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Warehouse Receipts**

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SUMMARY REPORT

OF THE SECOND SESSION
(Videoconference, 10 – 12 March 2021)

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1. The second session of the UNIDROIT Working Group on a Model Law on Warehouse Receipts (hereafter the “Working Group”) took place via videoconference between 10 and 12 March 2021. The Working Group was attended by 31 participants, comprised of Working Group members, observers including representatives of international and regional organisations as well as the private and public sector, and members of the UNIDROIT Secretariat (List of participants available in Annex I).

Item 1: Opening of the session by the Chair

2. *The Chair* opened the session and welcomed all participants to the second meeting of the Working Group.

Item 2: Adoption of the agenda and organisation of the session

3. *The Chair* introduced the annotated draft agenda and the organisation of the session. *The Working Group adopted the draft agenda* ([UNIDROIT 2021 – Study LXXXIII – W.G.2 – Doc. 1](#), available in Annex II) and agreed with the organisation of the session as proposed.

Item 3: Adoption of the Summary Report of the First Session (Study LXXXIII – W.G. 1 – Doc. 5)

4. *The Chair* noted that the Summary Report of the First Session had been shared by the Secretariat with all participants. *The Working Group adopted the Summary Report* ([UNIDROIT 2021 – Study LXXXIII – W.G.1 – Doc. 5](#)).

Item 4: Consideration of substantive matters

5. *The Chair* drew the Working Group’s attention to Item 4 on the agenda, which contained the consideration of substantive matters identified in the Issues Paper ([UNIDROIT 2021 – Study LXXXIII – W.G.2 – Doc. 2](#)).

1. Preliminary matters

6. *The Chair* referenced Section I of the Issues Paper, which contained the preliminary matters that were already presented to the Working Group at its first session, including the composition of the Working Group. She informed the participants that Ms Paula Maria All, Professor of Private International Law at the Universidad Nacional del Litoral in Argentina, had joined the project as a new Working Group member.

2. Scope and structure of the Model Law

7. *The Chair* introduced Section II of the Issues Paper concerning the scope of the Model Law on Warehouse Receipts (MLWR). She recalled the Group’s discussion during the first session and noted that the list of aspects to be covered by the MLWR had been revised accordingly, as set out in Doc. 2, paragraph 30. She invited the Group to consider the revised list of aspects. *The Working Group agreed that the aspects included in the revised list were sufficiently broad to cover all relevant items.*

8. *The Chair* then introduced the preliminary draft structure for the MLWR suggested in Doc. 2, Annex I and invited comments by the Group. Concerning the registry provisions, the Chair noted that the question of whether those should be merged with the sections on electronic warehouse

receipts (EWRs) in the MLWR would be discussed in more detail under Section III.E of the Issues Paper. *The Working Group agreed with the general structure for the MLWR, which was considered to be clear and comprehensive.*

3. Content of the Model Law

9. Next, *the Chair* drew the Working Group's attention to Section III of the Issues Paper concerning the content of the Model Law, highlighting that the following sections were to be considered in conjunction with Doc. 3 which contained the preliminary draft provisions for the Model Law that were prepared by the Drafting Committee ([UNIDROIT 2021 – Study LXXXIII – W.G.2 – Doc. 3](#)).

(a) Issue of a warehouse receipt

10. *The Chair* introduced the preliminary drafting suggestions. She drew the Working Group's attention to draft Article 1 "Issue of a warehouse receipt" under Chapter II, and raised the question included in the Issues Paper, at paragraph 34, on whether the MLWR should qualify who may issue a warehouse receipt. All experts supported adopting a broad approach, as formulated in draft Article 1, and not to establish any restrictions on who may issue a warehouse receipt. Consequently, the MLWR itself would allow both regulated and unregulated warehouses to issue receipts, and any implementing State would be able to establish any restrictions on who may issue receipts through its regulatory framework. It was highlighted that unregulated warehouses should be able to issue warehouse receipts under the MLWR, given that, reportedly, in many jurisdictions their receipts were traded very successfully. It was proposed to explain this permissive stance in the explanatory guide. *The Working Group decided that the MLWR would not establish restrictions on who may issue a warehouse receipt, but rather refer to "warehouse operator" as suggested in draft Article 1.*

11. Continuing with draft Article 1, *the Chair* referred to the questions addressed in paragraph 35 of the Issues Paper, namely whether the issuance of a receipt should be mandatory or voluntary, and whether the issuance should be mandatory if requested by the depositor.

