



REPUBLIC OF THE PHILIPPINES

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Journal

SESSION NO. 53

Wednesday, January 19, 2005

**THIRTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 53
Wednesday, January 19, 2005

CALL TO ORDER

At 3:41 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Jinggoy Ejercito Estrada led the prayer, to wit:

Lord, we believe that You have chosen us for a great purpose and mission for this beloved country of ours which You have gifted to us, for us to take care of, be responsible for and to love in spite of all the odds, afflictions and trials besetting this beloved country of ours.

Nananalig po kami na sa pamamagitan ng aming mga iniaakdang mga batas ay maiaangat po Ninyo ang aming bansa sa pamamagitan ng isang makatotohanang pag-unlad, hindi lamang sa ekonomiya at kabuhatan, sa pulitika at pananaw, sa kalidad at kalinisan ng buhay, kundi pati na rin sa kultura, kalinangan, at sa buhay espirituwal.

We present to You ourselves, Your humble senators, as Your servants whom You have anointed to be instruments of change as we bow down in submission to Your will and to the will of the people whom we vowed to serve.

And as Your servants, we believe in faith that You would equip us with the mind and heart of a lawmaker, the strength of an eagle, and the gentleness of a dove and the watchful vision of an angel.

And as You have promised, we believe that You would protect and shield us from those whose intentions are to curtail, if not hide the truth, unleash laws and policies that would further the burden of the people; and

from threats, personal and collective, that are meant to obstruct us from pursuing what is good, just and beneficial.

Higit sa lahat, hinihiling Po naming basbasan Po Ninyo ang bansang Pilipinas, lalo na sa panahon ngayon ng sakuna at kagipitan bunga ng galit ng kalikasan.

Alam namin, Panginoon, na sa bandang huli, sa gitna ng aming pagsisikap, Ikaw pa rin ang aming tunay na pag-asa at sandigan.

Amen.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Oscar G. Yabes, called the roll, to which the following senators responded:

Arroyo, J. P.	Lim, A. S.
Biazon, R. G.	Madrigal, M. A.
Cayetano, C. P. S.	Magsaysay Jr., R. B.
Defensor Santiago, M.	Osmeña III, S. R.
Drilon, F. M.	Pangilinan, F. N.
Ejercito Estrada, J.	Pimentel Jr., A. Q.
Ejercito Estrada, L. L. P.	Revilla Jr., R. B.
Flavier, J. M.	Roxas, M.
Lacson, P. M.	Villar Jr., M. B.
Lapid, M. L. M.	

With 19 senators present, the Chair declared the presence of a quorum.

Senators Angara, Enrile and Recto arrived after the roll call.

Senator Gordon was absent.

APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 52 and considered it approved.

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REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

**MESSAGE FROM THE HOUSE
OF REPRESENTATIVES**

Letter from the Secretary General of the House of Representatives, informing the Senate that on January 12, 2005, the House of Representatives elected Representatives Defensor, Locsin Jr. and Puentevella as additional conferees on the part of the House of Representatives to the Bicameral Conference Committee on the disagreeing provisions of House Bill No. 2996, entitled

AN ACT PROVIDING FOR OPTIMUM PERFORMANCE IN REVENUE COLLECTION THROUGH THE GRANT OF SPECIAL INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE AND THROUGH LATERAL ATTRITION IN REVENUE-GENERATING AGENCIES OF GOVERNMENT AND FOR OTHER PURPOSES

and Senate Bill No. 1871, entitled

AN ACT TO IMPROVE THE REVENUE COLLECTION PERFORMANCE OF THE BUREAU OF INTERNAL REVENUE (BIR) AND THE BUREAU OF CUSTOMS (BOC) THROUGH THE CREATION OF A REWARDS AND INCENTIVES FUND AND OF A REVENUE PERFORMANCE EVALUATION BOARD AND FOR OTHER PURPOSES.

To the Committee on Rules

SPECIAL ORDER

Upon motion of Senator Pangilinan, there being no objection, the Body approved the transfer of Committee Report No. 7 on Senate Bill No. 1862 to the Calendar for Special Orders.

**COMMITTEE REPORT NO. 7
ON SENATE BILL NO. 1862**

Upon motion of Senator Pangilinan, there being no objection, the Body considered, on Second

Reading, Senate Bill No. 1862 (Committee Report No. 7), entitled

AN ACT PRESCRIBING A FIXED TERM OF OFFICE FOR THE CHIEF OF STAFF AND THE MAJOR SERVICE COMMANDERS OF THE ARMED FORCES OF THE PHILIPPINES AND FOR OTHER PURPOSES.

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, with the permission of the Body, upon motion of Senator Pangilinan, only the title of the bill was read without prejudice to the insertion of its full text into the Record of the Senate.

The Chair recognized Senator Biazon, sponsor of the measure, for the sponsorship.

**SPONSORSHIP SPEECH
OF SENATOR BIAZON**

In sponsoring Senate Bill No. 1862, Senator Biazon delivered the following speech:

In the recent past, we have witnessed the erosion of the institutions in this country. The situation of the loss of credibility of not only social but, more importantly, political and government institutions have wrought havoc that might have affected the lives of 84 million Filipinos.

This loss of credibility and loss of effectiveness of our political institution at times have ended in extra-constitutional means to resolve political controversies in the Philippines. For example, in 1986, the loss of credibility of a democratic process, the conduct of snap elections in 1986, resulted in the change of a national leadership, not in accordance with the provisions of our basic and fundamental law, but because of the loss, again, of credibility of that electoral process we undertook in 1986. To my mind, that would not have occurred if the credibility of that democratic process of election was believed and accepted by our people.

