

RECORD OF THE SENATE

TUESDAY, FEBRUARY 22, 2000

OPENING OF THE SESSION

At 3:26 p.m., the Senate President, Hon. Blas F. Ople, called the session to order.

The President. The 63rd session of the Second Regular Session of the Eleventh Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. Francisco S. Tatad.

Everybody rose for the prayer.

PRAYER

Senator Tatad. Let us pray.

Almighty Father, on this feast day of the Chair of Saint Peter we recall the words of our Lord, Your Son to Simon Peter:

"I have prayed that your faith may not fail, and you in turn must strengthen your brothers."

Divided by politics and so many mundane concerns, we pray that in this Senate and in this country our faith will hold and each one of us will have enough grace, generosity and goodness to strengthen our brothers.

This we ask in Jesus' name.

Amen.

The President. The Secretary will please call the roll.

ROLL CALL

The Secretary, reading:

Senator Teresa Aquino-OretaPresent
Senator Robert Z. Barbers **
Senator Rodolfo G. BiazonPresent
Senator Renato L. Compañero Cayetano ...Present*
Senator Anna Dominique M.L. Coseteng ...Present
Senator Franklin M. DrilonPresent

Senator Juan Ponce EnrilePresent
Senator Juan M. FlavierPresent
Senator Teofisto T. Guingona Jr.Present
Senator Gregorio B. HonasanPresent
Senator Robert S. JaworskiPresent
Senator Loren B. Legarda-LevistePresent
Senator Ramon B. Magsaysay Jr.Present
Senator John Henry R. OsmeñaPresent*
Senator Sergio R. Osmeña IIIPresent
Senator Aquilino Q. Pimentel Jr.Present
Senator Ramon B. Revilla **
Senator Raul S. RocoPresent
Senator Miriam Defensor SantiagoPresent
Senator Vicente C. Sotto III **
Senator Francisco S. TatadPresent
The PresidentPresent

The President. With 17 senators present, there is a quorum.

THE JOURNAL

Senator Drilon. Mr. President, I move that we dispense with the reading of the *Journal* of Session No. 61, Wednesday, February 16, 2000, and consider it approved.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Drilon. Mr. President, I likewise move that we dispense with the reading of the *Journal* of Session No. 62, Monday, February 21, 2000, and consider it approved.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Drilon. I move that we proceed to the Reference of Business.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

The Secretary will read the Reference of Business.

* Arrived after the roll call

** On official mission

APPROVAL OF S. NO. 1554 ON SECOND READING

Senator Drilon. Mr. President, I move that we vote on Second Reading on Senate Bill No. 1554, as amended.

The President. Is there any objection? *[Silence]* There being none, we shall now vote on Second Reading on Senate Bill No. 1554, as amended.

As many as are in favor of the bill, say *aye*.

Several members. *Aye*.

The President. As many as are against the bill, say *nay*. *[Silence]*

Senate Bill No. 1554, as amended, is approved on Second Reading.

SUSPENSION OF CONSIDERATION OF S. NO. 1554

Senator Drilon. I move that we suspend consideration of Senate Bill No. 1554.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

BILL ON SECOND READING
S. No. 1902--E-Commerce Law
(Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1902 as reported out under Committee Report No. 179. This is the Act providing for the electronic commerce law and for other purposes.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 1902 is now in order.

Senator Drilon. Mr. President, I ask that the principal sponsor, Sen. Ramon B. Magsaysay Jr., be recognized.

The President. Sen. Ramon B. Magsaysay Jr. is recognized.

Senator Drilon. To continue his interpellation, may I ask the Chair to recognize Sen. Francisco S. Tatad.

The President. Sen. Francisco S. Tatad is recognized.

Senator Drilon. Sen. Raul S. Roco has also manifested his intention to interpellate the sponsor.

Senator Tatad. Thank you, Mr. President.

Will the distinguished sponsor yield for a few more questions?

Senator Magsaysay. Very willingly, Mr. President.

Senator Tatad. Mr. President, on page 4, Section 10 of the bill, we have "*Legal Recognition of Electronic Signatures*." I would like to focus momentarily on that phrase "*Electronic Signatures*." Just exactly what is meant by "*Electronic Signatures*"? Would this mean our customary signature signed electronically or is something else contemplated? Would this be synonymous with digital signature?

Senator Magsaysay. Electronic signature is used interchangeably with digital signature, Mr. President. The gentleman is correct.

Senator Tatad. Since the sponsor says the two terms are interchangeable, but neither one is defined in the bill, may we ask for a definition from the sponsor.

Senator Magsaysay. The first version of the bill defined electronic signature.

Senator Tatad. We are not talking of that version now, Mr. President. It has disappeared from view.

Senator Magsaysay. May I finish, Mr. President.

The first version of the bill defined "electronic signature." In the present version of the bill which the Committee reported out a few days ago, the committee decided not to include this definition because the UNCITRAL model does not include this. The other senator from Bicol, Senator Roco, felt that if we hew closely to the model law, we will have less problems and we will have a simpler way of having more flexibility.

