties in the definition of national territory.

The Chair asked how the boundary is defined if two countries share the same continental shelf. Commissioner Lambino said this could be established through a bilateral agreement.

As proposed by Commissioner Abueg, as amended by Commissioner Lambino, and there being no objections, the Body approved the rephrasing of the provision to read as follows:

*“... the territorial sea, the seabed, the subsoil, **the continental shelf**, the insular shelf and other **marine** and submarine areas.”*

PROPOSED AMENDMENT OF COMMISSIONER LAMBINO

Commissioner Lambino proposed the deletion the phrase “terrestrial, fluvial and aerial domains” on the grounds that this is already covered in the words “the national territory comprises the Philippine archipelago, with all the islands and waters embraced therein.”

Chairman Chua inquired as whether the word “aerial” should also be deleted. Commissioner Lambino replied that the term “aerial” pertains to the airspace over and above the territorial land, the terrestrial and maritime areas. By international agreement, he said, the boundaries of a country’s airspace ends at the point where gravity ceases to exist and beyond this point, it is already considered open space.

The Chair noted that satellites are located 38,000 kilometers above the earth, at the point where it is possible to establish orbit, therefore airspace may possibly be defined as going all the way up to orbit. However, this definition could be problematical because while a number of satellites are currently over the Philippines, under the ITU, no country can claim that space and only the ITUs can mediate its use.

Commissioner Lambino said there was no hard and fast rule in international law regarding the limits of airspace, but that the common consensus is that it ends at the point where gravity ceases and outer space begins.

Chairman Abueva suggested that the Committee on Style be consulted regarding the proposed deletions.

Attorney Ambrosio recommended that “aerial” should be retained since this provides for airspace.

As proposed by Commissioner Lambino, amended by the Chair, and there being no objection, the Committee approved the rephrasing of the provision to read:

*“The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, including those territories over which the Philippines has **historic rights or legal title**, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its **aerial domain, territorial sea**, the seabed, the subsoil, **the continental shelves**, the **marine and** submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.”*

Commissioner Matula noted that the words “marine and submarine areas” are already covered in the phrase “the waters around, between and connecting the islands of the archipelago.”

Commissioner Lambino explained that the waters referred to here are the seas that form part of the internal waters of Philippines, based on the archipelagic

doctrine which was first espoused by the Philippines in the international community and has since been the definition included in the U.N. Convention on the Law of the Sea. The doctrine, he said, protects the Philippines and other archipelagos by stating that the waters between a nation's islands are not considered open seas but are still part of its internal waters. Therefore, the term "internal waters" does not just refer to just fresh waters but even the seas between the respective islands.

**COMMISSIONER ADAMAT'S
PROPOSED AMENDMENT TO
SECTION 22, ARTICLE II**

"The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development. The State shall consider the customs, traditions, beliefs, and interests of indigenous cultural communities in the formation and implementation of state policies."

Commissioner Adamat said that the addition of the second sentence on the customs, traditions and beliefs of indigenous cultural communities, which was culled from the 1973 Constitution, would strengthen the provision and make it more comprehensive. However, he suggested that the term "indigenous cultural communities" be replaced with the internationally accepted term "indigenous peoples."

On the definition of indigenous peoples, Commissioner Adamat said that the term can be self-ascribed or by the ascription of other people. However, a further definition is that indigenous

peoples are those who have resisted colonization and retained their culture and traditions; it is therefore not enough to claim to be an indigenous person, but it is necessary to observe traditional practices.

**PROPOSED AMENDMENTS TO
SECTION 15, 16, ARTICLE II BY
COMMISSIONER LAMBINO**

Commissioner Lambino proposed the deletion of Section 15, Article II which provides for the right to health of the people, and Section 16, Article II which provides for the right to a balanced and healthful ecology.