12. All participants rejected the option of establishing an obligation irrespective of the depositor's request. The reasons cited for this stance were both party autonomy and the fact that there would be many instances in practice where the issuance of a receipt would not be economically reasonable.

13. Several experts supported the voluntary approach, namely that a receipt may be issued by a warehouse operator following receipt of the goods, leaving it for operators to issue a receipt if it was merited and requested by the depositor according to commercial practice. Against this voluntary approach, one expert questioned what the rationale for the provision stating that the operator might issue a receipt would be, since that would merely state the obvious.

14. Several other experts supported the notion that the issuance should be mandatory if requested by the depositor, referring to the bills of lading context, in which such an obligation had been introduced to promote the bill of lading as a commercial instrument and to protect the shipper, who was usually the weaker party. Similarly, in the case of warehouse receipt systems, the depositor would need to be protected as the party in the weaker bargaining position, often unable to choose to deposit goods in another warehouse. Against this notion of making the issuance mandatory upon request, some experts argued that such an approach would entail many practical implications that would need to be considered, such as the form and content requirements of such request. Furthermore, they noted that there were other conditions, in addition to receipt of the

goods, that had to be met in an electronic system prior to the issuance of a receipt, such as the depositor actually owning the goods.

15. It was highlighted that – should the Group decide to establish an obligation of the warehouse operator to issue a warehouse receipt upon request – the language of draft Article 1 would have to be revised to read as follows: “A warehouse receipt shall be issued by a warehouse operator if requested by the depositor after receipt of the goods.” Furthermore, it was noted that, if the MLWR were to establish such an obligation, it ought to determine the consequence of non-compliance. It was suggested to keep this issue in mind for consideration at a later stage.

16. Moreover, several experts recalled that warehouse operators commonly issued different types of documents. Many warehouses issued goods receipt notes, which generally provided evidence that they were holding a particular consignment of goods, whereas the warehouse receipt was usually additional to that goods receipt note, conferring additional rights and obligations on the parties. A question was raised on whether the additional warehouse receipt was required in all cases, or whether the goods receipt note was sufficient for the objectives of the MLWR in certain cases. It was also noted that, if the MLWR were to cover the obligation arising from a bailment contract, then there had to be an obligation of the operator to acknowledge the receipt of the goods, either by issuing a negotiable document or another type of document. An expert noted that the provision had to be considered in conjunction with the definition of a warehouse receipt under the MLWR. If that definition included both negotiable and non-negotiable documents, then an additional provision was needed stating that, in any event, the operator ought to acknowledge receipt of the goods for deposit. There were various examples of how this was addressed in the transport conventions, namely the United Nations Convention on the Carriage of Goods by Sea (the Hamburg Rules) and the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules).

17. *A slight majority of the Working Group favoured requiring that a warehouse receipt ought to be issued if requested by depositor; however, the Group agreed that this issue should be revisited before adopting a final decision.*

18. *The Chair drew the participants’ attention to paragraphs 36–37 of the Issues Paper and introduced the definition of a warehouse operator suggested for the MLWR as “a person who accepts goods for storage for reward on a professional basis”. She asked what other definitions would be necessary with regard to the suggested Article 1. The Working Group agreed with the elements included in this definition of a warehouse operator. It considered that, in addition, a definition of warehouse receipt would be necessary.*

(b) Form and content of a warehouse receipt

19. *The Chair drew the participants’ attention to draft Chapter II, Article 2 “Form and content of a warehouse receipt” set out in Doc. 3.*

Essential terms

20. First, *the Chair* introduced draft Article 2, paragraph 2, which established essential terms to be included on a warehouse receipt. Article 2, paragraph 2(a) required the name, address, and unique identification number, if any, of the depositor. One expert suggested to merely require the “name and identification”. *The Working Group agreed to reconsider the suggested draft.*

21. *The Chair* introduced draft Article 2, paragraph 2(b), which required the name of the warehouse operator and the address/location of the warehouse where the goods were deposited. *The Working Group endorsed the suggested draft.*

22. With regard to draft Article 2, paragraph 2(c), which required a description of the nature, quantity and quality of the stored goods to be indicated in the receipt, *the Chair* asked whether the MLWR should require the nature of the stored goods to be indicated as suggested in the draft. *The Working Group endorsed the draft as suggested, including the nature of the goods.*