Senator Tatad. Is my colleague from Bicol being made responsible now for the defects of this bill?

Senator Magsaysay. Not necessarily, Mr. President. But we have a definition of "digital signature."

Senator Tatad. I call attention to this because the term is being used in the present bill, and it should be defined in the present bill if we are to have one common understanding of this term.

So I believe this is a fair question. Just exactly what do we mean by an "electronic signature"?

Senator Magsaysay. Does the distinguished gentleman want me to define an "electronic signature," Mr. President?

Senator Tatad. So that we can proceed, it would be very helpful.

Senator Magsaysay. Thank you. Our definition of "electronic signature" refers to any letter, character, numeric figure or symbol, by any methodology or procedure, in electronic form, attached to or logically associated with an electronic document, representing and employed or adopted by a specified or nominated person and used, executed or adopted by such person with the intention of authenticating or approving the electronic document.

Senator Tatad. Translated into plain English, what does it mean, Mr. President?

Senator Magsaysay. In simple terms, Mr. President, an electronic or a digital signature, just like the real one, validates the sender's identity.

Senator Tatad. I am interested in looking at the technical composition of the signature. Of course, the purpose is to validate the document. But instead of the pen which we customarily use in signing paper documents, we have this digital signature. How does it occur? How does it happen?

Senator Magsaysay. This is a process wherein an electronic document is deemed to be accepted when the person using the particular document puts his own key or pin code—uses his or her name and pin code.

Senator Tatad. Pin code as in the cellular phone?

Senator Magsaysay. That is correct, Mr. President.

Senator Tatad. Is it a code or is it a key?

Senator Magsaysay. It is actually a key, Mr. President.

Senator Tatad. I wonder if our distinguished colleague would allow me to refer to some definition as published by *The Economist*.

"Digital signature" is a cryptographic technique which ensures that an electronic document really does come from a person whose name is at the top.

Strictly speaking, "digital signature" has two functions. It serves as proof of identity like a regular signature and as proof that the document has not been tampered with. And this is implemented in the jurisdictions where it is now in use via what is called the "public key cryptography." Here, the workings of the signature parts are straightforward; all or part of the document is

encrypted with an individual's private key which is or should be known only to him or her—to the individual. The text can only be decrypted in turn with the corresponding public key.

Now, to ensure that the document has not been tampered with, we have to rely on what is called its "hash" function which condenses the text into a short but unique series of numbers. When the document is received, it is checked to ensure that the "hash" function returns the same numbers.

Now, so crucial in making this scheme work is ensuring that public keys do really come from who they purport to.

That is a definition I have read from a small book. This is "Pocket Information Technology" published by *The Economist*, authored by John Browning.

Would that definition be acceptable to the sponsor?

Senator Magsaysay. Of digital signature, Mr. President?

Senator Tatad. Yes, Mr. President.

Senator Magsaysay. Certainly, Mr. President. This is very similar to the definition which I have in front of me based on a primer "Introduction to E-Commerce."

Senator Tatad. Yes, they are similar except that perhaps Mr. Browning has a better way of putting things.

In trying to define the term "digital signature," which our good friend has just accepted, we came up with several other terms which we will now have to understand by defining them. We encountered the words "public-key cryptography," "hash function." Are these terms familiar to our distinguished friend? If they are, perhaps he can tell us.

Senator Magsaysay. Yes, of course. They are familiar to me, Mr. President. The gentleman is talking of "public key," "private key," "encryption," "decryption" and then "encrypt." This is the whole process.

Senator Tatad. Yes, involved in e-commerce.

Senator Magsaysay. That is correct, Mr. President.

This is basically a way to initially scramble a message with the buyer's key and encrypting or encoding or scrambling the message; then as it passes through the Internet, we now have the decryption with the seller's private key—to unscramble or to decode that particular message which is based on bits and data. So, this is the public key encryption process. Encoding or scrambling, then decoding or unscrambling or decryption.

Senator Tatad. Just to go through that process rather slowly so those who will read these proceedings will have a clearer understanding of what this means, when we send a message, a data message, what do we do? We encrypt the text—

Senator Magsaysay. That is correct, Mr. President.

Senator Tatad. —with the public key of the intended recipient.

Senator Magsaysay. We encrypt with the buyer's private key.

Senator Tatad. With the public key of the recipient. Then someone with that person's private key will be able to decode it.

Senator Magsaysay. That is correct, Mr. President.

Senator Tatad. Equally, a message can be given a digital signature to ensure that it indeed comes from a person whose name is at the top by encrypting it with that person's private key and then decrypting it with the corresponding public key.

Are we still traveling on the same path?

Senator Magsaysay. I think so, Mr. President.

Senator Tatad. As we all know, the mathematics underlying this kind of cryptography is rather complex and involves large numbers. But so far, these are some of the few encryption techniques that cannot reliably be broken by code breakers using supercomputers.