Commissioner Lambino noted that Sections 15 and 16 are the only provisions in Article II that deal with rights and not policies of the State, and as such, these provisions should not be included in the Declaration of State Principles and Policies [Article II]. While he had nothing against these rights, he said, they were misplaced since Article II should not establish any right of the people or the State.

At this point, Chairman Abueva asked the reason for deleting Section 5 of Article II, to which the Chair replied that this is redundant as it is already covered in the Bill of Rights.

Commissioner Lambino suggested that Sections 15 and 16 be transferred to a new section.

Chairman Abueva mentioned that human rights are already covered by the international covenants for human rights and since the government has signed these covenants, to provide an article on all human rights might be superfluous. Commissioner Lambino concurred with the Chairman that once the government agreed with these international covenants, then these covenants

become part of the law of the land and it is no longer necessary to have another article to embody those covenants.

Commissioner Matula suggested that Sections 15 and 16 be transferred to the existing article on social justice and human rights. Commissioner Lambino, on the other hand, stated that these provisions could be transferred to the General Provisions.

As proposed by Commissioner Lambino, there being no objection, the Committee agreed on the transfer of Section 15 and 16 to the General Provisions.

COMMISSIONER VARELA ON THE RIGHT OF THE UNEMPLOYED AND THE INFORMAL SECTOR

Commissioner Varela claimed that if the Committee would talk about rights, then it should also consider the rights of the unemployed and the informal sector. He noted that the informal sector has never been mentioned in the Constitution.

However, Commissioner Lambino asserted that informal sector is a broad concept of social justice.

The Chair suggested that Commissioner Varela formulate his proposal so it would be included in the Committee's referral to the Committee on General Provisions.

SECTION 22 OF ARTICLE II

Commissioner Lambino proposed that Section 22 on the right of indigenous cultural communities, should be transferred to a more appropriate article.

LAMBINO PROPOSAL ON THE IMMUNITY OF THE STATE UNDER THE GENERAL PROVISIONS

According to Commissioner Lambino, Section 3 of Article XVI on the State's immunity from suit, is another misplaced provision in the General Provisions which should be embodied instead as the new Section 5 in the Declaration of Principles. The Chair concurred in the proposal.

LAMBINO'S PROPOSAL ON THE PRINCIPLE OF ELECTION

Commissioner Lambino suggested that a new section be provided under Article II to embody the provision that "The State shall promote the presence of election through popular will and the vote of majority." Such principle, he stated, would be the foundation of the enactment of series of provisions particularly on the establishment of government. He stressed that the presence of election through popular will should always be the guiding principle in whatever form of government and whatever kind of election that will be provided for by the Constitution.

According to Commissioner Lambino, it is only through election that the nation can preserve representative democracy. Further, if no specific provision is made to this effect, there might be an election vote not necessarily through a popular will. He pointed out that one of the cardinal principles of a democratic and republican state is that there has to be an election through popular will and the observance of the rule of majority, which should be preserved and protected, enhanced and promoted.

Chairman Abueva pointed out that election is already embodied in the principle of a republican state, so it may be redundant to have another provision of the election. The idea of majority rule, according to the Chairman, is a practice of democracy; but for it to be specified as such might be misconstrued that the rights of minorities are not protected. He stated that the idea of majority rule can be provided in the rules of legislative bodies but should not be alleviated in the Declaration of Principle as it is already an accepted idea that the republican state is based on the election of the representatives.

Commissioner Ortiz-Luis stated that besides the Constitutional bodies, the mode of the Commission on Election will only be nationwide.

Commissioner Lambino responded that the observance of election through popular vote is both a guarantee as well as an imposition of what the state should follow in the conduct of election and that all forms of election can be conducted but that does not necessarily mean republican government. He cited the case of Communist China where the election is conducted only by those under the members of the communist party; one cannot run for candidacy or vote if one is not a member of the communist party. This is not an election through popular will but it is an election conducted only for a selected few. The Commissioner suggested providing for a narrative principle in order to strengthen what has long been observed and recognized in the country's jurisdiction and in order that no attempt would come out from parliament to pass a law that would limit the successful election or stifle the rights of people to participate in an election when they are not members of the political parties in parliament.