23. *The Chair* introduced draft Article 2, paragraph 2(d), requiring an indication of whether the warehouse receipt was negotiable or non-negotiable. Several experts noted that such a requirement raised the question of what would happen if the receipt were in negotiable form but indicated non-negotiable. Whether such an indication served any purpose, other than giving notice that a non-negotiable receipt was non-negotiable, was discussed. It was suggested that this signalling function could be achieved differently, namely that the receipt might rather indicate whether it was issued to a named person, to the order of a named person, or to a bearer, which made it clear whether it was negotiable or non-negotiable. One expert proposed that the MLWR could establish a default function that a receipt was negotiable unless stated otherwise, and if it was meant to be non-negotiable, it needed to state non-negotiable. This approach was adopted in the bills of lading and bills of exchange context. *The Working Group agreed that paragraph 2(d) should be revised to require a warehouse receipt to indicate whether it was issued to a named person, to the order of a named person, or to bearer, instead of indicating whether it was negotiable or non-negotiable.*

24. *The Chair* introduced draft Article 2, paragraphs 2(e) and (f), which required the unique identification number of the receipt and the date of issue of the receipt to be indicated in the receipt, respectively. *The Working Group endorsed draft sub-sections (e) and (f) as suggested.*

25. In addition to the above items, *the Chair* raised the question of whether the MLWR should require the storage fee to be included on a warehouse receipt, as the receipt holder might have to pay that fee. Accordingly, examples of jurisdictions that required the fee to be indicated on the receipt were provided.

26. Several experts took the view that the storage fee should not be a mandatory requirement, but should rather be mentioned in the Model Law as an example for an optional term that might be indicated on a receipt. It was argued that there was no commercial reason for rendering such a requirement a global standard.

27. Several other experts were in favour of requiring that a receipt ought to contain the storage fee or alternatively a reference to the storage agreement by which the fees were calculable. They noted that any external charges not indicated on the receipt could not be known by a buyer of the receipt without undertaking further due diligence. The reason for proposing the alternative reference to the storage agreement was that lien rights typically accrued only with respect to fees that were described on the receipt and that accrued after the time of the purchase of the receipt by the eventual holder. In practice, storage fees were sometimes difficult to calculate, because they might involve handling charges, processing fees, or other items that could not always be described on a receipt.

28. It was flagged that whatever approach was adopted – whether an indication of the storage fee were required or optional – the storage fee was usually connected to the issue of the warehouse lien, and both should be coordinated in the Model Law. This was the reason why an indication of the freight was mandatory in transport documents.

29. *The Working Group agreed to revisit the question of whether the indication of storage fees or a reference to the storage agreement should be an essential or an optional term.*

30. *The Chair* raised the question of whether the MLWR should require any insurance of the stored goods to be included in the receipt. *The Working Group took the view that this should not be an essential content requirement, and that it would reconsider whether it should be suggested as an optional term.*

31. *The Chair* asked whether the MLWR should furthermore require an indication in the receipt as to whether the stored goods were exempt from customs duties. Experts noted that such an indication was relevant for customs bonded warehouses, where it was appropriate to mention such information in receipts, but not in a law that would apply to all types of warehouses. Among the reason cited for this view were the practical difficulties for the warehouse operator to determine the customs duties. *The Working Group agreed that an indication as to whether the stored goods were exempt from customs duties should not be a mandatory term, but that it could be addressed in the accompanying guide.*

Optional terms

32. *The Chair* introduced the optional terms suggested in draft Article 2, paragraph 3 of Doc. 3 with reference to paragraphs 44-46 of the Issues Paper. In opening the discussion, she asked whether the MLWR should set out optional terms.

33. One expert proposed adding an indication of whether the warehoused goods were subject to a prior security interest or a prior lien, either as an optional term, or as a substantial requirement. This was especially relevant for pre-harvest financing: financial institutions found it difficult to finance the pre-harvest phase if, when the goods were warehoused, the purchaser of the transferable receipt became a “holder in due course” and would thus have priority over the financial institution that had previously financed the crop. Ideally, there would be interoperability between a collateral registry and a warehouse receipts system. Several experts underlined the importance of hidden liens for any financier.

