WEDNESDAY, MARCH 22, 2000

OPENING OF THE SESSION

At 4:16 p.m., the Senate President, Hon. Blas F. Ople, called the session to order.

The President. The 76th session of the Second Regular Session of the Eleventh Congress is hereby called to order.

We shall be led in prayer by Sen. Ramon B. Magsaysay Jr.

Everybody rose for the prayer.

PRAYER

Senator Magsaysay. Thank you, Mr. President. The title of the prayer for this afternoon is:

"FINISHING WHAT WE'VE STARTED"

Dear Heavenly Father, You have called us to account for our brethren and our work as partakers of Your kingdom.

To equip us, You have encouraged and assured us that "You who began a good work in us shall complete it till the day of salvation."

We thank You for Your promise.

With zeal and vision, allow us to finish the work we have started, conscious of Your unique purposes for each of us.

What others have begun, allow us to pursue assiduously and selflessly despite individual, affiliational and political differences to reduce wastage and inefficiency in government, while invoking Your approval which outweighs human praise.

In the midst of many good ideas planted but never cultivated enable each of us to intensify our commitment to Christian welfare and good and be able to say in the end what St. Paul declared "I have fought the good fight, I have finished the race, I have kept the faith."

This we pray as we work with Your guidance and direction, building and continuing our brother's struggles.

In the name of Christ Jesus, the Sustainer of All Things Who knows where merit is due.

Amen.

The President. We thank Senator Magsaysay for an inspiring prayer.

The Secretary will now call the roll.

ROLL CALL

The Acting Secretary [Atty. Reyes], *reading*:

Senator Teresa Aquino-Oreta .....Present
Senator Robert Z. Barbers.....Present
Senator Rodolfo G. Biazon.....Present
Senator Renato L. *Compañero* Cayetano ..Present
Senator Anna Dominique M.L. Coseteng ...Present
Senator Franklin M. Drilon .....Present
Senator Juan Ponce Enrile .....Present
Senator Juan M. Flavier .....Present
Senator Teofisto T. Guingona Jr. .....Present
Senator Gregorio B. Honasan .....Present
Senator Robert S. Jaworski.....Present
Senator Loren B. Legarda-Leviste.....Present
Senator Ramon B. Magsaysay Jr. .....Present
Senator John Henry R. Osmeña .....Present
Senator Sergio R. Osmeña III .....Present*
Senator Aquilino Q. Pimentel Jr.....Present
Senator Ramon B. Revilla .....Present
Senator Raul S. Roco .....Present
Senator Miriam Defensor Santiago .....Present
Senator Vicente C. Sotto III.....Present
Senator Francisco S. Tatad.....Present
The President .....Present

The President. With 21 senators present, there is a quorum.

The Majority Leader is recognized.

THE JOURNAL

Senator Drilon. Mr. President, I move that we dispense with the reading of the *Journal* of the previous session and consider it approved.

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

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

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

* Arrived after the roll call

and the other environmental-friendly indigenous and renewable sources of energy;

5) The intragrid subsidies to compensate distribution utilities for mandatory social pricing of residential electric charges;

6) The intergrid subsidies to level grid costs of electricity; and

7) Such other claims as may be authorized by the Energy Regulatory Board.

Mr. President, as mentioned above, there should be collected by the National Transmission Company a "Universal Levy" on a monthly basis from all consumers of electricity an amount which shall be added to the Tolling Charge of the National Transmission Company. The universal levy shall be remitted by the National Transmission Company to the Trust. The amount of the universal levy to be collected from the consumers shall be fixed by the Energy Regulatory Board upon application by the Trust provided that such universal levy shall be collected only for a period of 15 years.

Mr. President, the Trust shall assume all the obligations of the National Power Corporation. Finally, all contracts such as but not limited to the BOT, the BOO, the ROM, and other derivatives authorized by Republic Act No. 6957 for the purchase of power by the National Power Corporation shall be retired or preterminated by the Trust under such terms and conditions as it may find advantageous to the government.

Mr. President, this bill is an integral part of what we call a sequential number of bills that are part and parcel of our power sector restructuring program.

The first bill, Mr. President, we already approved, and that bill was the bill creating the National Transmission Company.

The second bill, Mr. President, is the bill which amended the Charter of the Department of Energy, and which we already approved on Third Reading in this Congress.

The third bill, Mr. President, is the bill which amends Executive Order No. 172, creating the Energy Regulatory Board which is now pending debate and is on Second Reading before this Chamber.

The final bill, Mr. President, is the bill on the modernization and reform of the electric power industry which is pending in the committee.

Mr. President, the enactment of this bill is key to the success of the power sector restructuring program. The enactment of this bill is not going to be a small measure. As I said earlier, the total cost of restructuring will be about P300 billion. But it is essential that we bite the bullet because unless the independent power producers are withdrawn from their activity as contracted power producers by the National Power Corporation generating 47 percent of the total power, in reality, there is no privatization and restructuring. How can there be privatization if NPC, even after it has sold its generating assets, shall still control 47 percent of the supply of electricity in this country?

For these reasons, Mr. President, our Committee on Energy has reported out this bill favorably and requests the approval of this bill by this Chamber.

Thank you very much, Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 1942

Senator Drilon. Mr. President, to allow our colleagues to review the proposed measure, may I move that we suspend in the meantime the period of interpellations after that sponsorship speech.

I move that we suspend consideration of Senate Bill No. 1942.