Now, the effectiveness of the code is proportional to the size of the numbers used as keys. So that keys with numbers tens of bits long create codes that can be broken easily while anything over one thousand bits, we are told, is reckoned to be unbreakable. So the system is quite safe.

Is there anything in the bill that recognizes the need for a public key infrastructure?

Senator Magsaysay. We find that this is not necessary, Mr. President.

Senator Tatad. And why not?

Senator Magsaysay. The key entities here are both parties, the seller and the buyer; the sender and the receiver; the originator and the addressee.

Senator Tatad. Yes, that is very clear from the very start. Whether one is doing face-to-face commerce or something else, these are the two basic parties involved. But we are breaking new

ground and this is the first attempt to put in an e-commerce law.

I believe we have to learn from the experience of others, and where e-commerce is being practiced to a significant extent today, this is what is in use. One needs certification authorities, one needs digital signature services, and for this purpose, one needs what is referred to in the literature as public key infrastructure. The responsibilities of those involved in this infrastructure are clearly laid out in practice. I suppose that in framing a law that could be used in court, one will have to recognize the participation of these parties.

Senator Magsaysay. That is correct, Mr. President. There has to be a certification authority but that will depend on the two parties, the originator and the addressee, and it is up to the two parties to decide which entity, if they still need it, will be acceptable to both of them. We do not want to cover this in the present law which is basically the UNCITRAL law because this will allow flexibility to use either a private party as the certification authority or a public party or a nongovernment party or no party at all. This depends on the two entities involved in the transaction.

Senator Tatad. And if this is the concept, perhaps we do not need a law at all if all we need is what the two parties decide. But my understanding, Mr. President, is that here we are talking of the element of trust. There is what is called direct trust where the two parties, buyer and seller, have a long-standing relationship and they do not need a third party. But if we are talking of extensive commerce through the electronic highway, then we will need a trusted third party. And so this must be recognized in the law.

Senator Magsaysay. But if the two parties do not require a third party, it is up to them. Because the two entities will either trust each other or they will look for a common trusted third party. Either way, it is based, as the gentleman mentioned, on trust.

For example, if we have a responsible business entity or a person who is in business, we will expect him to be accountable and responsible for his own security of the transaction. The third party might be an alternative to the two—the originator and the addressee. Or it might not be necessary, as in the case of amazon.com, or the business-to-business practice that Shoemart and its 500 or so suppliers are conducting. They did not, by themselves, say, "Okay, we will conduct business through e-commerce and we will look for a third party." Because as long as Shoemart knows the integrity and reliability of these 500 or so suppliers, and the suppliers in turn accept the electronic purchase order of Shoemart, then there is no need for a third party in this particular case.

So, if we put a provision on certification authority in the bill, then we might be restricting the trust between two parties not

needing a certification authority. That is why it is not in the UNCITRAL law.

Senator Tatad. Mr. President, the UNCITRAL law is a very basic law. I mean, when it was enacted, there was very little experience in e-commerce going on. We should be in a reasonable position to build upon that basic platform because we have some experience now and the other countries can supply us with that experience. The examples provided by our colleague are very good examples of what we just described as existing relationships—we have the parties known to each other and we do not need a third party.

But in the real world where we want to expand our dealings with organizations and people we have not met or even heard of, we use the web to access information, and may have no opportunity to inspect for ourselves the premises of the organization. There has to be other means of making sure that the data messages being exchanged are reliable. As we established yesterday, the reliability of messages in most jurisdictions is best ensured by certification authorities. These certification authorities are established via the public key infrastructure.

But in any case, if our distinguished colleague wants to limit the first Philippine legislation on e-commerce to practices that have been superseded by developments, then we will just have to deal with that at the appropriate time.

I still have a couple of questions, Mr. President. In the transmission of data messages, is there any possibility of errors creeping in? Is there any possibility of the message being corrupted in transit?

Senator Magsaysay. There is always a possibility of generating error because we are in an imperfect world, Mr. President.

Senator Tatad. How does one deal with that?

Senator Magsaysay. These are on the provisions that define the integrity and reliability of an electronic document as original.

Senator Tatad. Mr. President, the question simply is: How do we deal with errors? For instance, I have placed an order for 1,000 pairs of something and the recipient receives a document that says I have placed an order for 100,000 pairs of that same article, and I got the 100,000 at inflated prices.

Senator Magsaysay. When the distinguished gentleman places an order for certain goods, together with the quantities,

specifications, qualities, et cetera, these are placed in an electronic contract where he puts his signature that this is what he has ordered, including terms of payment. The addressee receives this and has to acknowledge it that the distinguished gentleman has ordered so much.

In the practice that we are exposed to at this time, usually the supplier—assuming it is amazon.com—will send the distinguished gentleman an e-mail to confirm that he has ordered such and such items at such and such prices and to be charged against his credit card.