EDSA II occurred because one constitutional process was not allowed to continue to its logical conclusion. Had the

impeachment process of that year been allowed to continue and come to a logical conclusion, EDSA II probably, again, would not have happened.

These changes in the leadership of this country dictated not by institutional processes but by marches on the streets continue to weaken the institutions and institutional processes in the Philippines. This, to my mind, continues to contribute to the lack of stable governance.

One of these institutions that would require some face-lifting through legislative reforms is the institution of the Armed Forces of the Philippines. At times, the institution of the Armed Forces of the Philippines that should be the agent of stability in our society, ends up as the source of political instability. Because of this, this Representation has filed 13 reform bills to effect such reforms in the armed forces and one of these is the one that is being sponsored on the floor by this Representation today.

The Committees on National Defense and Security; and Constitutional Amendments, Revision of Codes and Laws, today present for the Chamber's consideration Senate Bill No. 1862 under Committee Report No. 7. This bill which is entitled, "An Act Prescribing a Fixed Term of Office for the Chief of Staff and the Major Service Commanders of the Armed Forces of the Philippines and for Other Purposes," is in substitution of Senate Bill No. 67 filed by Sen. Luisa Ejercito Estrada, entitled "An Act Amend-ing Section 9 of Republic Act No. 291 so as to Provide that No Officer shall be Appointed Chief of Staff if said Officer has less than a Year Remaining in the Active Service," and Senate Bill No. 1284, entitled "An Act Prescribing a Fixed Term of Office for the Chief of Staff and Major Service Commanders of the Armed Forces of the Philippines and for other Purposes" which was filed by this Representation as part of the AFP Reform Agenda.

These bills were discussed in a public hearing on 30 September 2004, and in

addition, position papers were also submitted to the Committee.

Senate Bill No. 1862, as contained in Committee Report No. 8, which was filed on 30 November 2004, is the consolidated product of the two original bills as the two have essentially the same subject matter, the term of office of the Armed Forces Chief of Staff.

The objectives of this bill are as follows:

- 1) To prevent the trivialization of the position of the Chief of Staff thereby preserving its integrity; and
- 2) To provide stability to the leadership of the Armed Forces of the Philippines by fixing the duration of the term of corps leadership so as to ensure continuity and consistency in the formulation and implementation of policies and programs.

The 1987 Constitution under paragraph 7 of Section 5 of Article XVI prescribes that the tour of duty of the Chief of Staff of the Armed Forces shall not exceed three years. However, in times of war or other national emergency as declared by Congress, the President may extend such tour of duty.

The above provision has been interpreted as prescribing a limitation on the term of office of the Chief of Staff. It does not preclude Congress from fixing a term of office which, however, should not exceed three years, as stated in the Constitution. The problem lies in the practice of appointing Chiefs of Staff who reached the compulsory retirement age even before they were able to put in place their respective reform programs in the Philippines. Under this bill, the Chief of Staff of the Armed Forces of the Philippines shall have a fixed term of office of three years. Three years—not beyond the limitation provided for in the 1987 Constitution.

For their part, the major service commanders shall each have a term of office of not less than two years, without

prejudice to being appointed as Chief of Staff if otherwise qualified. The term shall commence on the date of appointment by the President. There will be no more extension of term except for the position of Chief of Staff which may be extended, however, only in cases of war or national emergency as declared by Congress.

The pool of officers from which the Chief of Staff shall be chosen is also changed. The bill provides that the President shall select from among the officers in the grades of Major General, Rear Admiral to Lieutenant General, Vice Admiral, the officer who, in his or her opinion, is best qualified for the position of Chief of Staff. This means that only those from the rank of two-star general or Rear Admiral to three-star general or Vice Admiral, are qualified to be appointed as Chief of Staff. This pool would be numbering more than 40 officers. Of course, the President will still have the power to remove for cause any Chief of Staff so appointed even before the end of the three-year term. But this is prescribed to be removal for cause.

With respect to retirement and separation, when the officer so appointed reaches the compulsory retirement age before the end of his term, he shall still be allowed to complete his term, but shall be deemed compulsory retired upon completion of the same.

For example, an incumbent Chief of Staff who reaches the age of 56 will still be allowed to complete the three-year term and compulsory retirement will only take effect upon completion of that three-year term. Needless to say, this bill will do away with appointing Chiefs of Staff who merely have months remaining in the active service before they are due for compulsory retirement. Because of this, the President had to resort to arbitrary decision to extend the services of a retiring Chief of Staff because of his compulsory retirement age of 56. Extensions may go beyond the requirement if there is an existence of a war or national emergency as may be declared by Congress.

Fixing the term of office of the Chief of Staff to three years and that of the major service commanders to two years will, in a sense, give security of tenure to this leadership corps and allow it to plan, test, and execute meaningful programs. It will also shield the selection process for such position from too frequent political and personal considerations by ensuring that merit and fitness shall prevail. The days of the so-called revolving door policy which trivializes the position of the Armed Forces Chief of Staff and politicizing the position too much will then come to an end.

In view of these considerations, the Committee on National Defense and Security humbly submits for the Chamber's consideration Senate Bill No. 1682 under Committee Report No. 7.