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, with the permission of the Chamber, may I move that we resume consideration of Senate Bill No. 1902 as reported out under Committee Report No. 179.

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, we are now in the period of individual amendments. May I ask the Chair to recognize Sen. Ramon B. Magsaysay Jr., the principal sponsor. For purposes of the debate at this period, may I refer our colleagues to the version dated March 21, 2000 which was earlier distributed to every member of the Chamber.

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

Senator Magsaysay. Thank you, Mr. President.

We are now on page 4. Last night, we suspended our period of individual amendments because Senator Roco made mention of entering a new chapter, meaning the legal recognition of data messages, a little more time for us to study and to absorb the important provisions of this chapter.

Senator Drilon. Mr. President, we are now on page 4. The amendments are in capital letters under Section 8.

The President. Did the gentleman say page 3A or page 4?

Senator Drilon. Mr. President, we are now on page 4. We ended yesterday's debates on page 3B. So, we are now on page 4.

Senator Pimentel wishes to be recognized.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized.

PIMENTEL AMENDMENT

Senator Pimentel. Thank you, Mr. President.

Mr. President, in line 3 of Section 8, the sentence starts with the following: "Information shall not be denied legal effect..." I think there is a certain degree of vagueness in the way it is formulated. What information are we talking about here? There should be some qualifiers that can clarify the meaning of the information that we are tackling here.

Senator Magsaysay. This is part of the original provision of the UNCITRAL model law. But if the gentleman from Cagayan de Oro would like to define or clarify this further, we are open to his suggestion.

Senator Pimentel. Certainly, Mr. President, but I am not prepared at the moment to do that except that I notice that if we allow this to stand, the ambiguity will certainly not be helpful to the enactment of this bill.

Senator Magsaysay. Perhaps we can return to page 3A, Mr. President, line 16A, to define "Information" as amended by Senator Drilon and accepted by the chairperson.

Senator Pimentel. This is a little better now. In other words, probably what we can do here is INFORMATION AS DEFINED IN PARAGRAPH I...something...

Senator Magsaysay. Of page 3.

Senator Pimentel. No, because the pages will change but the number of the paragraphs may not be changed.

So, probably, INFORMATION AS DESCRIBED IN SECTION 5, DEFINITION OF TERMS, PARAGRAPH I.

That would probably cure the ambiguity there, Mr. President.

Senator Magsaysay. I will accept that, Mr. President.

Senator Pimentel. Thank you, Mr. President. That is all for this particular section.

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

The Majority Leader is recognized.

Senator Drilon. If there are no other amendments on page 4...

Senator Roco. Just a minute, Mr. President. I am sorry, I missed it. We were chatting with the Majority Leader.

So, what was the amendment put in?

Senator Magsaysay. "INFORMATION AS DESCRIBED IN Section 5, paragraph I," referring to our definition of the word "Information".

Senator Roco. May we suggest to the committee, if this is acceptable, to cut the sentence into two so that the first statement shall read: "Information shall not be denied legal effect, validity or enforceability solely"—I think this is the critical rule here—"on the grounds that it is in the FORM OF A data message."

I really do not understand or it is not contained in the data message. I do not understand that, Mr. President. If the sponsor can give us a demonstration of what that means, "purporting to give rise to such legal effect, but is merely referred to in that data message..."

I do not understand the second phrase but I suggest that we end with line 6, "to in that data message." As the first sentence in line 6.

Then, the next sentence should read—remove the word "AND"—FOR ALL LEGAL PURPOSES, A DATA MESSAGE OR ELECTRONIC WRITING AS REFERRED TO UNDER THIS ACT SHALL BE THE FUNCTIONAL EQUIVALENT OF A WRITING OR A WRITTEN DOCUMENT."

I think what we really mean, Mr. President, for all...it is not legal purposes...

May I ask for a one-minute suspension?

SUSPENSION OF SESSION

Senator Drilon. 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 4:40 p.m.

RESUMPTION OF SESSION

At 4:55 p.m., the session was resumed.

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

Senator Roco. Mr. President, after discussing and looking at various texts, may we amend, if it is acceptable to the committee, Section 8 to read as follows:

"SEC. 8. *Legal Recognition of Data Messages.* Information shall not be denied legal effect, validity or enforceability solely on the ground that it is in the FORM of a data message, OR THAT IT IS INCORPORATED BY REFERENCE IN THAT DATA MESSAGE."

So it cannot be objected to solely on those grounds, solely on the ground that it is in the form of a data message or it is incorporated by reference in that data message.

So that if the e-mail says, "we incorporate by reference this provision of the Civil Code," that cannot be a ground for objecting as inadmissible. Then that is the first sentence.

The second sentence then becomes: FOR EVIDENTIARY PURPOSES, A DATA MESSAGE OR ELECTRONIC WRITING SHALL BE THE FUNCTIONAL EQUIVALENT OF A WRITTEN DOCUMENT UNDER EXISTING LAWS.

Senator Magsaysay. The amendment is accepted, Mr. President.

Senator Drilon. Before we approve the amendment, Sen. Miriam Defensor Santiago manifested to me earlier that she has a question in Section 8.

The President. Sen. Miriam Defensor Santiago is recognized.

Senator Santiago. Thank you, Mr. President.

I am on page 4, lines 3 to 6d referring to Section 8 on *Legal Recognition of Data Messages.*

This paragraph can be divided into two: The first part will state, "Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the FORM OF a data message." That is the first part of this paragraph.