34. One expert proposed that a warehouse operator, as a condition to issuing a negotiable warehouse receipt, should be required to obtain a declaration from the depositor that the goods were not subject to any prior encumbrance. In a similar vein, another expert reported that in practice collateral managers and warehouse operators always asked for a statement that the depositor was the owner of the goods, or, if it was the buyer of the goods, that these had been fully paid. The purpose of requiring such a statement was to provide a certain level of protection to the financiers, because this statement helped to establish that the buyers of the receipts had acquired them in good faith, which in turn made warehouse receipts more attractive to financiers. Therefore, the expert concluded that requiring such a statement should be made mandatory under the MLWR.

35. One expert queried whether it would be viable to require the warehouse operator to consult a collateral registry, provided one existed, to verify the presence of a previously registered encumbrance and, if that was the case, indicate that there was such a registration in the receipt. This would provide greater assurance than a depositor’s statement. Another expert referred to Article 49 of the UNCITRAL Model Law on Secured Transactions (MLST), which dealt with a similar situation.

36. Other experts objected to any such requirement as it would go beyond the bounds of duty of warehouse operators, who would not be in a position to make a legal determination as to whether crops were subject to a security right or not. For instance, many registrations would be for inventory, in which case whether the lien covered the crops would not be evident from the registration. Rather, financiers might be required to carry out due diligence during loan appraisal

and search the collateral registry, or through an affidavit from the depositor that the goods were not encumbered.

37. *The Working Group agreed to further consider the question of whether an indication of a prior security right over the warehoused goods should be mandatory, whether it should be added to the list of optional terms, or whether it should not be mentioned in the MLWR.*

38. With regard to paragraph 3(a)–(c), *the Chair* asked whether those terms should be included as optional terms, and whether the inclusion should be at the choice of the parties or of the warehouse operator.

39. An expert proposed that both, term (a) concerning a mention of the power of substitution, and term (b), concerning an indication of the duration of the storage, should be mentioned in the receipt and thus should be mandatory rather than optional. It was argued that, if they were optional, there would be neither motivation for the warehouse operator nor for the depositor to include that information.

40. Another expert opposed including terms (a) and (b) as mandatory or optional terms on a receipt, arguing that the suggested terms rather related to specific substantive rules, such as when and how the warehouse operator was allowed to commingle certain goods. It was proposed that the optional terms set out under paragraph 3(a) and (b) might be described in the accompanying guide rather than in the MLWR itself. It was also argued that sub-section (c), concerning any other terms and conditions insofar as they were not contrary to the MLWR and did not affect the delivery obligation, should be set out in a separate provision, rather than as an optional term.

41. *The Working Group agreed to reconsider the suggested optional terms at a later stage in relation to the consequences of missing information in a warehouse receipt. Furthermore, the Group agreed that, if the MLWR were to set out optional terms, it should be neutral, as formulated in draft paragraph 3, in respect of whether the inclusion of optional terms should be at the choice of the parties or at the choice of the warehouse operator.*

Consequences of missing or inaccurate information

42. With reference to paragraphs 47–50 of the Issues Paper, *the Chair* introduced draft Article 2, paragraph 5 of Doc. 3, which suggested alternative options for the consequences of missing or inaccurate information in a warehouse receipt, and asked which consequences the MLWR should reflect.

43. Some experts were of the opinion that, in case of missing essential information, the document could not be considered a warehouse receipt for the purposes of the MLWR. In support of this approach, it was argued that the lack of certain information in the receipt affected third parties who could not know the nature of the particular receipt. Conversely, a claim for damages could arise from the initial contract if the warehouse operator omitted information in the receipt. However, that approach was criticised by other experts, noting that this was the solution for bills of exchange, while the situation covered by the MLWR was more complex and the consequences would depend on how the issue of negotiability would be addressed.

44. Other experts proposed that the consequence of missing essential terms should be the warehouse operator's liability for damages, rather than invalidity of the receipt. However, in response to this proposal, it was noted that, when Article 7 of the Uniform Commercial Code established the operator's liability for damages, it was referring to tort law. Similarly, it would not be sufficient for the MLWR to stipulate that the operator was liable for damages, as it would still need to determine the nature of compensation.