Commissioner Ortiz-Luis questioned what "election by popular will" would promote. He opined that using this phrase will not solve the possibilities of the two parties scheming with one another at the time of election.

Commissioner Lambino responded that the principle would promote the concept that the election should be open to all who may be qualified under existing laws.

Commissioner Ortiz-Luis said however that he does not think the proposed provision would solve the problem.

Commissioner Lambino responded that if Congress can come up with a law that limits the participation of the members of the political parties, without this provision, Congress would not be violating any Constitutional provision.

Chairman Abueva stated that the article on suffrage defines one who can exercise the right to vote but it does not provide for the rights of the members of the political party to vote. The Chairman stated that he liked the principle but the provision could be redundant as the provision is already covered by the principle of the republican state, by the article of suffrage, by the articles of the election of members of parliament, and the election of local government officials. He asked what would be gained by adding such principle of popular will in the election.

Commissioner Lambino said that the provisions on suffrage and other provisions of the Constitution delineate the exercise of the people the right to suffrage as well as regulate how the elections should be conducted. But these provisions, he said, have no

foundation except the concept of republicanism. He stressed that without elections, the state cannot be called democratic or republic.

Commissioner Lambino suggested defining what kind of election should be conducted which is the reason for the Commissioner's suggestion of the inclusion of the phrase "there must be always an election through popular will" because if the election should be limited only to a select few, then it will not be an election through factor assuming that there is no provision on suffrage regarding the guarantee on the exercise of the right subject to limitations as maybe be imposed by law. The Congress then can come up always with a kind of election that is not necessarily according to popular will. The Commissioner reiterated that the principle of election through popular will is not a new and strange principle in the Constitution and that the principle is observed in all republican and democratic states and there is no harm in putting these as one of the principles that should guarantee an indigenous exercise of election through popular will.

Commissioner Ortiz-Luis stated his problem with the definition of popular will and who are covered by this. Commissioner Ortiz-Luis mentioned that even with the provision, the Congress can pass laws that would disenfranchise voters even with the republican provision. He asked what the proposal would add in the Constitution.

Likewise, Chairman Abueva noted that many presidents were elected by plurality not by majority. The Chairman reiterated his reservation about the majority rule considering that the country is a pluralistic society.

Commissioner Lambino explained the difference of the two ideas. The presence of election though popular will

cover the participation of the people at large in the electoral process either as voters or candidates. He added that it is also necessary to disseminate as much information as possible, who the candidates are, what are their platforms, what are their ideologies, what are their appeals. Not having specific provision regarding the conduct of elections, according to the Commissioner, will dispel the qualifications and the limitations in the exercise of law, and that the parliament will not be guided by this very important principle that the election must always be conducted by popular will and not limited to a certain group or sector. The Commissioner stated the fear of the people that if there is a government that would like to control in perpetuity, the government can always come up with a law regarding election of officials not necessarily observing the principle of election through popular will.

On the other hand, Commissioner Lambino explained that the rule of the majority in this case does not mean one-half plus one. There are so many aspects of the rule of majority but what is important is that a law is put where a certain number of people will decide regardless whether they are more than one-half or less than one-half as long as it is the rule of majority. Moreover, Commissioner Lambino stated his view that the presence of election through popular will is not a redundant provision as it is the foundation of all democratic and republican state, for without election through popular will, the country cannot have the republican or democratic state.

Commissioner Ortiz-Luis said that even if the "popular will" is adopted, the definition of the term is obscure and can vary from person to person. The Commissioner mentioned that the word does not add value but even create some gridlock later on as the inclusion of the word still cannot cover everyone

who should be covered or prohibited in the election as voters or candidate. He said that it would only spur debate on something which may not be of use in the end.