The second part will state: "OR 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."

The first part of this paragraph follows the UNCITRAL model law on electronic commerce but the second part of this paragraph was merely included in the bill in the form of a committee amendment dated 7 March, this year and carried over to this present version of the bill.

So I have some questions about the second part or the second statement which provides: "OR 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."

My point will be that we might be amending the Rules of Court on the parol evidence rule. I would like to explain as follows:

Under the second paragraph, the situation would be like this: Let us suppose there are two parties, A and B, the buyer and the seller. Let us say A and B have agreed to enter into a contract of sale of books. A sends to B through electronic mail a letter informing B that A will sell his books to B, and A has attached to the letter a purchase order which has been signed by A and which must be returned to A with the complete details.

B agrees to the terms of the offer and fills up the purchase order form contained in the attachment. B then sends A through electronic mail a letter acknowledging receipt of A's letter and attaches the completed purchase order form.

However, let us hypothesize, there has been some unforeseen circumstance and A receives the electronic mail containing the letter of acceptance by B of the offer of A but without the attachment, which is the completed purchase order form.

If we apply the second statement of Section 8 to this example, then the letter of acceptance of B received by A through electronic mail shall be given legal effect and shall be enforced even though it does not contain the terms and conditions of the sale nor the approval or consent of the parties through their electronic signatures.

Under this second statement, the information, by which I mean the terms of the contract of sale, would not be contained in the data message purporting to give rise to the legal effect, which is the electronic mail received by A from B, but was merely referred to in such data message through B's acceptance. The actual terms for the contract of sale were contained in the attachment which was not received.

I am therefore raising this question: Does this second statement not create an exception to the parol evidence rule?

The Rules of Court, Rule 130, Section 9, provides as follows:

> Sec. 9. *Evidence of Written Agreements.* - When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.
>
> However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:
>
> (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
>
> (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
>
> (c) The validity of the written agreement; or
>
> (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.
>
> The term "agreement" includes wills.

Under this parol evidence rule which I have just read, the terms of a contract are rendered conclusive upon the parties and evidence *allunde*, meaning to say, evidence outside of the written document is not admissible to vary or contradict a complete and enforceable agreement embodied in a document.

Physically, in any electronic mail transaction there is no written agreement. The provision in Section 8 allows the data message and those merely referring to it as the functional equivalent of a writing or a written document. Because of the second part of Section 8, there will be no need to present any other evidence to prove the intention of the party since it recognizes the validity of information merely referred to in the data message, a data message which does not contain the actual enforceable agreement.

So it seems to me that, in effect, by means of this second statement or second sentence in Section 8, we are amending the Rules of Court. We, of course, have the power to repeal or to amend the Rules of Court. But I just want to clarify whether that is our intention in our deliberations this afternoon.

That is my question. Do we seek to amend the parol evidence rule in the Rules of Court by this provision?

Senator Magsaysay. We do not seek to amend the Rules of Court on parol. Maybe my colleague, who is a good lawyer, can answer this because there is already an anterior amendment and Senator Roco might be able to help out in harmonizing the view of the lady senator from Iloilo.

The President. Senator Roco is recognized.

Senator Roco. Just to offer a view, Mr. President. I really also have difficulties with the second phase and that is why in the proposed amendment, which was accepted, we thought it should read just that. The critical word here is that these documents may not be denied legal effect, validity or enforceability solely, and that is critical. So that we cannot object that because I picked it up from the cyberspace; therefore, we cannot prove it or we object solely on that ground.

The second phrase then is incorporation by reference. And so we said, or because it is merely incorporated by reference in that data message. In the example given, that can happen by saying, for instance, "I sell you this book as identified and numbered 1, 2, 3, 4, 5 in the Library of Congress." So that the reference gives a specific description of the object of the sale.

Now, I thought, Mr. President, that would correct the first sentence and it should end with line 6 after "data message."

In the second proviso, Mr. President, it was also accepted to say that only for evidentiary purposes, a data message or electronic writing shall be the functional equivalent of a writing or a written document under existing laws. So that because we had not seen it being prepared, it may now be considered still original as long as it was simultaneously witnessed from the giving side to the receiving side. That is the value of e-mail. One can see it; he can chat.

If the question is: Do we propose to modify? We cannot help but modify many rules of evidence, Mr. President, under this law. I do not feel I am an expert on this matter, simply because I have been studying it a little time. The result of this bill, if it becomes a law, is to modify a number of the rules of evidence. We cannot help it.

In terms of the parol evidence on the specific example of our

distinguished friend from Iloilo, it seems to me that there will be no sale because there was no meeting of the minds. And the meeting of the minds on the specific object involved is an essential element of a sale.

That is my opinion on the matter, Mr. President. On the question of whether we are modifying parol evidence, probably we are, but it will refer only to the submission of the piece of document pulled out from cyberspace. We are saying that that cannot be objected to simply because it came from cyberspace.

That is the contribution I can give, Mr. President. I hope it clarifies, instead of further convolutes.

Senator Santiago. Mr. President, as invited, I would like to make two comments which are in the form of a reiteration and a summary of what I have said before.

No. 1. This Congress has the power to amend the Rules of Court. So if we really wish to, we cannot be estopped by the existence of the parol evidence rule in the present Rules of Court. We can change it if that is what we really want to.