45. A third group of experts were in favour of seeking an intermediate solution. They argued that the objection to validity in case of missing information was adopted in the context of bills of exchange and promissory notes; however, the nature of those documents differed from that of a warehouse receipt, as the latter was not a purely abstract document but rather a causal document, i.e. a negotiable document that was not completely detached from the underlying transaction. It would be unreasonable to deprive a purchaser from the basic right arising from the underlying bailment contract, namely the right to claim delivery of the goods from the warehouse operator. The operator should not have the right to rely on the invalidity of the document to refuse fulfilling that obligation. Therefore, the document would not be valid as a warehouse receipt receiving full protection under the MLWR, nevertheless some core rights and obligations would remain enforceable, as it would be unconscionable for the warehouse operator to omit an essential term and then rely on this omission in order to deny the rights acquired by the receipt holder. Claims for damages could be additional. Based on this suggested intermediate solution, it was proposed to differentiate even further with regard to the consequences, as there were many terms that were essential for commercial purposes and should be covered by a receipt, yet their absence should not entail its invalidity.

46. In the end, the majority of experts supported the proposition that the terms on a warehouse receipt should be classified into three different categories, namely essential, mandatory, and optional terms. The terms that were considered essential should be those that were needed to identify what right was represented by the warehouse receipt, such as the quantity and quality of the stored goods and the name of the warehouse operator. Only if such an essential term was missing, then the document would not qualify as a warehouse receipt, yet this should not affect the receipt holder's right to delivery. However, the absence of any of the terms considered mandatory but not essential would entail other consequences, either the warehouse operator's liability for damages or a default rule to fill in the missing information.

47. *The Working Group agreed that the terms on a warehouse receipt should be classified into three categories: essential, mandatory, and optional terms. The Group decided to further consider the consequences of missing or inaccurate terms, while it preliminarily noted that the following might be **essential information**, in the absence of which a document would not qualify as a warehouse receipt: a description of the quantity and quality of the stored goods (current sub-section (c)); the name of the warehouse operator and the address/location of the warehouse where the goods were deposited (current sub-section (b)); and the signature of the warehouse operator (current paragraph 4). Furthermore, the Group noted that the following would likely be terms that would be **mandatory**, yet not necessary for the receipt's validity: the name, address and unique identification number, if any, of the depositor (current sub-section (a)); whether the receipt was issued to a named person, to the order of a named person, or in bearer form (replacement for current sub-section (d)); the unique identification number of the receipt (current sub-section (e)); the date of issue of the receipt (current sub-section (f)); a mention of the power of substitution and duration of storage (as indicated in current paragraph 3, sub-sections (a) and (b)); storage fees; and insurance. The Group agreed to consider whether to further distinguish these mandatory terms into two categories regarding the consequences of their absence in more detail, namely either the warehouse operator's liability for damages or a default rule for filling in the missing information.*

Electronic warehouse receipts

48. *The Chair* introduced the suggested Article 3 "Electronic warehouse receipts" with reference to paragraph 51 of the Issues Paper. It was noted that the text of the proposed provision was intentionally neutral as to what constituted control.

49. An expert stated that some aspects of the Article were only applicable to negotiable receipts, and thus the scope and title ought to be specified. Furthermore, it was suggested to retain only the

essence of Article 3, paragraph 1 in Chapter II. Conversely, as the content of paragraph 1, sub-sections (a), (b) and (c) related closely to the notion of control, they could be addressed in the subsequent chapter concerning the transfer of warehouse receipts, and the content of paragraph 2 could be addressed in the accompanying guide instead of the Model Law itself.

50. Other experts objected to this proposal, as deferring those sub-sections to a subsequent part of the Model Law would tip the balance of the MLWR in favour of primarily paper-based warehouse receipts, which contradicted the overall aim of this project. Rather, they argued that the Model Law's focus on electronic receipts might be strengthened even further. Moreover, they argued that paragraph 2 was necessary as it established that an EWR was an original warehouse receipt and thus provided for the legal equivalence of an EWR to the paper document.

51. *In view of the above considerations, the Working Group agreed that the content of the suggested Article 3 should generally remain in Chapter II.*

(c) Loss of a warehouse receipt

52. *The Chair* introduced the suggested Article 4 "Loss of a warehouse receipt" with reference to paragraph 52 of the Issues Paper. She asked whether the MLWR, if a court order were to be required with respect to lost negotiable warehouse receipts, should describe the procedure and the rights of the innocent holder of the lost receipt more precisely.