INTERPELLATION OF SENATOR ARROYO

Senator Arroyo stated that the President, as commander-in-chief of the Armed Forces, can change the Chief of Staff if, in his judgment, the Chief of Staff can no longer serve the country. He noted that the Constitution has wisely not prescribed that the removal of the Chief of Staff should be for cause. He pointed out that during the American Civil War, President Lincoln changed generals three times before settling on Ulysses S. Grant because he felt that the three generals were not performing their duties.

Asked whether the President cannot change the Chief of Staff unless "for cause," Senator Biazon replied that the bill is not meant to encroach on the prerogative of the President. He explained that "for cause" should mean that there has to be a reason for removing the Chief of Staff; it was never contemplated that "for cause" has reference to a legal procedure.

Senator Arroyo pointed out that President Truman sacked General MacArthur because he took the position that he could not win the war unless he went beyond the Yellow River. Senator Biazon asserted that President Truman had reason to sack General MacArthur when the General proposed the bombing of an area beyond the Yellow River which is in Chinese territory because it would have violated the President's

policy. He noted that America was not yet ready at the time to go to war against China because of its strong ties with Russia. He also cited General John Singlaub who was dismissed by President Carter because of policy differences on Korea.

Senator Arroyo recalled that during his speech before the U.S. Congress, General MacArthur explained that his actions in the conduct of the Korean war had been cleared by every responsible military official, including the Joint Chiefs of Staff, but still, nobody questioned the power of President Truman to remove him. He stated that as far as President Truman was concerned, General MacArthur was not the kind of commander that could serve him. Furthermore, he said that he was disturbed by the term "for cause" because it would tie the hands of the President. He expressed concern that Congress would be limiting the constitutional power of the President when it comes to the Chief of Staff. He noted that there are certain powers of the President that the Senate can live with.

Asked if the correct nomenclature of the Chief of Staff is "Chief of the General Staff," Senator Biazon replied in the affirmative. He explained that in the United States, the Chairman of the Joint Chiefs of Staff does not have any command authority over the operations of the United States Armed Forces and that it is the President who determines the USAF's conduct, even in war.

On the other hand, Senator Biazon observed that in the Philippines, the chain of command concept and structure makes the President the commander-in-chief. He added that since the President issues instructions through the Chief of Staff, the Chief of Staff ended up acquiring command authority over the armed forces. Moreover, he said that there is no legislative mandate limiting the command authority of the Chief of Staff over the whole armed forces since this emanates from the President as commander-in-chief.

Senator Arroyo opined that the problem is not when the Chief of Staff acts as political agent, but the additional powers that he acquired through the President.

Asked if the President can extend the mandated three-year tour of duty of the Chief of Staff, Senator Biazon replied in the negative. However,

he said that it could be extended in times of war or national emergency declared by Congress, as provided for in the Constitution.

Senator Arroyo argued that the interpretation of the existence of an emergency depends on the Executive. He stated that historically, the Executive determines the existence of a national emergency and Congress gives its concurrence. He added that for Congress to determine the existence of a national emergency would be an encroachment on the inherent powers of the President.

Citing Section 5(7) of Article XVI of the Constitution, Senator Biazon stated that the tour of duty of a Chief of Staff is limited only to three years; however, the President may extend it in times of war or other national emergency declared by Congress.

Senator Biazon cited precedents when the tour of duty of the Chief of Staff was extended several times: General Arturo Enrile – extended by six months because of the APEC Conference; and General Mariano – extended for a few days so he could supervise the AFP Day celebration. He said that the extensions have been accepted despite the constitutional provision.

Senator Biazon averred that the position has been trivialized by the extensions and more seriously, it has been subject to the political whims of the President. To emphasize, he raised the possibility that a Chief of Staff who is given an extension could campaign openly for the President, an act that is cause for his removal because the Constitution prohibits the military from engaging in partisan politics. He added that the President may have the power to appoint the Chief of Staff but it should have limitations as provided for in the Constitution and other laws.

Senator Biazon noted that the manner of appointing the Chiefs of Staff using the "musical chair method" has given rise to some maneuvering in the selection of candidates. He said that precisely, the bill seeks to remove political patronage from the selection process.

Senator Arroyo clarified that he was not disputing the need to correct certain practices in the AFP, but he said he was merely concerned that certain provisions of the bill might tie the hands of

the President, citing, for instance, the provision that the Chief of Staff should come from a pool of higher-ranking generals which, in effect, puts a statutory limitation on the power of the President to appoint his Chief of Staff. The President, he emphasized, would be precluded from appointing a rising star as Chief of Staff because the person must first reach a certain grade before he can be appointed.

Citing the case of the United States, Senator Arroyo recalled that nobody complained when Brig. Gen. George Catlett Marshall, who was not even a graduate of the United States Military Academy but the Virginia Military Institute, was wisely appointed Army Chief of Staff by President Roosevelt over 36 to 40 senior contenders. Likewise, he pointed out that the best generals in Europe during World War II were from the class of 1913-1914 that included Generals Bradley and Patton who were classmates of Eisenhower who was made commander of the expeditionary forces to North Africa even though he was only a brigadier general.

Senator Arroyo remarked that Commonwealth Act 1 or the National Defense Act was a simple law that created a citizens' army. Senator Biazon agreed, adding that Republic Act No. 291 was an elaboration of that law as it provided that the selection of the Chief of Staff should be limited to the ranks of brigadier generals and colonels, the first to be selected Chief of Staff being Major General Rafael Jalandoni.

Senator Biazon said that eventually, the position of Chief of Staff was elevated to the rank of a four-star general or lieutenant general and that the first to be conferred a four-star rank was General Alfredo Santos, a reservist, on June 22, 1963.