No. 2. I have no objection to the first sentence in Section 8— "Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the FORM OF A data message..."

That is an innocuous statement. It does not really change the pattern of legal thinking. It simply means that one can present a printout from the computer or the fact that something was transmitted through the computer. Then it will be for the judge to evaluate whether there is sufficient evidence or not. That is what I mean by "it is, in effect, an innocuous statement." It does not have any major impact on the present rules of evidence.

One proof that it is an acceptable statement is that this very statement, I believe, has been lifted from the UNCITRAL model law on electronic commerce.

My problem is the second sentence in this paragraph because I believe that this is an indigenous thought that came from our own committee. I wish simply to point out that it has far-reaching consequences in the law of evidence.

First of all, this Chamber will have to clarify whether we really want to exercise the power to amend the Rules of Court. And second, whether we want to accept normally what would be a printout as evidence in a court of law.

Parol evidence rule simply means that if something has been committed to writing, we cannot present evidence to change the terms of what is contained in that writing.

So if we pull a printout from the computer and present it in court, we can no longer add or subtract from what is contained within that printout. That would be the meaning.

If we are not yet prepared to make a decision on this point, we can suspend consideration while the lawyers in this Chamber and others who are similarly interested could spend more thought on the point.

I just wanted to call attention to the fact that what we are doing with Section 8 will eventually have an impact on our Rules of Evidence.

No. 1. Do we want to amend the Rules of Court?

No. 2. Do we want to have a situation in our legal system where a mere printout from a computer will bind the parties to that transaction and where the judge would be estopped from admitting evidence to change what is contained in that printout?

Mr. Majority Leader, I was suggesting that, perhaps, because this is a complicated legal point, our colleagues might need more time to study it in-depth and we can move on in the meantime.

Senator Drilon. Mr. President. I would have no basic objection to the proposal. We will not be closing the debates on the amendments this afternoon. There will be enough time for everyone to go over this particular provision. We can debate on this issue exhaustively until we are satisfied that what we are providing for is the most understandable and proper version.

The President. Is the Majority Leader presenting a motion?

Senator Drilon. No, Mr. President. I have no basic problem with the proposal of Senator Santiago. What I suggest is that we proceed to the other pages but we will not close yet the period of amendments until everybody would be satisfied that the provisions are in order.

The President. Does the Majority Leader want to move on from page 4?

Senator Drilon. That is correct, Mr. President. I would emphasize that we are not closing the debates. We will just proceed until we have finished all the pages.

Senator Roco. Mr. President.

The President. Senator Roco is recognized.

Senator Roco. Mr. President, by way of a rejoinder only to help the lawyers who will read the debates on this bill.

We do not seem to have a choice if we want a law that will reconcile our e-mail concepts with the rest of the world. We have no choice but probably to start modifying our own thoughts even on the rules of evidence.

So far, Mr. President, this first section on legal recognition of data messages is the simplest. Yesterday, I was the one who was saying that this provision is very difficult and yet this is still the simplest provision over the rest in the chapter.

Mr. President, just a rejoinder to our friend from Iloilo. Let me say that the parol evidence rule in this particular case is not modified because the document will speak for itself.

The second part of the first sentence merely says—and this is also allowed by the Rules of Court—that when someone refers to something and incorporates a provision somewhere and refers to it as part of the document, then that is still covered by the parol evidence. It is still deemed part of the document.

Although it is not reproduced fully, it must be read as part of the document. So it is still covered by the parol evidence rule which says that one cannot modify a document presented in court and that that document will speak for itself. The words stated in that document would be what it says. One cannot therefore testify on it. It is an exclusionary rule. One cannot testify that when we used that word, we meant this. The court should normally say "Stay away from that. What you meant is another matter. Whatever is in your mind, that is your problem."

But the document will speak for itself in the normal meanings or signification of the terms. So parol evidence here will not be modified by the first two sentences as modified.

The second proviso—that is why we suggested and it was graciously accepted only for evidentiary purposes—the functional equivalent rule was also taken from the UNCITRAL. It was the way it was phrased that I think made it a little difficult to understand. But the functional equivalent rule on a writing, again, we have to accept.

Is it an original? That is one of the questions. We have a very specific definition of when it is an original. But when the two of us are sending the document to each other, is it now an original? Well, let the lawyers debate. We are saying that one cannot object to its being an original simply because he pulled it out from cyberspace.

That is all we are saying, Mr. President.

I hate to burden the nonlawyers because I am sure even the lawyers will have great difficulty. But I am just trying to be as helpful as possible. Those are my comments, Mr. President. So that for the lawyers who read it later on, let it be clear that all we are saying is that we cannot say that it is not an original simply because it was pulled out from the computer.

Thank you, Mr. President.

Senator Drilon. Just for clarity and without prejudice to the same being subjected to further amendments. May we find out from Senator Roco how Section 8 was proposed to be amended?

Senator Roco. As accepted by the committee, Mr. President. It will now read: "Information shall not be denied..."

Senator Drilon. "Information" as defined in this Act?

Senator Roco. Yes. But I would prevail upon my friend to remove it for styling purposes because it is really redundant. It does not satisfy Strunk and White.

Senator Drilon. Anyway, as we said without prejudice to another view, may we know...

Senator Roco. As defined, "Information" shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the FORM OF A data message, OR..."

Again, "solely" does not have to be repeated, "OR THAT IT IS INCORPORATED BY REFERENCE IN THE DATA MESSAGE..." That is the first sentence.