Commissioner Lambino pointed out that the word “popular” does not mean unanimity of action nor does it mean that everybody must agree; it means something acceptable to the whole population, not necessarily unanimous. The classification of a particular group that can vote or cannot vote is not based on substantial classification; it will not be in consonance with the principle of equal protection of the law as well as the principle of popular will.

According to Commissioner Ortiz-Luis, assuming that the national identity card is issued next year and eventually becomes the voter’s identification card. But if some people in the mountains would not be issued such IDs, he said, it might become a violation of the principle of popular will. With this, Commissioner Ortiz-Luis reiterated that it would create a lot of problems.

Commissioner Lambino expressed the view that “popular will” would not create problems but instead would institute safeguards against possible government abuse.

Commissioner Varela suggested adding the phrase “popular will as may be defined by law”.

Chairman Abueva proposed that the Committee vote on the matter at hand, and the results of the voting be recorded in the right column of the matrix, then present this to the Plenary for approval so that the Commission will have the chance to look at the alternative proposals.

As proposed by the Chairman, and there being no objection, the Committee agreed to bring the proposal to the Plenary for further deliberation.

AMENDMENT TO SECTION 8 OF ARTICLE II

Commissioner Lambino stated that the issue is whether to allow stockpiling or the manufacture of nuclear weapons. In order to follow the intent of the 1987 Constitution, the Commissioner suggested retaining the provision, except to change the word “consistent” with the phrase “subject to national interest”.

Chairman Abueva mentioned that the country is for nuclear disarmament and that the removal of this provision might invite a lot of objections and opposition. The Chairman further stated that national interest is always determined by the parliament whether it is consistent to or subject to national interest.

As proposed by Commissioner Lambino, seconded by Commissioner Varela, the Body approved the substitution of the words “consistent with” with the words “subject to”.

PROPOSED DELETION OF SECTION 9 OF ARTICLE II

Chairman Abueva suggested the deletion of Section 9 as it is redundant in relation to the Preamble.

According to Commissioner Lambino, the provision of Section 9 can be covered by the principle of social justice in Section 10, and thus, can be deleted.

Upon motion of Commissioner Varela, there being no objection, the Committee approved the deletion of Section 9.

PROPOSED AMENDMENTS OF COMMISSIONER LAMBINO

Section 12, Article II provides:

“The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.”

Commissioner Lambino proposed that the second sentence should be removed, as it does not belong in this section. He suggested that the deleted sentence be transferred to the Articles under the perusal of the Committee on General Provisions or other appropriate committee.

Section 13, Article II provides:

“The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.”

Commissioner Lambino proposed that this section, rather than being deleted as originally agreed on, should be transferred to the appropriate article of the Constitution.

Section 14, Article II provides:

“The State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men.”

Commissioner Lambino suggested that this section be transferred to the Article dealing with women.

PROPOSED AMENDMENT TO SECTION 15, ARTICLE II

Section 15 provides:

“The State shall protect and promote the right to health of the people and instill health consciousness among them.”

Commissioner Matula proposed to add the following sentence: “No person shall be denied hospital or medical care by reason of poverty.” Commissioner Lambino proposed that this section be transferred to the Article dealing with health.

ORGANIZATION OF ARTICLES

Upon suggestion of Commissioner Lambino, the Committee agreed to harmonize the Articles so that Article II would deal exclusively on principles and state policies and not with matters already established in other provisions.

Commissioner Adamat reiterated that Sections 13, 14, 15, and 16 would be transferred to the appropriate committees.

Commissioner Lambino proposed that Section 18, which deals with social

justice and labor, be transferred to the Article on Labor. Commissioner Matula said that there is a provision for labor in Section 3 of Article 18.

The Chair requested the Secretariat to take note of these provisions and list the appropriate committees so that he could write the chairmen of the pertinent committees.