So, in effect, there is a complete communication from the time the buyer initiates a purchase to the time that the electronic purchase order arrives at the addressee's or the supplier's domain, and the supplier, in turn, confirms that he has received such an order by sending an e-mail or even calling up or sending a fax. That is the practice today, Mr. President.

Senator Tatad. This is the practice—use the e-mail and the fax?

Senator Magsaysay. Or a phone call.

Senator Tatad. How about the other means anticipated by the developments in e-commerce?

Senator Magsaysay. That is why we have to have some kind of a flexibility.

Senator Tatad. But in any case, Mr. President, the question really is: If an error has crept in, how do we deal with that? That is the question. Our friend says it is possible for errors to come in since we are living in an imperfect world.

Now, there are two types of errors that could come in. One type would be accidental errors; the other type would be intentional errors. We are more interested, I suppose, as lawmakers, in intentional errors. We want to prevent the data message from being corrupted by the intervention of third parties. Especially if the message goes through another system, as in the Internet routing system, then we have this distinct possibility. Do we not, Mr. President?

Senator Magsaysay. That is correct, Mr. President. The originator or the customer may call the attention of the merchant or the supplier, which is generic, for that matter. I mean, he may send an e-mail or he can call his bank so that the credit card company will not pay. So there are several alternatives for him to correct the error.

Senator Tatad. Yes, but this is if the originator knew that an error had crept in. But as we see, because of the development

of certain practices, certain things we were doing yesterday, we are no longer doing today; certain things we are doing today, we may no longer be doing tomorrow.

For instance, in booking one's flight, it used to be that if one made a stopover in a certain city, for 72 hours, one had to reconfirm his flight. Today, if one books a flight on BA, he just gives his schedule, he does not have to reconfirm anywhere, he is booked. So, this is one such example. There is no longer any feedback to the originator of the message until the termination of the contract.

Senator Magsaysay. That is true, Mr. President.

Senator Tatad. So, I believe this is one area that we must inquire into.

Finally, just to allow this bill to move on faster. I will ask my last question. This has to do with the issue of nonrepudiation.

In an ordinary transaction, if I sign a paper document, I am bound by that signature. If I deny it, the other party can take me to court. I mean the other party could take me to court and use the signed document as proof.

In an e-commerce transaction, what safeguards are we putting in place so that nobody can repudiate an electronic signature or a digital signature?

Senator Magsaysay. Can we go to Section 15, Mr. President, or we can start with Section 14, page 6. *Formation and Validity of Contracts*. In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data messages. Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose.

Then on page 7, Section 15. *Recognition by Parties of Data Messages*. As between the originator and the addressee of a data message, a declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message.

This is the thrust of the bill—that we recognize this electronic document.

Senator Tatad. Yes, the meaning of the provisions just read is very clear, Mr. President.

But I am talking of a situation where somebody who, in fact, sent the data message and received the confirmation of the

transaction entered into, subsequently says, "Well, I never sent this message. Somebody must have sent it in my name. And the confirmation that the other party sent was received by this still other party who was acting in my name. I was not involved at all." This is the situation. How do we guard against that? What is in the law that guards against it?

Senator Magsaysay. That is correct, Mr. President. Since this is based on the model law, as the distinguished gentleman mentioned, we would like to put this up-to-date since the model law does not make mention of electronic signature. We are willing to accept suggestions that the distinguished gentleman will make to improve this bill, to keep it up-to-date, and to include a provision on electronic signature which was in the original bill.

Senator Tatad. That was all I have been waiting for, Mr. President.

Senator Magsaysay. Thank you, Mr. President.

Senator Tatad. I thank the distinguished sponsor for that. Now I think we can begin to talk business.

Thank you very much, Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF SESSION

Senator Roco. Mr. President, I move that we suspend the session for one minute.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 4:35 p.m.

RESUMPTION OF SESSION

At 4:36 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

Senator Drilon. Mr. President, I ask that Sen. Raul S. Roco be recognized.

The President. Sen. Raul S. Roco is recognized.

Senator Roco. Thank you, Mr. President.

Would the distinguished gentleman yield to questions that I have been asked to study?

Senator Magsaysay. Very willingly, Mr. President, from the sage of the Bicol Region, the highest-placing presidential candidate in 1998 in the demographics of Class A and B, including the youth, having been the top.

Senator Roco. Mr. President, I am about to sit down because as we all know, in this Hall, flattery will get us everywhere. [Laughter]

Senator Magsaysay. The distinguished gentleman may proceed, Mr. President.

Senator Roco. This is purely for the lawyers because I think this bill will probably be the most discussed and the most intensely studied law of all the bills we have ever submitted to this Chamber. Barring none, all lawyers will be studying this for the next two months the moment it becomes a law without any guarantee that they will understand it. [Laughter]

So, Mr. President, in an effort to help, maybe our distinguished friend will write a book on this and make money because he should claim authority.

Senator Magsaysay. With the help of the distinguished gentleman, Mr. President.