Then, for evidentiary purposes, "A DATA MESSAGE OR ELECTRONIC WRITING SHALL BE THE FUNCTIONAL EQUIVALENT OF A WRITING OR A WRITTEN DOCUMENT UNDER EXISTING LAWS." Again, purely for evidence.

In other words, what we are removing from the lawyers is the ability to stand up and say, "I object to this writing because it was printed down from the e-mail." The judge will say, "Sorry, you cannot object solely on those grounds. Counsel will have to come up with a better objection. It will get in."

Senator Drilon. All right.

May I ask the Chair to recognize Senator Guingona.

The President. Sen. Teofisto T. Guingona Jr. is recognized.

Senator Guingona. Mr. President, may I just be clarified as to the phrase, "AS REFERRED TO" and what is the term "FUNCTIONAL EQUIVALENT"?

Senator Roco. I do not remember the technical rule, Mr. President. But a document can incorporate by reference a whole body of knowledge.

Senator Guingona. Which one is referred to? Is it the electronic writing or the message itself?

Senator Roco. The data message can say, for instance, "I sell you my car described in document, in bill of lading" whatever specifically. So it does not say it is a red Mercedes Benz, 6-cylinder, et cetera. All those are in the document or in the bill of lading Nos. 1, 2, 3.

That incorporation by reference is valid. We must look at the bill of lading because it is a part. We are put on notice that there are other things there. If in that bill of lading, it says there are no accessories to the car, that is too bad for us. We should have looked. But that will not give us an opportunity to object and say, "You did not say there are no accessories. You must now put the accessories." No, we are on our own because all the descriptions and the details were incorporated by reference. So that is valid, Mr. President.

That is the first part.

Senator Guingona. Is it modified by or under this Act? Which portion, may we know?

Senator Roco. The whole act, Mr. President, precisely.

If we will continue, electronic signature will now modify authentication. Then there is even a specific section further authenticating the data message itself. Because authenticating a document is one thing. Authenticating now the data message is another thing.

It is layering, Mr. President. I hope I understand this correctly and I hope I am being understood. But we must authenticate a document normally by saying: "This is signed by him. I know this to be the signature because I sit beside him. I am looking at his signature in all these reports." That is authentication.

But authenticating the data message is another one. We must have the facsimile. I think Malacañang has the facsimile of the picture of Malacañang, the logo. We must have a facsimile that is known to the two of us—the sender and the receiver. That is how we authenticate a data message. When they say, "In this Act", that is what it involves.

Senator Guingona. What will be the effect if in line 6a, we delete AS REFERRED TO?

Senator Roco. Yes, that has been deleted, Mr. President.

Senator Guingona. That has been deleted?

Senator Roco. Yes, Mr. President.

Senator Guingona. So, it is ELECTRONIC WRITING SHALL BE THE FUNCTIONAL EQUIVALENT?

Senator Roco. For evidentiary purposes, yes.

Senator Guingona. If that is deleted, then fine. May I now be clarified as to what is the exact meaning of "FUNCTIONAL EQUIVALENT"?

Senator Roco. That is a new term under the UNCITRAL, Mr. President. I am no expert on this, but the way I understand it, for whatever it is worth, a written document printed out in my presence, that is a writing. A written document or a writing under existing law, it exists. It is there. What is a "functional equivalent"? I look at the screen, it is not physical, but I see the same things. It is virtual, that is the difference. It is no longer physical reality, it is not a piece of paper. It is virtual, it is paperless.

The businesses now are paperless. So, when we recall like Pay TV, we say, "Pay TV and charge it to my card on this number." That is not paper, that is not physical paper, but that is the functional equivalent of paper because that is exactly what paperless society means. When I pull it out again from the machine in front of the court, I will say, "Your Honor, this is the functional equivalent of the order I gave, it was accepted and they have not delivered my red Mercedes Benz."

Senator Guingona. What would be the effect if we remove the word "functional"? What if we just say "EQUIVALENT OF A WRITING" or "A WRITTEN DOCUMENT UNDER EXISTING LAWS"?

Senator Roco. I have no problems with that, Mr. President. But again, the only reason we used it that way is that it was in the model law—the functional equivalent. That is the only reason.

Senator Magsaysay. Yes, Mr. President.

Senator Roco. As long as we understand statutorily that when we say "equivalent", because it is not really equivalent, it is a functional equivalent. It functionally performs the function of the order, of the PO.

Senator Drilon. Just to intervene. We can actually present that in lieu of the written signed document.

Senator Roco. Yes, Mr. President. When they object...

Senator Drilon. Therefore, it is really the equivalent. That, I think, is the point of the Minority Leader.

Senator Guingona. Yes, Mr. President.

Senator Roco. No, we have no conceptual difficulty. The reason we used the words "functional equivalent" is that the model law also used it.

Senator Magsaysay. May I mention here that if we hue closely to the model law which mentions the functional equivalent approach, I think we will have less difficulties. Because this is really in the model law, and it says here: "That the model law relies on a new approach sometimes referred to as the functional equivalent approach." So, we will always have a reference on this basis.

Senator Guingona. I just would like to be clarified as to what is functional and what is not.

Senator Magsaysay. May I read the definition.

Senator Drilon. Go ahead, please.

Senator Magsaysay.