53. In this regard, experts stated that it was unnecessary to prescribe the procedures that would need to be followed because they would depend on the applicable law.

54. It was also noted that this provision seemed to be tailored to lost paper receipts, which typically implied that a piece of paper had been misplaced and could not be found. However, it would also apply to EWRs, for example when an electronic system was not able to retrieve a receipt. Thus, it was suggested to clarify how this article applied to EWRs and in particular what was meant by the "loss" of a receipt.

55. *The Working Group agreed with the substance of draft Article 4 and on the insertion of the following elements (in italic) in draft Article 4, paragraph 2: "If a negotiable warehouse receipt has been lost, a Court may order delivery of the goods or issuance of a substitute receipt upon demand of the depositor or transferee. The claimant must provide proof of entitlement and a security to indemnify the warehouse operator against claims by a lawful holder of the original warehouse receipt." Furthermore, the Group agreed that the MLWR should not describe the procedure for a court action for lost negotiable warehouse receipts.*

(d) Transfer of warehouse receipts

Transfer of a negotiable warehouse receipt

56. *The Chair* introduced Chapter IV on the transfer of warehouse receipts. She stressed that the provisions for this chapter had been selected as examples of issues that might need to be addressed in the MLWR to serve as a basis for the discussion, and that the Working Group would still need to find a "legal functional equivalent" to express those concepts in a manner more broadly acceptable among legal systems.

57. Proceeding to the first question, *the Chair* drew the participants' attention to draft Article 1 on the transfer of negotiable warehouse receipts and asked whether the MLWR should use the terms "negotiable" and "non-negotiable" warehouse receipt and refer to the "transfer" of receipts. It was recalled that the relevant international instruments, including the Rotterdam Rules, the United

Nations Convention on International Bills of Exchange and International Promissory Notes (the Geneva Convention) and the MLST, used the terms “negotiable” and “non-negotiable”, while they avoided the phrase “negotiate” or “negotiation” – because it carried the doctrine of negotiability – and referred to “transfer” instead. *The Working Group agreed with the use of the terms “negotiable” and “non-negotiable” warehouse receipt and “transfer” as suggested in the draft provisions.*

58. *The Chair* then invited experts to comment on the substance of draft Article 1. After discussing the topic, a number of experts agreed that the text of the article should be clarified. It was noted that the meaning and purpose of Article 1, paragraph 2, sentences 2 and 3 was not clear. *The Working Group agreed that draft Article 1, paragraph 2, sentence 3, and paragraph 1, last sentence should be reformulated and merged into a new, separate paragraph.*

Rights of a transferee who is not a protected holder

59. *The Chair* introduced draft Article 2 of Chapter IV on the rights of a transferee who was not a protected holder. She asked whether the term “non-negotiable” on a receipt should render it non-negotiable regardless of the receipt’s form. Experts noted that the warehouse operator should have the ability to restrict the transferability of a receipt by making note of it on the receipt. The consequence would be to disqualify any transferee from becoming a protected holder, because the receipt was non-negotiable. *The Working Group agreed that the term “non-negotiable” on a receipt should render it non-negotiable, regardless of the receipt’s form.*

60. *The Chair* raised two questions as to whether the issuer should be bound to accept the transfer of a non-negotiable receipt regardless of the terms of the storage agreement, and whether the MLWR should recognise a third variety of warehouse receipts, namely non-transferable receipts, referred to in the trade as “goods received notes”. It was noted that a transferee should be bound by the terms of the storage agreement, yet limited to the contractual duties that the warehouse assumed, while none of the provisions in the agreement should preclude the transfer of property rights. *The Working Group agreed to reconsider the two preceding questions.*

Transfer of a negotiable warehouse receipt to a protected holder

61. *The Chair* introduced draft Article 3 on the transfer of a negotiable warehouse receipt to a protected holder with reference to paragraphs 60–63 of the Issues Paper. First, she asked whether the MLWR should adopt the terminology “[protected holder] [other type of holder to be specified by the enacting State]” and leave it to the enacting State to choose the corresponding term used in its legislation, a technique adopted in the MLST. *The Working Group agreed with this suggestion.*

62. Next, *the Chair* invited the participants to consider the criteria for the transfer of a negotiable warehouse receipt to a protected holder suggested in draft Article 3.