Senator Roco. Thank you, Mr. President. We are really getting everywhere. [Laughter]

In the *Declaration of Policy*, Mr. President, is there any reason the distinguished sponsor wants to put so many objectives or declaration of policies, or may the distinguished sponsor want to just focus on a declarative sentence or whatever it is that he may wish? Because it is a mouthful and it becomes difficult to interpret with all those declared principles.

Senator Magsaysay. That is a fact, Mr. President. I, myself, wonder about my legal staff's verbosity.

Senator Roco. Exuberance.

Senator Magsaysay. Exuberant verbosity in Section 2, the *Declaration of Policy*. I do not mind that we may make this more succinct. As they say, "You keep it short and simple." I have no objection to being proven that this can be made more brief and concise.

Senator Roco. Yes, Mr. President. I am sure the staff will have notions of their own. Maybe both the *Declaration of Principle* and the *Objective* can be compressed into one, and if the intention is to facilitate international commerce and to have a uniformity of ideas and definitions, then we just say so. Then it becomes simpler for those who would interpret the law.

Senator Magsaysay. That is correct, Mr. President.

My staff is urging me to state here that e-commerce encompasses a lot of sectors, the infrastructure, of course, the software, the hardware, the underwear, I am sorry. [Laughter] I slipped.

Senator Roco. I noticed, Mr. President, that when the sponsor slipped, he was looking down.

Senator Magsaysay. There is nobody in front of me.

Senator Roco. This reference to the underwear, Mr. President, is more than a Freudian slip. I am sure we need loftier thoughts for e-commerce instead of this.

Senator Magsaysay. I will look up from now on, Mr. President.

Senator Roco. Regarding the definition on computer, maybe the staff would also want to cut it, Mr. President. For instance, if talks are according to mathematical and logical rules, and supposing a new method can come up which defies logic, which is neither logical nor mathematical, since computers are based on binary—maybe it is by some process not even known today—when we define and cement the concept of what the computer is, then a new one that comes up, maybe next month, will therefore be excluded. So, by making it more generic, we may wish to cover even future developments.

Senator Magsaysay. We will do that, Mr. President. In fact, when the gentleman mentioned new developments, the optical part is not even included here. It says, "electronic, electromechanical or magnetic." But the latest developments on fiber optic is optical, which is not mentioned here.

So, that is correct. We welcome new suggestions for the definition of "computer."

Senator Roco. As for "electronic data," in the definition on page 3, may we know why we have to add "using an agreed standard to structure the information." Again, supposing a new method of cutting through, it is like the Java development or the Amazon development, these were not necessarily at nodding acquaintances with the Microsoft or the Windows. So, by putting agreed standards on something that we may not even know, we constrict our flexibility.

Senator Magsaysay. We appreciate the gentleman's concern. Because aside from Java, there is the free software of Linux, which is competitive with the Windows, and of course, the old DOS, disk operating system, which is still used by those using the old computers before the Pentiums.

Senator Roco. Yes, Mr. President.

Senator Magsaysay. The gentleman may help us amend this definition by maybe adding "or to be newly developed."

Senator Roco. We have total trust in the staff, Mr. President. I am just calling attention to some notions that they may wish to adopt.

Now, as for "hacking," may we suggest also that the staff revisit the definition. Again, we lawyers are always prone to defining by enumeration. But since hacking is one of the criminal acts we penalized, we may want to definitely state the elements. Because we are penalizing. So we cannot just go by enumeration.

Again, I just leave that, Mr. President. I am just calling attention to them by way of helping in the drafting, if we may do so.

Senator Magsaysay. That is most welcome, Mr. President.

Senator Roco. Mr. President, I have a conceptual problem on interpretation of Section 6. I honestly do not understand what we mean when we say that in interpreting this Act, we must give due regard to its international origin. I do not understand that, Mr. President, and I know that that is lifted bodily from UNCITRAL.

Senator Magsaysay. That is correct, Mr. President.

Senator Roco. But my problem, Mr. President, is, one of the criticisms in Seattle in the WTO—and I think in Bangkok, we heard it; we were together in the UNCTAD—is that because of the effort to internationalize rules of conduct, we surrender part of national sovereignty to international rules, which is fair if we want to. But when we interpret considering its international origin, even in the interpretation, we surrender part of our national sovereignty to some amorphous authority that I do not know. I just do not know it. Who will be the final authoritative interpreter of these terms?

I do not have the answer, Mr. President, to my own question. If the sponsor has already an explanation, I will be truly appreciative of what and how we understand this interpretation considering its international origin.

Senator Magsaysay. The point is well-taken, Mr. President. The UNCITRAL states here the reason. It says:

Article 3 is inspired by Article 7 of the United Nations Convention on contracts for the international sale of goods. It is intended to provide guidance for interpretation of the modern law by courts and other national or local authorities. The expected effect of

Article 3 is to limit the extent to which a uniform text once incorporated in local legislation would be interpreted only by reference to the concepts of local law.