The model law does rely on a new approach, sometimes referred to as the functional equivalent approach, which is based on an analysis of the purposes and functions of the traditional paper-based requirement with the view of determining how those purposes or functions could be fulfilled through electronic commerce techniques.

For example. Among the functions served by paper document are the following:

1. To provide that a document would be legible by all;

2. To provide that a document would remain unaltered over time;

3. To allow for the reproduction of a document so that each party would hold a copy of the same data;

4. To allow for the authentication of data by means of a signature; and

5. To provide that a document would be in the form acceptable to public authorities and courts.

It should be noted that in respect of all the above-mentioned functions of paper, electronic records can provide the same level of security as paper and, in most cases, a much higher degree of reliability and speed, especially with respect to the identification of the source and content of the data, provided, that a number of technical and legal requirements are met.

Senator Guingona. Mr. President, I think under this new system, there is no more original or duplicate original. It is all original. And it says, "Subject...under existing laws."

So, why do we have to bother with functional and nonfunctional?

Senator Roco. If it is not functioning, then we should not take it.

Mr. President, I, myself, cannot project what could happen because it is really unchartered waters. But in the case of an original, right now when produced simultaneously and perfected at the same time, then that is an original, so that carbon copy is an original.

But under e-commerce, when is it produced simultaneously? That is why we will now expand the concept of the word "original" so that what is produced by the machine in cyberspace is now really also considered original.

I was sending it to the gentleman and he said, "Yes, I agree." Then, whoever pulls it out, that is an original. If one pulls it out in New York, I pull it out from Makati, both of them are original.

The reason we say functional is that it is now the equivalent of a carbon copy. It is obviously not a carbon copy. It is not original in the way we use it now. But when one pulls it out in New York and I pull it out in Makati, they are both original.

Senator Guingona. So, if we remove the word "functional," it will be considered simultaneously original.

Senator Roco. I guess that is one possibility, Mr. President.

If there is a resistance to the term "functional"... the only reason really for using it is that it is used in the model law.

Senator Guingona. But it complicates.

Senator Magsaysay. I feel, Mr. President, the term "functional" is vital to the measure because if it is just "equivalent", we are making the paper and the paperless exactly on the same level. But if we say functional equivalent, it is the same as far as legal function is concerned.

Senator Drilon. Mr. President, if I may, this is the difficulty

because the logical question of the Minority Leader is: What is a nonfunctional equivalent of a written document? If we say there is a functional, there must be a nonfunctional.

Senator Roco. If it is pulled out by a third party. In my example, we agreed on a document. He is in New York and I am in Makati. Then, we said, "Okay, print." That is an original.

But the gentleman from Cebu, for some reason, got into our...because he saw me using my PIN, and he pulled it out. That is not original. That is not a functional. We cannot use it now as evidence but it binds the two of us.

Under my proposal later on, we will always identify the sender and...So, when in Cebu somebody pulls it out, it may conform to...It is an exact replica of what we agreed on. But while the two of us have the functional equivalent of an original, his will not be because it is disauthorized. Especially when there is, let us say, a confidentiality provision that it cannot be seen by anybody else, but for some reason somebody from Cebu, Bicol or whatever got into it, that is not original. That will be a dysfunctional copy.

I mean, I am just inventing explanations the way I understand it. It is not backed by any authority.

Senator Magsaysay. Actually, Mr. President, my legal staff feels that if this is very important to the Minority Leader, we can remove the word "functional" because in effect, we are raising the electronic data message as the same as paper, which it is not. That is why there is a functional equivalent to this. But this paper to nonpaper is not exactly the same. Functional equivalent makes it a little less than the paper, but it is still admitted for functional use, functional equivalent. But if we remove the word "functional", it would even be a more liberal term, which is all right with us, if this is such an important thing to the gentleman.

Senator Roco. In which case, Mr. President, I will object. Because we are precisely liberalizing when we have no control. When we liberalize, then I will object. I will oppose because now, we have no control over the meaning, if we start removing this from the model law.

Senator Magsaysay. Yes. This is an issue that had been taken up by the senator from Naga which took us a couple of days to put together and which was finally approved by him and accepted by the Committee. So it is actually a done and accepted amendment, the functional equivalent approach.

Senator Drilon. Anyway, Mr. President, at this point, I think the Minority Leader would like to have a copy of the definitions of the functional equivalent phrase as read by the sponsor. And with the indulgence of the Chamber, we can move to approve Section 8 with the amendments, without prejudice to a reexamination of the same at a subsequent session.

The President. Is the Chamber ready to vote on this motion to approve Section 8 as amended?

Senator Drilon. With the understanding that we can review it again later.

The President. Provided it remains open. Is there any objection to these amendments presented? *[Silence]* There being none, the amendments are approved.

Do we want to move on to page 4A, Majority Leader?

Senator Drilon. Yes. We now go to page 4A, if there are no other amendments to page 4.

SUSPENSION OF SESSION

Senator Roco. Mr. President, I move that we suspend the session for one minute. I am committed to be somewhere at six o'clock. So I am sorry that I cannot continue; I cannot be here.

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

It was 5:33 p.m.

RESUMPTION OF SESSION

At 5:34 p.m., the session was resumed.

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

Senator Drilon. I would like to take advantage of the presence of our colleagues who may have amendments on the different sections of the bill. So, we will proceed with the period of individual amendments, again, without closing this period to enable our colleagues to review at the appropriate time and revisit the various amendments proposed. With that understanding, may we now proceed page by page with this proposed measure.