Senator Biazon said that the Goldwater-Nichols DOD Reorganization Act of 1986 prescribes the present structure of the leadership corps of the U.S. Armed Forces—the Joint Chiefs of Staff consisting of five members, namely, a Chairman, Vice-Chairman, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, and the Commandant of the Marine Corps. He said that the position of Chairman of the Joint Chiefs of Staff is rotated among the chiefs of the four major services.

Senator Biazon said that the Goldwater-Nichols Act of 1986 sets the criteria in the selection of the

Chief of Staff, to wit: 1) he must have served as vice chairman of the Joint Chiefs of Staff; or 2) he must be the Chief of Staff of the Army or the Air Force, the Chief of Naval Operation, and the Commandant of the United States Marine Corps. Moreover, he said that the President could also select from among the three commanders of the unified commands.

Noting that the Goldwater-Nichols Act of 1986 does not allow the President of the United States to make a deep selection because of the criteria, Senator Arroyo asked whether the President could ever appoint a Brigadier General the same way that President Roosevelt appointed George Marshall.

SUSPENSION OF SESSION

Upon motion of Senator Arroyo, the session was suspended.

It was 4:33 p.m.

RESUMPTION OF SESSION

At 4:33 p.m., the session was resumed.

In reply to Senator Arroyo's query, Senator Biazon said that an appointment similar to that of General George Marshall is not possible because of the limitations in Paragraph 1 of the U.S. law. However, he pointed out that under Paragraph 2, the President may waive Paragraph 1 if he determines that it is necessary in the national interest. But he opined that it would be unwise for the President to do so considering that the U.S. Armed Forces is stiff in traditions, noting that, in fact, the primary consideration in the selection of the Chairman of the Joint Chiefs of Staff is seniority.

Senator Arroyo noted that the U.S. President has never used this escape clause. However, he expressed openness to these matter.

Senator Arroyo stated that Senator Biazon would not have sponsored the bill had there been no problems in the selection or in the conduct of the Chief of Staff. For instance, he pointed out that there is no law that mandates the President to appoint the most senior justice as the Chief Justice when the incumbent retires but tradition dictates that the most senior should be appointed, although there had been exceptions, twice during the time of

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President Marcos. On the other hand, he said, the tradition of seniority was not followed in the selection of the Chief of Staff and this elicited complaints.

Senator Arroyo said that under the bill, the President could only appoint a Chief of Staff from among those with the rank of Major General or Rear Admiral to Lieutenant General. Asked whether the proposal would not negate the Goldwater criteria since it would allow the President to appoint even the service commanders who have the rank of Lieutenant General, Senator Biazon said that there should be a limit because the contingent of the United States Armed Forces is many times larger than that of the Armed Forces of the Philippines.

Senator Arroyo stated that no one can be appointed Chairman of the U.S. Joint Chiefs of Staff unless he is a four-star general and the choice is limited to four chiefs of staff. However, he said that in the case of the Philippines, the President is given the discretion to choose among 55 generals. He asked if this is not inconsistent with the Goldwater-Nichols Act of 1986. Senator Biazon replied that the proposal might not be in harmony with the intent of the U.S. law but the bill seeks to give the President wider latitude in the selection process. He, however, added that he would not object to a collective decision to limit the selection to the ranks of Lieutenant General, which number 10 presently. He related that when he was about to retire as Chief of Staff, he was asked by the President whether he wanted to run for office, but he declined because he was not sure if he could shift from the culture of a soldier, where black is black and white is white, to the culture of a politician where there are many gray areas.

Commenting that the regimented life of a soldier requires certain distinct standards, Senator Biazon added that the military is stiff in tradition that includes seniority. He stated that precisely, the pool should be limited to the rank of Major General.

Senator Arroyo said his readings on the U.S. military history reveal that the Navy is the most tradition-bound and thus, the most seniority-inclined. He added that the Chief of Naval Operations is appointed by the President upon the recommendation of the most senior naval officers, a practice going on over the years.

The parallel mechanism in the Philippines, Senator Biazon said, is the Board of Generals which recommends the next chief of any branch of service to the President, who, however, retains the prerogative of choosing whom to appoint.

Senator Arroyo stated there were times when the President had to push for the appointment and exercise the powers of Commander-in-Chief, as in the case of the appointment of Senator Biazon, who was appointed by President Aquino as Chief of Staff even if he was not recommended by the Board of Generals.

Senator Biazon narrated that when he was about to retire as Chief of Staff, President Aquino asked who would replace him, and the Board of Generals had a list which was similar to his, and, which included in descending order of priority: Lt. Gen. Guillermo Flores of PMA Class '59; Adm. Mariano Dumangcas Jr. of Class '60; Gen. Alexander Aguirre of Class '61; and Gen. Lisandro Abadia of Class '62. Without naming his specific choice, he stated that President Aquino selected General Abadia, the most junior in the list. He said that he warned the President that her choice could disrupt the AFP and true enough, it did, although things were eventually ironed out.

Senator Arroyo noted that from the explanation of Senator Biazon, the President does not really follow the lineal roster. Senator Biazon explained that the President has the prerogative of choosing the Chief of Staff, but as political practices go, political patronage is a very vital factor. He proposed that there should be guidelines on the selection of Chief of Staff to put an end to the "revolving door policy" that results in the trivialization of the position and fuels infighting among contenders. Moreover, he underscored that another effect of the policy is that the Chief of Staff is not given enough time to examine the organization's major policy and, at the same time, formulate his own policies and put together programs to implement the same.