Senator Roco. That is very good, Mr. President. In the introductory paragraph of UNCITRAL, I suggest that there be a reference that this does not override local law as regards protection of consumers. Maybe that phrase should be reintroduced. Since now we will domesticate the terms, it is understood that the domestic meaning of the terms as we use it will prevail in terms of local law. I do not want some international organization telling us what we mean when we say "goods." We can probably figure that out all by ourselves.

Senator Magsaysay. This is good, Mr. President. I support the gentleman's efforts and concern because, after all, there is still such a thing as national sovereignty.

Senator Roco. Yes, Mr. President. I am sure the staff—they were nodding their heads—caught that part of the introductory paragraph of UNCITRAL.

The variation by agreement is also one that I have difficulty understanding. If it can be explained a little. I do not understand why it is here. In fact, I do not know what it is saying. It is difficult. It says:

As between parties involved in generating, sending, receiving, storing or otherwise processing data message, and except as otherwise provided, the provisions of Part II, Chapter III, may be varied by agreement.

I honestly could not identify, unless it means communication of data messages. I cannot figure it out.

SUSPENSION OF SESSION

Senator Magsaysay. Mr. President, I move that we suspend the session for one minute.

The President. Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 4:49 p.m.

RESUMPTION OF SESSION

At 4:54 p.m., the session was resumed.

The President. The session is resumed. Senator Magsaysay is recognized.

Senator Magsaysay. Mr. President, the gentleman's concern is very valid. The provision on the variation by

agreement, pointing to the provisions of Part II, which is on page 2, Electronic Commerce in General and particularly Chapter III on page 6, COMMUNICATION OF DATA MESSAGES; *Formation and Validity of Contracts*, we quote the model law:

The decision to undertake the preparation of the model law was based on the recognition that in practice, solutions to the legal difficulties raised by the use of modern means of communications are mostly sought within contracts. The model law is thus intended to support the principle of party autonomy. However, that principle is embodied only with respect to the provisions of the model law contained in Chapter III.

which is our page 6, Chapter III of Part 1.

Senator Roco. I see. So I guess, on a technical basis, that can just be corrected.

Senator Magsaysay. Yes, Mr. President.

Senator Roco. May we go to Chapter II on page 4. I think this is probably the most substantive part of the bill.

Senator Magsaysay. That is the core of the bill. The gentleman is correct, Mr. President.

Senator Roco. And I guess my questions will be again an effort to make a lawyer, reading the Record, understand what we are approving.

My first observation, Mr. President, is: Under Section 8, it merely says: "Information shall not be denied legal effect, validity or enforceability." They are three: effectivity; whether it is substantially valid as a contract; and whether it can be enforceable. These are not to be denied simply because it is in the form of a data message as defined, which is any of the...

Senator Magsaysay. May I interject here, Mr. President,—

Senator Roco. Yes, please.

Senator Magsaysay. —that there is an error in Section 8.

Senator Roco. The phrase "form of." I think the gentleman lost "form of."

Senator Magsaysay. Yes, that is correct. So, if I may read, with the gentleman's permission—

Senator Roco. Yes, please. I also put it in.

Senator Magsaysay. —that Section 8 should read: "*Legal Recognition of Data Messages*. - Information shall not be denied

legal effect, validity or enforceability solely on the grounds that: (a) it is in the form of a data message; or (b) it is not contained in the data message purporting to give rise to such legal effect, but is merely referred to in that data message."

That is the correct provision, Mr. President.

Senator Roco. Yes, I understand that the first part is the 96 version and then it was improved in 98, I think the second paragraph.

Senator Magsaysay. Thank you, Mr. President.

Senator Roco. Now, my first problem, Mr. President, is: Under the present situation, a lot of data message like "white paper,"—they are called "white paper" but they are really "black papers" can easily be spread. They spread all sorts of stories, innuendoes, malicious gossips, et cetera, and they just plug it into the Internet. And because we cannot find who is writing, under these conditions, it is given legal recognition.

So I have a problem with the total access to all these things. I was going to suggest that we put in this bill—and I know it is not in the UNCITRAL—that unless the source is identified, the recipient is identified, and the telephone numbers are identified, they cannot be given recognition. In other words, there must be a source fully identified by number—whatever—by footprint for all I care, by nose print. I am open to all suggestions—ear print, whatever.

Senator Magsaysay. Or DNA.

Senator Roco. Yes, whatever, or smell. [Laughter] But there must be an identification. I think we should oblige all telecommunications companies in the Philippines to make sure that they will not attach... It will be a presumption of illegality the moment it has no source and it has no addressee. I mean, how will that be received by the committee?

Right now, we have reelectionists among ourselves, Mr. President. Even in the U.S., I think they are having problems. One of the most treacherous campaigns now is they just plug into the Internet. The story at least about Glen comes out in the papers. So one catches it. If it is only in the Internet, everybody talks about it. And they plug it into the message centers and everybody is talking about it. And if one is not plugged in to his Internet, he is just slandered, libeled at liberty.