PROPOSAL OF CHAIRMAN ABUEVA

Chairman Abueva suggested that in order to facilitate business, instead of voting on every provision to express the will of the committee, it is possible to simply get a consensus of the whole committee, in case the committee cannot agree as a whole, then it should be noted that the Committee is divided on the matter and the reasons entered into the third column of the matrix under the heading "Comments and Alternative Proposals." This, he said, would be useful when the Commission reaches a point when there is no more time to hold plenary consultations for the reports of the specific committees; this will also offer an alternative proposal, or an issue that a Committee cannot agree on but which the Commission as a whole can vote on.

Chairman Chua agreed to the suggestion and asked the members to take note of it.

PROPOSED CHANGES TO SECTION 8 OF ARTICLE III

Section 8, Article III reads:

"The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged."

Commissioner Lambino said this section is misplaced because the Bill of Rights only covers civil and political rights, while Section 8 pertains to an economic right. He suggested that the provision be transferred to Article XIII, or be considered by the Committee on General Provisions.

Chairman Abueva noted that it may be both an economic and a political right. He cautioned that removal of this provision might invite significant opposition.

Commissioner Lambino replied that formation, assembly or grouping is a political right if its purpose is for redress against the government. However, Section 8 refers to formation of the union of an economic organization that is not directed towards government but to a particular employer, therefore it is different from the political right to assemble. For this reason, said Commissioner Lambino, the provision must be transferred to the appropriate article. He averred that it is certainly a fundamental human right, however the Bill of Rights is a guarantee against government abuse, while Section 8 is a guarantee of possible excesses by the private sector.

Chairman Abueva said that the provision includes the public sector, which covers 1.2 million people employed by the State in national and local government. Commissioner Ortiz-Luis replied that it is necessary to distinguish governmental function as regulator and as employer.

Commissioner Lambino stated that government employees are protected by the provisions of Article IX-B, which pertains to the rights of people employed in public sector. In addition, he said, the right to form an association is already embodied in Article 9. He observed that Section 8 is misplaced

and that the proposed transfer is intended to correct the wrong placement of Articles and not to downgrade the substance of the provision.

Chairman Chua said that while he understood the position of Commissioner Lambino, and the wish to put everything in its rightful place, it is necessary to address the issue raised by Chairman Abueva.

Commissioner Lambino suggested that the Committee explain that the Bill of Rights is a guarantee of civil and political rights as a safeguard against government abuses. However, economic and other human rights can be established in another provision of the Constitution. He added that the Committee must explain that there are rights of the people that are not geared against the government, but could be directed against a particular sector like the private sector.

Commissioner Abueg suggested that the matter be brought to plenary for consultation.

Commissioner Matula proposed the retention of Section 8 because it pertains to the basic right to freedom of association. He said the Bill of Rights is for the protection of liberty, and freedom of association is a basic right and is not necessarily limited to employer-employee relations but other concerns as well.

The Chair noted that the commissioners had a difference of opinion, with one proposing the transfer of the section to a more appropriate location. He said that the section would be retained for the moment to prevent complaints that the Committee is not sensitive to the people's right to union or association.

PROPOSED ARTICLE IV: BILL OF DUTIES BY CHAIRMAN ABUEVA

Chairman Abueva said that Article IV is designed to balance the Bill of Rights. He suggested that it be called simply the "Bill of Duties" and to subsume the word "obligations."

Chairman Abueva said that the Bill of Duties is a historic opportunity to educate the Filipino people, including national leaders, who as a people are so obsessed with rights, entitlements and privileges but often forget duties. He said that the people would applaud the ConCom for this innovation. He added that a Bill of Duties was actually included in the 1973 Constitution but was removed in the 1987 Constitution.

The Members discussed the sections and proposed the following revisions:

In Section 1, Chairman Abueva suggested that the word "federal" be deleted from the term "Federal Republic of the Philippines" to avoid confusion.