Senator Biazon recalled that during his three-month tenure as the Chief of Staff, the only thing he was able to do was promulgate the Code of Conduct and Professional Standards and Ethics for soldiers, and draw up a basic guideline or concept for the AFP modernization.

Asked if the bill would preclude jockeying among service and area commanders for the

position of Chief of Staff, Senator Biazon replied that his bill would lessen its frequency.

Thereafter, Senator Arroyo suspended his interpellation until a later date.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:52 p.m.

RESUMPTION OF SESSION

At 4:53 p.m., the session was resumed.

INTERPELLATION OF SENATOR LACSON

At the outset, Senator Lacson stated that he wanted to inquire about the issue raised by Senator Arroyo on the need for the President to show cause for removing a sitting Chief of Staff. He noted that there is no formal process, legal or otherwise, in removing the Chief of Staff, in view of which he would introduce an amendment that would address this issue during the period of amendments.

Asked whether the proposed Act would apply to the incumbent Chief of Staff, Senator Biazon replied that it is an open proposition, but he informed the Body that in a position paper submitted by the AFP, the proposed Act should apply to the next appointment.

Upon queries of the Chair, Senator Biazon affirmed that the incumbent Chief of Staff would not benefit from the law and that it would apply only to the Chief of Staff who would be appointed after its affectivity.

Senator Biazon disclosed that the Office of the present Chief of Staff provided inputs, thus, it would be safer to put the law into effect after the term of the present Chief of Staff.

The Chair inquired if the term "present" refers to whoever is the occupant of the office at the time the law becomes effective. Senator Biazon replied in the affirmative.

Senator Lacson queried if the removal of a sitting Chief of Staff is strictly the prerogative of

the President. Senator Biazon replied that such is being proposed in the bill.

Asked if there is no need for the President to show cause for removing an incumbent Chief of Staff, Senator Biazon said that the removal should not be for a whimsical reason, and the term "for cause" means the President has to justify the removal.

Asked about the process involved in the removal of the Chief of Staff, and to whom the President would explain why such is being done, Senator Biazon stated that the term "for cause" means there should be a legal process to determine culpability. He stated that he would be willing to accept amendments to address this particular issue at the proper time.

INTERPELLATION OF SENATOR ENRILE

Noting that the measure allows the President to remove the AFP Chief of Staff for cause, Senator Enrile asked who determines the cause. Senator Biazon said that this should be in accordance with existing laws.

Asked whether the Chief of Staff could be removed for cause if he forgot to salute the President, Senator Biazon replied that such is not a cause under the measure.

Supposing the Chief of Staff is suspected by the President of planning a *coup d'etat* because some intriguing officers interested in the position made up an intelligence report and submitted it to the President, Senator Enrile asked if he could be removed for cause. He said that unless a standard is set, it is the President who has the sole discretion in determining the cause for the removal of the officer. Senator Biazon stated that the legal definition of the term "for cause" should be taken into consideration.

Senator Enrile wondered if the Chief of Staff could be removed for cause if the President does not like the face of the officer's wife, the President is interested in the officer's wife, or the President is jealous because the President's husband is looking amorously at the officer's wife. Senator Biazon said that none of those instances could be considered a cause for removal and that he would propose a clause providing that "cause" should constitute a criminal act or a violation of the Constitution.

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Asked whether the Chief of Staff could be removed for cause if he were caught in a compromising situation inside a motel, an act unbecoming an officer and a gentleman under the Articles of War, Senator Biazon said that if the officer were married, there is a violation of existing standards of morality, but he does not know what charge could be brought against a bachelor or widower caught in a similar situation because there is no law pertaining to it.

On whether the Chief of Staff could be removed for cause if he defies the order of the President that he thinks is illegal, Senator Biazon stated that this would need an examination of what is being asked of the officer because it is very clear in the Constitution and the Articles of War that the officer should follow the legal orders of his superiors. Senator Enrile said that the matter should be brought to court to determine its legality.

On whether the President could remove for cause the Chief of Staff after it was discovered that he used the spouse of another officer as a sex slave, Senator Biazon replied in the affirmative, saying that it is an immoral act and could be considered an abuse of power by the Chief of Staff. He stated that even if they were consenting adults, it is covered by Article 96, *Conduct Unbecoming of an Officer and a Gentleman*, of the Articles of War.

Asked if the Chief of Staff could be removed for cause if: 1) he gets drunk and creates a scandal; or 2) slaps an enlisted man in a fit of anger, Senator Biazon replied in the affirmative, adding that said acts are covered by the Articles of War. He agreed that the provision should be refined.

Asked why the Chief of Staff should be given a three-year term, Senator Biazon stated that it is in consonance with the three-year limit as provided for in the Constitution.

Senator Enrile noted that under the bill no officer shall be appointed as Chief of Staff if said officer has less than one year remaining in the active service. He then raised a situation where a senior commander, who has remaining three years to serve the military, could be appointed commanding general, who has a two-year service. He said that with a year left in service, the commanding general could be appointed Chief of Staff so that, in effect, he would be given an extension of two years. Senator Biazon said that he would accept an

amendment to the provision at the proper time. Senator Enrile argued that by providing a fixed term for the Chief of Staff, an extension would be tucked into the law.

Asked why the remainder of the service of a service commander should not be limited to two years so that he leaves the service once he finishes his term, Senator Biazon said that the service commanders would lose the opportunity to be appointed as Chief of Staff.