So, in my view, Mr. President, if this is an acceptable notion, somewhere here in the provision, we must oblige identity of source, identity of addressee, and we must also oblige telecommunications companies to connect only when origin is

identified. After all, it is communication, then even for purposes of ascertaining truth. If we therefore cut white paper without sources, it is automatically considered. And whoever, whichever company, whichever telephone we trace it to, they become liable.

Senator Magsaysay. The concern of the gentleman from Bicol is appreciated. We can accept any amendment that will attain this concern. Or if we can look at Section 11, then it can be applied as evidence.

Senator Roco. Yes.

Senator Magsaysay. Maybe with his own amendment on this particular issue, Section 11, I think we can increase the reliability and integrity of the document.

We can even include that unidentified documents should also be made bases of action, libel, et cetera, if the source is identified later, if we know the owner.

Senator Roco. Yes, and the owner of the telephone so that everybody watches his own telephone. We watch our own telephone.

Senator Magsaysay. There has to be some kind of responsibility to the owners or owner of the appliances like the telephone, the fax machine, or the computer for that matter.

Senator Roco. My only problem, Mr. President, is the confidentiality. But I am debating in my mind, like the military. If they are military secrets, they should not send them through there. If they are trade secrets, they should not send them through there.

Since e-commerce, the Internet and the web are supposed to be for free access to information, then everybody must be culpable for the information or whoever plugs it in.

So the principle, I thought, Mr. President, could be examined for something that we can introduce.

Senator Magsaysay. That is correct, Mr. President.

Senator Roco. Now, Mr. President, I will ask a series of questions and I will leave it to the sponsor to answer. I am really leading him to the answers, but again this is for the lawyers who will read the record.

When we say "accessible" in Section 9, what exactly do we mean? Downloaded? And if it is secured, secured with permission. If it is coded... What exactly do we mean by "accessible"?

Senator Magsaysay. When we use the term "accessible," certain individuals who might be allowed to access into the data

message will easily access to this provided they have their private key. It can be retrieved for reference later on.

Senator Roco. That is correct. So what we mean is retrievable?

Senator Magsaysay. It is retrievable.

Senator Roco. Or it can be downloaded by the addressee or recipient.

Senator Magsaysay. That is correct, Mr. President.

Senator Roco. Again, that should be made clear because "accessible" can be... I can look. I mean, I can have a picture of what appears on the screen. But if for some reason one blocks it so that I cannot download it, then...

Senator Magsaysay. Then it is not accessible.

Senator Roco. Yes, it is something like that. I do not know. I do not know what is the correct mode, Mr. President.

And then it says, "Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being in writing."

I think—I hope the sponsor will be patient with me—the document can be just for recording. What will the rule be for documents that are needed just for record? Whatever. We just want the record. So, what is the rule that we are looking at in this section? When is it a valid record?

Senator Magsaysay. I would answer that if the document is maintaining its integrity, then it is for all purposes a valid record. If it is not in error, if it is not tampered with, and it maintains the originality, based on Section 11 as original documents and Section 13 on page 6...

Senator Roco. Yes, Mr. President. I will ask the distinguished sponsor to later on ask the staff to identify. I think they are in the different sections. But I want the lawyers to really understand when it is just for recording or to have a legible, readable record of a fact. Nobody quarrels with that. I think one of the sections—and I am not sure which—covers that. So, something is a valid record if it complies with the following requirements. Is that correct? So, we are not yet talking of legal effect. But it is a picture. It is one's picture, it was scanned. That is a valid record of how one looks, whatever—10 years ago.

Again, I am just asking for guidelines so that the lawyers will

know that this is the section that applies. I think they are giving the section, whatever.

Senator Magsaysay. Section 13.

Senator Roco. Having established Section 13 as the one that is valid for a record that is legible and unaltered, what is the rule that will be followed to determine whether the document is an original? The lawyer will tell us, Mr. President, that documents prepared at the same time are all marked original. That is fine when it was carbon copy. Now with xerox and e-mail, what is original? When is it original and which rule do we follow?

Senator Magsaysay. Can we refer to Section 11? Maybe this can help us.

Page 4, Section 11, states:

SEC. 11. *Original Documents.* — (1) Where the law requires information to be presented or retained in its original form, that requirement is met by a data message if:

- (a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as a data message or otherwise; and
- (b) where it is required that information be presented, that information is capable of being displayed to the person to whom it is to be presented.

Senator Roco. So, it is reliable assurance of the integrity of the information. How do we determine this, Mr. President? The reliable assurance that the integrity as generated—the integrity of the information—is faithful to its original as it was first generated? Because, when we start tinkering with the machine, we come out with all sorts of 000, x, et cetera and if there was a static somewhere along the way, we come out now. When is it considered or what rule shall we follow to say that this is the original?

Senator Magsaysay. Can we look at Section 16? It might help us, Mr. President. This is on page 7, line 5. It says:

SEC. 16. *Attribution of Data Messages:* — (1) A data message is that of the originator if it was sent by the originator itself.