In Section 8, Commissioner Lambino said that the "right to a balanced and healthful ecology" should correctly be called a "duty to a balanced and healthful ecology."

There was lengthy discussion on Section 3, which reads:

"Human life, dignity, rights. Citizens shall respect the life and dignity of every human person and help uphold human rights whenever these are threatened or violated. The State and the citizens shall prevent and prohibit the killing of humans in any form and for whatever purpose."

Commissioner Lambino observed that this was a new provision and is not found in the 1973 Constitution. He inquired as to whether this provision prohibited the imposition of the death penalty. Chairman Abueva said that the section specifically prevents death penalty.

Chairman Chua said that the removal of the death penalty could raise some issues. For example, a major concern that discourages foreign investors is the peace and order situation in the Philippines while the reason for the rampant kidnapping in the country is the absence of the death penalty; thus, investors fear that putting in big money will make them targets. He inquired whether this issue should be dealt with in the Constitution or simply by passing a law.

Chairman Abueva said that Section 3 is based on the idea that all major faiths in the world prohibit the killing of humans. The purpose of this provision is to make leaders and citizens conscious that killing of humans should be prevented for whatever reasons, although in practice, the possibility of causing death can never be fully excluded as in self-defense. Chairman Abueva added that the provision can be qualified if there are conditions in which it is permissible to take human life, but that it is better to start with an absolute prohibition and only after that consider the justifiable conditions.

Commissioner Lambino said that respect for human life is an obligation of both citizens and the state, and suggested the following amendment:

“Citizens and the state shall at all times respect the life and dignity of every human person and help uphold human rights.”

Chairman Abueva accepted the amendment.

The second sentence, said Commissioner Lambino, would read:

“The State and citizens shall prevent and prohibit the intentional killing of humans in any form.”

Commissioner Lambino clarified that self-defense is not an intentional act but only a reactionary act. The provision is therefore intended to actually wipe out the death penalty.

Commissioner Ortiz-Luis commented that if the question were put on plebiscite, the death penalty would still have popular support.

Commissioner Adamat suggested the adopting the first sentence proposed by Commissioner Lambino, but to reserve approval of the second sentence to plenary because it deals with a very ticklish issue.

It was agreed that the first sentence would be adopted in revision, and the second sentence be put before plenary.

Commissioner Lambino noted that Section 19 of Article III reads:

“(1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty imposed shall be reduced to reclusion perpetua.”

Commissioner Lambino cautioned that if Section 3 of Article IV was ratified, all existing death penalties imposed by the courts would automatically be converted into *reclusion perpetua*. Furthermore, the provision would have a retroactive effect. He therefore inquired as to whether Section 19 of Article III must be amended to provide for this contingency. He suggested that in order to avoid disturbing the status quo, the sentence “Any death penalty imposed shall be reduced to *reclusion perpetua*” be removed.

The Chair noted that this sentence would be deleted unless the proposal of Chairman Abueva is adopted.

Chairman Abueva said that his position was for the total abolition of death penalty.

The Chair suggested that the matter be taken up in plenary.

COMMISSIONER LAMBINO’S SUGGESTION ON STYLE

Commissioner Lambino suggested that to conform to the style followed by the other Articles, the section titles in Article IV should be removed. Chairman Abueva replied that the section titles were not just a matter of style but were an invaluable aid to readers, particularly laymen readers; they function similarly as a table of contents.

Chairman Chua suggested that the section titles be left as is, with the understanding that the Committee on Style has the liberty to make changes later on. Chairman Abueva reiterated he would argue for retaining the titles per section.

PROPOSED AMENDMENTS TO SECTION 1, ARTICLE IV

“Loyalty, obedience, cooperation. It shall be the duty of the citizen to be loyal to the Federal Republic of the Philippines and to honor the Philippine flag, to defend the State and contribute to its development and welfare, to uphold the Constitution and obey the laws, and to cooperate with the duly constituted authorities in the attainment and preservation of a peaceful, just and orderly society.”