Senator Enrile stated that a commanding general, in the middle of his term, could be appointed, Chief of Staff by the President. Senator Biazon said that he would welcome an amendment to the provision at the appropriate time.

On page 1, lines 20 to 22, Senator Biazon explained that the provision would allow one who is appointed as Chief of Staff at the age of 55 to serve a three-year term even if he reaches the mandatory retirement age only a year after his appointment, but he would be considered compulsorily retired upon the completion of the term.

Asked whether the Chief of Staff would receive any additional benefit for the two-year extension of his service, Senator Biazon said that the only possible additional benefit would be the pension, the payment of which shall not go beyond 85% of the basic salary of the last rank upon retirement.

Asked if the present retirement law of the Armed Forces of the Philippines provides that one is considered retired if he/she reaches the age of 56 or had served for 30 years whichever comes later, Senator Biazon replied in the affirmative. However, he pointed out that there are exceptional cases such as that of General Victor Corpuz who was considered retired since he already reached the age of 56 but was extended because he only served for 26 years and can still be in the service until the age of 60 to complete the 30 years.

On whether one of the requirements for selecting the Chief of Staff is that he must be appointed not less than one year before the end of his career as an officer of the AFP, Senator Biazon replied in the affirmative.

Senator Enrile said that if the 30-year rule would apply, the person should be appointed, at least, at the end of the 29th year of his service, to which Senator Biazon agreed.

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INTERPELLATION OF SENATOR ROXAS

At the onset, Senator Roxas said that at present, there is no fixed term for the Chief of Staff who serves at the pleasure of the President.

Senator Biazon stated that the 1987 Constitution provides that the Chief of Staff may not serve beyond three years but it also allows the President to extend his term in case of war or state of national emergency declared by Congress. He pointed out that said constitutional provision is not being observed, and that instead, the term of the Chief of Staff is being extended in relation to the retirement age of 56 years.

Senator Biazon observed that in recent years, a succession of officers occupied the position of Chief of Staff briefly like General Defensor who served for only 60 days and himself who served for only 82 days. This, he lamented, resulted in the constant maneuverings within the ranks of contenders that engender the perception that the position is being politicized and a source of political patronage in violation of the constitutional provision that the AFP should be shielded from partisan politics.

The second objective of the bill, he said, is to give the Chief of Staff sufficient time to study the situation of the military establishment and come up with a policy and a program to implement such policy. This, he stressed, cannot be realized if the Chief of Staff only serves briefly.

Senator Biazon said that the third objective is to put an end to the trivialization of the position of the Chief of Staff as a result of the brief tenure in some instances.

Senator Roxas shared the concerns of Senator Biazon. However, he reasoned that fixing the term of the Chief of Staff might create a different set of problems; for instance, his dismissal from the service would now require a formal process which could delay or hinder swift action from the Commander-in-Chief. He stated that this is of critical importance in times of emergency.

Senator Biazon noted that the same concern was raised by Senators Arroyo, Enrile and Lacson, and he agreed that there is a need to define more clearly the meaning of the term "removal for cause."

Senator Roxas said that the Chief of Staff serves like a Cabinet Secretary who, even if he/she is performing his duties and responsibilities, may be dismissed by the President for whatever reason. In this regard, he said that he would like to participate in the effort to find a better definition of cause or circumstances under which a Chief of Staff may be relieved or dismissed from the position. He underscored that predictability and stability in the term of the Chief of Staff may be attained by simply providing that no officer can be appointed to the position if the retirement age is less than three years away so that if the appointee performs well, discretion can still be exercised by the President to remove or retain him.

Senator Biazon pointed out that at present, an officer who has only one year before retirement cannot be appointed to the position of Chief of Staff but considering that one of the primary factors in having a good investment climate is political stability, the term of the Chief of Staff must also be stabilized.

Senator Roxas reiterated that he shared the concerns of Senator Biazon as he suggested caution in determining the cure to the situation which could lead to more instabilities and problems.

At this point, the Chair suggested that the term "loss of confidence" be used instead of "for cause" because of its many implications. It added that the term "loss of confidence" is also recognized in law and has a broader concept. Senator Biazon stated that the suggestion of the Chair would be considered by the Committee at the proper time.

Thereafter, Senator Pangilinan announced that Senators Villar, Pimentel and Angara have manifested their desire to interpellate the Sponsor.

INTERPELLATION OF SENATOR VILLAR

At the outset, Senator Villar commented that he has heard of problems that could arise if a Chief of Staff is appointed with a three-year term as he suggested that the Body might as well decide on a period to help reform the AFP.

From a managerial point of view, Senator Villar asked if three years is sufficient to reform and institute changes in the AFP. Senator Biazon replied in the affirmative as he underscored that

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a provision in the Constitution states that the tour of duty of the Chief of Staff shall not exceed three years.

Stating the present problems of the AFP might necessitate a radical overhaul and given that three years is the maximum length of service, Senator Villar queried if a six-year transition program could be adopted. Senator Biazon replied that the closest thing possible is to lengthen the service of the major service commanders who could put reforms in place, noting that there is no provision in the Constitution that affects the length of service of the service commander. He narrated that as Superintendent of the PMA, he needed five years to address the issue of hazing which was the PMA's most serious problem at that time but a year later, he was assigned Commandant of the Marines and a month later, the August 28, 1987 *coup d'etat* occurred. He pointed out that time is of the essence in instituting changes that make a difference.