The President. Yes, do we want to move on to page 5?

Senator Drilon. All right, questions on page 5 by the Minority Leader.

The President. The Minority Leader, Sen. Teofisto T. Guingona Jr., is recognized.

Senator Guingona. Thank you, Mr. President.

Because we are delegating to the Supreme Court the power to enact or to adopt appropriate rules concerning electronic writings, data messages, electronic signatures on authentication, my question is: May we know from the distinguished sponsor what standards are imposed here on this Act so that the delegation of power to the Supreme Court to enact or adopt appropriate rules shall be valid?

Senator Magsaysay. Actually, Mr. President, we are not delegating to the Supreme Court the power to enact rules. It says here, "UNTIL THE SUPREME COURT BY APPROPRIATE RULES SHALL HAVE SO PROVIDED." I would feel that the standards would be the standard practices of the court to enact rules.

Senator Guingona. So, what is the effect here? Supposing that after we adopt this, after a period of time—six months, one year—the Supreme Court shall adopt rules, does that mean that it supplants the rules on authentication that we have adopted?

Senator Magsaysay. I do not think the Supreme Court will supplant the provisions of the law. Maybe the Supreme Court will interpret certain provisions that must be interpreted if there are questions raised, Mr. President.

Senator Guingona. Well, in that case, why place it here? We might as well remove from line 15 the phrase "UNTIL THE SUPREME COURT BY APPROPRIATE RULES SHALL HAVE SO PROVIDED." Delete that phrase and start with the words "THE ELECTRONIC WRITINGS".

Senator Magsaysay. The legal staff has no objection if the Minority Leader feels that this should be deleted. I think it will even be more defined.

Senator Guingona. Yes. And then when...

Senator Magsaysay. Is there a motion to delete this, Mr. President?

Senator Drilon. Wait. Mr. President, I think what we are trying to do, if I understand this bill, is that we are allowing the admission into evidence of what otherwise would not be admissible under the present Rules of Court. If we delete Section 12 which is precisely, to my mind, one of the highlights of this measure, then I do not know what else we are...

Senator Guingona. No, only the first portion. Only the phrase "UNTIL THE SUPREME COURT BY APPROPRIATE RULES SHALL HAVE SO PROVIDED." Only that portion because by the time this bill is enacted into law, there may be a coincident adoption of Rules of Evidence on electronic commerce by the Supreme Court.

Senator Drilon. Under the Constitution, are we depriving the Supreme Court of the right to promulgate Rules of Evidence?

Senator Guingona. No, we are not. But I asked whether...

Senator Drilon. By the deletion of the phrase from line 15a to line 15c, does that mean that the Supreme Court cannot anymore...

Senator Guingona. No, it does not. It will not. As a matter of fact it will just simplify the situation. If it wants to adopt, then we will be guided. But if we place it here, there is a need for... Supposing it amends only one part and not the other parts, then what happens? It authenticates use, device. So many things. It is all right if the Supreme Court will change *in toto*. Supposing it adopts only a portion?

Senator Magsaysay. Mr. President, may I interject? If we look at this proposal of the Minority Leader to remove the phrase starting with line 15a up to line 15c, there is a provision on the next page starting with line 15ii which will maintain the whole thought on this authentication section.

It reads: "THE SUPREME COURT MAY ADOPT SUCH OTHER AUTHENTICATION PROCEDURES, INCLUDING THE USE OF ELECTRONIC NOTARIZATION SYSTEMS AS NECESSARY AND ADVISABLE..."

So the proposal will not change the whole thought, if that is acceptable.

Senator Cayetano. Mr. President.

Senator Drilon. Sen. Renato L. Cayetano wishes to be recognized, Mr. President.

The President. Sen. Renato L. Cayetano is recognized.

Senator Cayetano. With the permission of the Minority Leader and the sponsor.

I do agree that perhaps the first portion of Section 12, beginning from the word "UNTIL" up to line 15i, ending with the word "FOLLOWS" with a colon (:), may be deleted to simplify this particular provision. In the first place, Congress may not tell the Supreme Court what to do with respect to rules on evidence or authentication of data messages because the power of the Supreme Court is just as concurrent as that of Congress. Second,

I think removing that phrase will simplify the message being sent by this section, which is nothing but authentication of data messages.

If the sponsor would accept, we can just start with line 15j—"THE ELECTRONIC SIGNATURE SHALL BE AUTHENTICATED..." We amend by deleting this paragraph beginning with line 15a, starting with the word "UNTIL", up to line 15i ending with the word "FOLLOWS" and a colon (:). I think that will simplify it. Nothing will be lost by this amendment deleting this particular paragraph.

SUSPENSION OF SESSION

Senator Magsaysay. 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 5:43 p.m.

RESUMPTION OF SESSION

At 5:45 p.m., the session was resumed.

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

Senator Cayetano. Mr. President, after conferring with the principal author and the Majority Leader, the principal author has accepted my recommendation of amendment by substitution by deleting the word "UNTIL" in line 15a up to the word "FOLLOWS" with a colon (:) in line 15i.

However, there is a suggestion from the principal author that Section 12, which is found in line 15a, on *"AUTHENTICATION OF DATA MESSAGES"* should also include the phrase AND SIGNATURES. That is all, Mr. President.

Senator Magsaysay. The amendment is accepted, Mr. President.

Senator Santiago. Mr. President.

The President. Sen. Miriam Defensor Santiago is recognized.