Chairman Abueva proposed to remove the word “Federal” from “Federal Republic of the Philippines”; replacing the word “preservation” with “maintenance”, and inserting the phrase “to pay taxes” after the phrase “to uphold the Constitution.”

Commissioner Lambino suggested that the phrase “the rule of law” be inserted before the words “a peaceful, just, humane and orderly society.” He explained that this would cover the provision of law mandating people to cooperate as witnesses to a crime, otherwise they can be charged as accessories or of obstruction to justice.

As proposed by Chairman Abueva, amended by Commissioner Lambino, the Body approved the amended provision to read:

“Loyalty, obedience, cooperation. It shall be the duty of the citizen to be loyal to the Republic of the Philippines and to honor the Philippine flag, to defend the State and contribute to its

development and welfare, to uphold the Constitution, to pay taxes and obey the laws, and to cooperate with the duly constituted authorities in the attainment and preservation of the rule of law and a peaceful, just, humane and orderly society.”

PROPOSED AMENDMENTS TO SECTION 12, ARTICLE II

Commissioner Lambino brought attention to Section 12 of Article II, the second sentence of which states:

“The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.”

Commissioner Lambino proposed that this sentence be removed from Section 12 of Article II and be transferred to Section 7, Article IV: Responsibility of youth. The sentence can be inserted and the title changed to: Responsibilities of parents and the youth.

Chairman Chua said that the entire Section 12 of Article II can be removed completely from Article II and transferred to Section 8 of Article IV. These two sections can be combined because they refer to the role of the youth. Commissioner Lambino agreed.

PROPOSED AMENDMENTS TO SECTION 5

In Section 5, civic, political participation, Commissioner Lambino suggested that the phrase “at every election” be changed to “at every election, plebiscite and referendum.” He also suggested that the duties of the citizen be enumerated as follows:

“it shall be the duty and obligation of every citizen qualified to vote: (1) to register and cast his or her vote at every election, plebiscite and referendum; (2) to participate actively in other public and civic affairs; (3) and to contribute to good governance, honesty and integrity in the public service and the vitality and viability of democracy.”

Commissioner Abueg proposed the addition of the word “referendum” after the phrase “and other political exercises.”

Chairman Abueva proposed the deletion of the last sentence, which is redundant.

As proposed by Commissioner Lambino, amended by Commissioner Abueg and Chairman Abueva, the Body approved the provision to read:

“Civic, political participation. It shall be the duty and obligation of every citizen qualified to vote: (1) to register and cast his or her vote at every election, plebiscite, referendum and other political exercises; (2) to participate actively in all public and civic affairs; (3) and to contribute to good

governance, honesty and integrity in the public service and the vitality and viability of democracy.”

PROPOSED AMENDMENTS TO SECTION 8

Commissioner Lambino proposed the merger of Sections 15 and 16 of Article II with Section 8 of Article IV, as these all deal with health and environment. The merge, he said, will result in a provision that imposes the duty of the state regarding health and environment and at the same time the duty of the citizen. He proposed the following amendment:

“The state and citizen shall now exercise their duty to a balanced and healthful ecology, and contribute to the maintenance of a clean, enjoyable and sustainable environment.”

This amendment, he said, would now cover the intentions of Sections 15 and 16, Article II so there would be no need to transfer these to another committee.

Chairman Abueva pointed out that the duties mentioned in Article IV refer only to the duties of citizens.

Commissioner Lambino suggested that duties should not be limited to citizens but include duties and obligations of citizens and the state. He proposed changing the title of Article IV to: Duties and Obligations of the State and the Citizen.

Commissioner Ortiz-Luis inquired as to whether the Article would cover the duties of expatriates.

Commissioner Lambino suggested that provisions should be phrased so that the duties and obligations would also cover expatriates. For example, rather than state that citizens will pay taxes, the more general wording would be that persons will pay taxes, since taxes should be an obligation imposed on all people. Chairman Chua agreed that even non-residents must pay taxes if they do business in the Philippines.