Senator Villar remarked that it would need more than five years to reform a much bigger organization like the AFP. Senator Biazon agreed, saying that three years is sufficient time for the Chief of Staff to draw up policies and define specific programs.

On the suggestion of Senator Villar to come up with a system wherein the Vice Chief of Staff would eventually succeed the Chief of Staff and therefore assure a follow-through of the plans initiated by his predecessor, Senator Biazon remarked that it would be too restricting on the part of the appointing authority.

Senator Villar said that perhaps, a one-time opportunity is needed to revamp or overhaul the AFP accompanied by a radical addition of funds like a loan for its modernization and a fixed long term for the Chief of Staff. He posited that one of the reasons why modernization has failed is that there has been frequent changes in the AFP leadership, with each Chief of Staff having a different view on how modernization should be done.

Senator Biazon argued that a structural reform is needed and it would require legislation. He added that he is also pushing for the National Security Act. He said that with legislation allowing it, a Chief of Staff would be able to produce results to reform the institution.

To the observation that the modernization program has not been implemented because the modernization fund established by Congress has not been used, Senator Biazon affirmed that Congress allotted P50 billion for the program, to be released in tranches in five years. He explained that AFP had other sources of funds, like the BCDA Law, where it gets 35% of the proceeds from the sale of the military camps in Metro Manila. He said that at present, the trust fund has close to P10.4 billion.

On the same matter, Senator Biazon informed the Body that the trust fund was supposed to be the basis of contracts that may be entered into by the Armed Forces of the Philippines for the build-up of its equipment. He proposed to give the least priority to the acquisition of fighter planes and instead frontload the acquisition of helicopters as these are much needed in addressing internal security problem.

Asked if there is a fixed list of equipment that need to be acquired under the AFP Modernization Program, Senator Biazon replied that there was a fixed list submitted.

Asked if the term "fixed" means that the list remains unchanged even with a new Chief of Staff, Senator Biazon replied in the affirmative. Senator Villar asked when the list was prepared.

SUSPENSION OF SESSION

Upon motion of Senator Biazon, the Chair suspended the session.

It was 5:58 p.m.

RESUMPTION OF SESSION

At 5:59, the session was resumed.

Senator Biazon revealed that the last regular evaluation of the list was done a year ago under the leadership of General Narciso Abaya. He pointed out that one factor that could change the original list is the availability of funds. He noted that the procurement process for needed military equipment is a long one. For example, he pointed out that the acquisition of frigates and corvettes for the Philippine Navy had been pushed down the priority list in lieu of fast patrol boats.

Senator Villar agreed that there is a need to update the list from time to time. But he expressed concern that the frequent changes of Chief of Staff might result in new procurement lists which would prevent the military from pursuing its modernization program.

Asked whether such frequent changes in the list occur with the changes in leadership, Senator Biazon observed that Chiefs of Staff who served for short periods such as Generals Villanueva (4 months); Defensor Jr.(2 months); and Santiago (five months) did not have any time to change the list. He noted that the one-and-a-half-year term of General Abaya was considered the longest in the recent appointments to the top AFP post. He said that the procurement list has to be adjusted based on the developing situation in the country and on the availability of funds. He recalled that in 1995, the procurement list prepared after the enactment of the modernization program was in line with the projection that the CPP-NPA was already a spent force and as such, the AFP shifted to developing its external defense capability. However, he noted that helicopters, which had not been included in the procurement list, are now needed, so the list had to be modified anew.

Asked whether General Abaya was halfway through in undertaking the overhaul of the military since he held office for one-and-a-half years, Senator Biazon replied that General Abaya instituted certain changes within the AFP which would have been more significant had he served for three years. Senator Villar opined that there is a need for someone to supervise an overhaul of the military and come up with radical changes in the system but he acknowledged that such changes might take more than just three years. He hoped that the Body would take that chance to reform the military by passing the bill.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1862

Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the session was suspended.

It was 6:08 p.m.

RESUMPTION OF SESSION

At 6:15 p.m., the session was resumed.

CONFERENCE COMMITTEE REPORT ON SENATE BILL NO. 1871 AND HOUSE BILL NO. 2996

Upon motion of Senator Pangilinan, there being no objection, the Body considered the Conference Committee Report on the disagreeing provisions of Senate Bill No. 1871, entitled

AN ACT TO IMPROVE THE REVENUE COLLECTION PERFORMANCE OF THE BUREAU OF INTERNAL REVENUE (BIR) AND THE BUREAU OF CUSTOMS (BOC) THROUGH THE CREATION OF A REWARDS AND INCENTIVES FUND AND OF A REVENUE PERFORMANCE EVALUATION BOARD AND FOR OTHER PURPOSES,

and House Bill No. 2996, entitled

AN ACT PROVIDING FOR OPTIMUM PERFORMANCE IN REVENUE COLLECTION THROUGH THE GRANT OF SPECIAL INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE AND THROUGH LATERAL ATTRITION IN THE REVENUE-GENERATING AGENCIES OF GOVERNMENT AND FOR OTHER PURPOSES.

The Chair recognized Senator Recto for the sponsorship of the report.

SPONSORSHIP SPEECH OF SENATO RECTO

Thereupon, Senator Recto presented to the Body the Conference Committee Report as follows:

The Conference Committee on the disagreeing provisions of Senate Bill No. 1871 and House Bill No. 2996, after having met and fully discussed the subject matter, hereby report to their respective Houses the following, that:

1. The Senate version was adopted as the working draft;

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2. A new section was introduced as Section 1, to read as:

“SECTION 1. *Short Title.* - This Act shall be known as the ‘Attrition Act of 2005’.”