Senator Santiago. Thank you, Mr. President.

Before we vote on Section 12, may I please just express certain thoughts about the status of the provision.

Section 12 is entitled "AUTHENTICATION OF DATA MESSAGES," and begins with: "UNTIL THE SUPREME COURT BY APPROPRIATE RULES SHALL HAVE SO PROVIDED..."

Whether or not this clause remains in this bill, the effect would still be the same. The Supreme Court will have at all times the power to promulgate the Rules of Court. So if we pass the bill with this provision as it is right now, the Supreme Court may exercise the power to overrule our own rules in this bill. If we pass this bill without this phrase, still the Supreme Court would have the power.

So it does not really make any difference on whether this clause is here or not. I am referring to the clause "UNTIL THE SUPREME COURT BY APPROPRIATE RULES SHALL HAVE SO PROVIDED", et cetera. Whether or not we recognize the power of the Supreme Court, it has that power because of constitutional grant.

If we eliminate this first paragraph of Section 12, referring to Section 15a to 15i, the effect will be that we will make these two methods under paragraphs (A) and (B) exclusive methods of authentication of data messages because the first paragraph says that the electronic writing shall be authenticated by, among others, the following system. If we eliminate the first paragraph, we eliminate the phrase "AMONG OTHERS", and the implication will be that what remains as procedures for authentication will be exclusive procedures because what is not included is deemed to be excluded.

That is one consequence of adopting the proposed amendment, that we will, in effect, lock ourselves into only these procedures of authentication that are set out in paragraphs (A) and (B) and there can be no other methods. Whereas if we retain the first paragraph, these two methods would only be two of others that could be allowed under our law.

I will also refer to line 15ii of the same Section 12. "THE SUPREME COURT MAY ADOPT SUCH OTHER AUTHENTICATION PROCEDURES", et cetera. My comment on this clause is the same as my comment on the opening clause of Section 12. Whether or not we give this power to the Supreme Court, it already has the power because the source is not the Congress but the Constitution of the Philippines.

The President. The Majority Leader is recognized.

Senator Drilon. Mr. President, with the indulgence of everyone who participated in the debate, why do we not just retain 15a if only to prompt the Supreme Court to take a look at these rules, now Rules of Court, and amend it, if it wishes to amend it. At least there is something here in this provision which, as

correctly pointed out by Senator Santiago, is not really necessary but if only to highlight the fact that the Supreme Court can amend the Rules of Court, particularly on the Rules of Evidence. If there is no harm in placing it here, we can retain it.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. My impression, Mr. President, is that Congress has plenary powers to insist that a certain rule of interpretation be adopted even to the extent of amending the rules of the Supreme Court.

Senator Drilon. But the Supreme Court, Mr. President, cannot be deprived of the power to promulgate Rules of Procedure, including Rules of Evidence.

Senator Pimentel. That is correct, we do not dispute that. But at the same time, maybe it is good for us to come out categorically that these are the rules as far as we are concerned. It is just a question of principle that would probably underline what we are trying to do in all our legislative activities, Mr. President.

Senator Drilon. Mr. President, if we agree that the Supreme Court cannot be deprived anyway of its power to promulgate Rules of Evidence, then, with that understanding, we can delete the phrase from lines 15a to 15c and just proceed with this section as worded, including line 15ii.

Senator Pimentel. That is correct, Mr. President. That is my suggestion. But over and above my suggestion, maybe we should defer consideration of this bill. Let us take a second look even by way of editing, perhaps, the various provisions.

Senator Drilon. Mr. President, with that request of Senator Pimentel, the committee may wish to go over this measure once more and consult our colleagues on the various provisions so that we can go through it faster the next time that we call this bill for debates. It is a very difficult bill and therefore we just have to be patient with each other.

SUSPENSION OF CONSIDERATION OF S. NO. 1902

With that, Mr. President, I move that we suspend consideration of Senate Bill No. 1902 with the understanding that we will call this again on Monday. That gives us about four days to go over this measure.

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

SUSPENSION OF SESSION

Senator Drilon. 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 5:53 p.m.

RESUMPTION OF SESSION

At 5:55 p.m., the session was resumed.

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

Senator Drilon. Mr. President, may we take up a few administrative matters.

Mr. President, we are in receipt of a letter from Sen. Sergio Osmeña III, requesting that the Senate bills which were referred to the Committee on Rules concerning the cityhood of certain municipalities be now referred to the Committee on Local Governments considering that we have received the House versions of these bills. These are House Bill No. 7260 on the cityhood of Candon, Ilocos Sur; House Bill No. 3338 on the cityhood of Muñoz Science City, Nueva Ecija; and House Bill No. 8877 on the cityhood of Sorsogon, Sorsogon.

MOTION OF SENATOR DRILON
(Referral of Equivalent Senate Bills of H. Nos. 7260, 3338 and 8877 to Local Government Committee)

May I therefore move, Mr. President, that the equivalent Senate bills of House Bill Nos. 7260, 3338, and 8877 be now referred to the Committee on Local Government.

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

Senator Drilon. Before I move to adjourn, may I make it of record that we have barely three weeks before we go on our adjournment for the Holy Week.

May I request our colleagues to give due consideration for the continued debate on the electronic commerce bill and the power bills that are pending before our Chamber. We will give these bills priority in the coming sessions.

The President. Yes, very well. I am sure that this manifestation is supported by all.