PROPOSED AMENDMENTS TO ARTICLE V: CITIZENSHIP

Commissioner Lambino requested the members to consider opening Filipino citizenship to persons of foreign parentage who are born in the Philippines.

Commissioner Abueg pointed out that the proposed amendment to Section 2(2) states that persons born in the Philippines and/or whose fathers or mothers are citizens of the Philippines are entitled to citizenship.

Commissioner Lambino suggested rearranging Section 1 to read as follows:

“The following are citizens of the Philippines: (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution; (2) Those who are born in the Philippines and/or whose fathers or mothers are citizens of the Philippines; and (3) Those who are born in the Philippines after the adoption of this Constitution.”

On the matter of extending citizenship to children of foreign parentage who are born in this country, Commissioner Abueg suggested that

this be based on the principle of reciprocity. In practical terms, this means extending Filipino citizenship to persons born in the Philippines of foreign parents whose native country allows Filipinos born in their country to become citizens.

Commissioner Lambino brought the Committee's attention to paragraph 3 of Section 1, which reads: "Those born before January 17, 1973, of Filipino mothers." Commissioner Abueg said this could be deleted. He explained that persons born before this date are already covered in paragraph 1 of the same section.

Commissioner Lambino explained that this paragraph has already expired for all legal intents and purposes in 1992. He explained that under the 1935 Constitution, the basis for acquiring Filipino citizenship was only through the father. Children whose fathers were foreigners were not Filipino at the moment of birth, but had the right to choose the citizenship of the mother upon reaching the age of majority. Therefore, the cutoff date given was January 17, 1973.

Commissioner Lambino added that after this date, Filipino citizenship was acquired through the father and the mother. Paragraph 2 will take care of children born after the adoption of the new Constitution, and those born before the adoption will be covered in Paragraph 1. Thus, no one will be prejudiced by the deletion of paragraph 3.

PROPOSAL OF COMMISSIONER LAMBINO ON DUAL CITIZENSHIP

Commissioner Lambino pointed out that there already exists a law allowing dual citizenship, and that Section 5 is a provision that refers to original text found in the 1987 Constitution. He

clarified that while dual citizenship is allowed, dual allegiance is prohibited and is ground for disqualification from public office. The purpose of Section 5 is to disallow dual allegiance.

Commissioner Abueg said that Section 5 should be maintained.

Chairman Chua clarified that in principle, dual citizenship is acceptable but not dual allegiance.

Commissioner Ortiz-Luis inquired if Filipinos who migrate, take dual citizenship and take the oath of allegiance in another country are still entitled to Filipino citizenship. Commissioner Lambino said that they are still entitled to citizenship but are prohibited from exercising certain political rights such as the right to vote.

On the question of how Filipinos may reacquire citizenship, Commissioner Lambino said that under the dual citizenship law, the person must simply file an affidavit requesting the reacquisition of Filipino citizenship. However, the person will be disqualified from certain areas such as the right to be appointed into public office or the right to vote.

Commissioner Abueg suggested that the Committee not change this section, as a law has already been passed allowing Filipino citizens to reacquire citizenship and possess dual citizenship. Chairman Chua explained that the Committee is now contemplating the issue of dual allegiance.

Commissioner Lambino said that amendments to Section 5 should be adopted; otherwise there could be implications, for instance, in the case of war between two nations, the dual allegiance would be put on the line.

He added that the laws on citizenship do not recognize the citizenship of another country, because their law has no application in the Philippines.

As proposed by Commissioner Lambino, there being no objection, the Body approved the section to read:

“Dual citizenship may be allowed under conditions set by law. Dual allegiance shall be dealt with by law.”

ADJOURNMENT OF MEETING

Upon suggestion of the Chair, there being no objection, the meeting was adjourned.

It was 2:35 p.m.