3. Sections 1 (*Declaration of Policies*) and 2 (*Coverage*) of the Senate version were adopted as Sections 2 and 3, respectively, of the reconciled version;
4. Section 3 of the Senate version was amended and adopted as Section 4 of the reconciled version, to read as follows:

“SEC. 4. *Rewards and Incentives Fund.* - A Rewards and Incentives Fund, hereinafter referred to as the Fund, is hereby created, to be sourced from the collection of the BIR and the BOC in excess of their respective revenue targets of the year, as determined by the Development Budget and Coordinating Committee (DBCC), in the following percentages:

Excess of Collection Over the Revenue Targets	Percent (%) of the Excess Collection to Accrue to the Fund
30% or below	-15%
More than 30%	-15% of the first 30% plus 20% of the remaining excess.

The Fund shall be deemed automatically appropriated the year immediately following the year when the revenue collection target was exceeded and shall be released on the same fiscal year.

Revenue targets shall refer to the original estimated revenue collection expected of the BIR and the BOC for a given fiscal year as stated in the Budget of Expenditures and Sources of Financing (BESF) submitted by the President to Congress. The BIR and BOC shall submit to the DBCC the distribution of the agencies’ revenue targets as allocated among its revenue

districts in the case of the BIR, and the collection districts in the case of the BOC.

Any incentive under this Section shall be apportioned among the various units, officials and employees of the BOC or the BIR, as the case may be, in proportion to their relative contribution to the aggregate amount of the excess collection over the targeted amount of tax revenue to be collected by the two (2) bureaus respectively.

The Fund shall be allocated, distributed and released by the Revenue Performance Evaluation Board in each agency, hereinafter created in Section 6 of this Act, in accordance with the rules and regulations issued by the same.”

5. Sections 4 (*Incentives to District Collection Offices*) and 5 (Revenue Performance Evaluation Board) of the Senate version were adopted as Sections 5 and 6 respectively of the reconciled version.
6. Section 7 of the Senate version was also adopted as Section 7 of the reconciled version with the following amendments:

6.1. Paragraph a) was amended to read as:

“a) To prescribe the rules and guidelines for the allocation, distribution and release of the Fund due to the agency as provided for in Sections 4 and 5 of this Act: *Provided*, That the rewards under this Act may also take the form of non-monetary benefits;”

6.2. Paragraph b) was amended by replacing the phrase “ten percent (10%)” with “seven and a half percent (7.5%)”

6.3. Paragraph c) was amended to read as follows:

“c) To terminate personnel in accordance with the criteria adopted in the

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preceding paragraph: *Provided*, That such decision shall be immediately executory: *Provided, further*, That the application of the criteria for the separation of an official or employee from service under this Act shall be without prejudice to the application of other relevant laws on accountability of public officers and employees, such as the Code of Conduct and Ethical Standards of Public Officers and Employees and the Anti-Graft and Corrupt Practices Act;”

7. A new Section 8 was introduced, to read as follows:

“SEC. 8. *Liability of officials, examiners and employees of BIR and BOC.* - The officials, examiners, and employees of the Bureau of Internal Revenue and the Bureau of Customs who violate this Act or who are guilty of negligence, abuses or acts of malfeasance or misfeasance or fail to exercise extraordinary diligence in the performance of their duties shall be held liable for any loss or injury suffered by any business establishment or taxpayer as a result of such violation, negligence, abuse, malfeasance, misfeasance or failure to exercise extraordinary diligence.”

8. Section 8 (*Right to Appeal and Receive Retirement/Separation Benefits*) of the Senate version was amended and adopted as Section 9 of the reconciled version, to read as:

“SEC. 9. *Right to Appeal.* - An official or employee whose employment is terminated by virtue of the decision of the Board may appeal to the Civil Service Commission (CSC) or the Office of the President (OP), whichever is applicable, in accordance with pertinent laws, rules and regulations.”

9. Section 6 (*Performance Report*) of the Senate version was adopted as Section 10 of the reconciled version;

10. Sections 9 (*Rules and Regulations*), 10 (*Joint Congressional Oversight Committee*), 11 (*Separability Clause*), 12 (*Repealing Clause*) and 13 (*Effectivity*) were adopted as Sections 11, 12, 13, 14 and 15, respectively, of the reconciled version; and

11. The title of the bill shall read as:

“AN ACT TO IMPROVE THE REVENUE COLLECTION PERFORMANCE OF THE BUREAU OF INTERNAL REVENUE (BIR) AND THE BUREAU OF CUSTOMS (BOC) THROUGH THE CREATION OF A REWARDS AND INCENTIVES FUND AND OF A REVENUE PERFORMANCE EVALUATION BOARD AND FOR OTHER PURPOSES”.

In case of conflict between the statements/amendments stated in this Explanatory Statement and that of the provisions of the reconciled version in the accompanying Conference Committee Report, the provisions of the latter shall prevail.

APPROVAL OF THE CONFERENCE COMMITTEE REPORT

Upon motion of Senator Recto, there being no objection, the Conference Committee Report on the disagreeing provisions of Senate Bill No. 1871 and House Bill No. 2996 was approved by the Body.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of Monday, January 24, 2005.

It was 6:22 p.m.

I hereby certify to the correctness of the foregoing.

OSCAR S. YABES
Secretary of the Senate

Approved on January 24, 2005