(2) As between the originator and the addressee, a data message is deemed to be that of the originator if it was sent:

(a) by a person who had the authority to act on behalf of the originator in respect of that data message; or

(b) by an information system programmed by, or on behalf of the originator to operate automatically.

Senator Roco. Whatever, Mr. President, I will rely totally on the sponsor. But again, we will ask for certain guides from the staff. What I am trying to do is later on introduce, again with the help of the staff, a modification so that the Rules of Evidence will be modified—the lawyers will say *mutatis mutandis*—to the extent it applies or we modify it to suit the situation.

For the lawyers, an original document has probative value. But if the original document is lost, then one is now allowed to present secondary evidence. But here, depending on how we phrase it, the original document may never disappear. It is part of the world memory; it is somewhere in cyberspace. I do not know where it is, except that the senator must tell me why it is original so that I will retrieve it sometime in the future in cyberspace.

So the sponsor need not answer right now. But we will appreciate later on an enumeration by the staff, since they have been reading it, that as a record section blank, to show original section blank, plus the modification on the Rules of Evidence—to show and to authenticate. And this is what we were discussing with Senator Aquino-Oreta and Senator Drilon. Authentication. What is the section that will now rule to authenticate a data message?

Senator Magsaysay. Very welcome, Mr. President. The staff will work and will craft the amendments as we see or deem fit to comply with the real concerns of our present-day society.

Senator Roco. In the authentication, Mr. President, the hologram replaces apparently the signature. So that must be stated when we authenticate. Right now, to authenticate, we must say that the signature is the signature of Senator Aquino-Oreta. How do we know it is? We are unfamiliar with her signature. We copied from her. So I am familiar, whatever. And then we establish authentication.

But here, we must make clear to everybody how we authenticate a hologram.

Senator Magsaysay. May I take note here that in the original bill reported by the committee, before this present bill we are discussing, there is a Section 10 entitled *Reliance as Originator's Electronic Documents*. I think this comes pretty close to the protection that the senator might require.

It says:

An addressee is entitled to regard electronic

documents as being that of the originator and to act on that assumption if:

(a) the addressee properly applied a procedure previously agreed upon or provided in the electronic documents released and sent directly by the originator for that purpose; or

(b) the electronic document received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify the electronic document as that of the originator.

Senator Roco. I appreciate that, Mr. President. In fact, that may really be the applicable provision. But when the staff goes through it, they may want to also suggest the section to govern enforceability. Again, because it is valid, because it is authentic does not mean it is enforceable. I am just enumerating.

The problems that a regular lawyer practicing law will be meeting when he reads the transcripts, he might as well learn what we are talking about.

Also, their acceptance by public authorities and courts. When shall we then rely on these data messages to be accepted and relied on by public authorities? It is different to rely on between individuals. One is the originator; I am the addressee. If we had a preconceived signal, then it binds both of us. That is, I think, one of the sections.

But when does it bind the Senate, the public? When can judicial notice or legislative notice be taken so that we do not have to prove? Because it is very difficult to prove something, and yet we cannot appeal to say that this is self-evident.

Senator Magsaysay. That is a good suggestion, Mr. President.

Senator Roco. I will break there, Mr. President. We did promise the Majority Leader up to five o'clock. It is 5:15 p.m.

May I just call attention to one more item. In the UNCITRAL, there is always a provision for the exceptions. But we have to skip it because it is very difficult to ascertain the exceptions. I also appreciate the hardships that my staff have encountered.

But I suggest that in some exceptions, as defined by domestic law, by Philippine law, by Civil Code, or by the rules of evidence, these should be mentioned. I leave it to them to choose. Or maybe a generic exception later on as a separate section. Because

UNCITRAL allows local law to prevail. So we do not necessarily have to be subject to all the interpretations of some esoteric group in the United Nations' small room in New York where they do not even know that we exist.

Senator Magsaysay. We will work on that provision on exceptions, Mr. President.

Senator Roco. So if the Majority Leader will suspend consideration of this bill, we will appreciate it.

Thank you, Mr. President. We will continue.

The Presiding Officer [Sen. Flavie]. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 1902

Senator Drilon. Mr. President, I move that we suspend consideration of Senate Bill No. 1902 as reported out under Committee Report No. 179.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the motion is approved.

BILL ON SECOND READING S. No. 1438--Kinder Plus: The Early Years Act (Continuation)

Senator Drilon. Just for the purpose of closing the period of interpellations, I move that we resume consideration of Senate Bill No. 1438 as reported out under Committee Report No. 22.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 1438 is now in order.

Senator Drilon. We are still in the period of interpellations. I move that we close the period of interpellations.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF CONSIDERATION OF S. NO. 1438

Senator Drilon. Mr. President, I move that we suspend consideration of Senate Bill No. 1438.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Drilon. Mr. President, I move that we proceed to the Additional Reference of Business.