63. With regard to draft Article 3(b), the representative of UNCITRAL reported that the Commission avoided the notion “for value” and similar notions derived from a common law tradition in their instruments. He underlined that such notions were not familiar to civil law jurisdictions and the same result was achievable through a different methodology. Instead, it would be advisable to find a functional equivalent and express the concept in jurisdiction-neutral terms, that were suitable for both common and civil law traditions. Other experts also highlighted the potential problems with the notion, and the doctrinal debate that the concept related to “consideration” or “cause” entailed in civil law jurisdictions. It was proposed to consider referring to a “non-gratuitous” transaction instead, or to consider incorporating the approach adopted in Article 29 of the Geneva Convention. From a common law perspective, experts stressed that the law would not be widely used if the *nemo dat* exception was not clearly laid down in this article. However, it was stressed that civil law jurisdictions did not lay down a requirement of value nor of good faith; rather, they established

absolute protection for holders of documents of title, absent bad faith. Thus, incorporating the suggested Article 3(b) in its current form would decrease the protection of the receipt holder. However, in substance, experts agreed that some sort of value needed to be given for a transfer to qualify as a business transaction.

64. One expert queried whether the last phrase of Article 3(b), “unless it is established that the transfer is not in the ordinary course of business”, already implied that some value was provided, as a donation would not be in the ordinary course of business. In this respect, it was flagged that the notion “in the ordinary course of business” at the end of Article 3 had been highly problematic during the deliberations on the MLST, and that it would need to be clearly explained in the MLWR.

65. *The Working Group agreed to avoid the notion “for value” and instead aim for a jurisdiction-neutral expression. It noted that it would consider possible solutions for this provision in more detail.*

66. One expert queried about the definitions of the terms “good faith” and “without notice” included in draft Article 3(b), and whether “good faith” would relate to the UNIDROIT Principles. In reply to this comment, it was noted that the MLST referred to good faith without defining the term in Article 4, linking it to the applicable good-faith concept in the domestic legislation. It was argued that, as was the case for the MLST, a uniform definition of good faith in the MLWR would not be desirable. One expert added that, while the UNCITRAL Legislative Guide on Secured Transactions stated that the notion of good faith was related to the corresponding concept in domestic legislation, it referred to objective good faith rather than the purely subjective one.

67. In this context, it was reported that UNCITRAL had attempted to attract common law countries to the system on bills of exchange laid down in the Geneva Convention in the past. Article 29 of that Convention embodied the notion of good faith without using that expression. It had been deemed a good compromise at the time between the common and civil law approaches with regard to a holder in due course. The Convention did not incorporate the generic expressions, such as “good faith” or the “ordinary course of business”, that were not used in many legal systems. Similarly, it was recommended to identify the elements of such concepts and describe them in neutral terms in the MLWR, instead of notions that were not jurisdiction-neutral.

68. Similar considerations applied to the notion “without notice”. The MLST instead referred to “without knowledge” in relation to a protected holder. However, it was noted that there would be substantive differences between those two terms, and that they should therefore be considered in more detail.

69. *The Working Group agreed to aim for jurisdiction-neutral expressions and to consider possible solutions in more detail.*

70. Next, *the Chair* introduced draft Article 4 on the rights of a protected holder, and asked whether the notion of “title” was sufficiently known to jurisdictions to use it in the MLWR.

71. Some experts noted that the notion of title was not only used in common law systems, but also in many jurisdictions with a French or German tradition, and therefore its use in the MLWR might be appropriate. However, the MLWR would need to clearly set out the meaning it would attach to it.

72. Conversely, other experts supported a language referring to ownership (meaning property rights to the document of title) rather than title, and clearly setting out what rights the transferee acquired with respect to the warehouse receipt. It was noted that, while the concept of title was well known in civil law jurisdictions, it was ambiguous as it could designate either the document or

the right. It was proposed to rephrase Article 4, paragraph 1(a) as follows: “The holder becomes the owner of the receipt.”

73. With regard to Article 4, paragraph 1(b), it was noted that it was not a common approach across jurisdictions for the holder of the receipt to also be the owner of the goods, and it was therefore proposed to rephrase this passage stating that the holder had “the right to” the goods. For example, in the French and Spanish translations of the Geneva Convention, “title” was translated as “a right to” the bill or receipt. Hence, one could have the right to possession or the right to the receipt, which would not necessarily mean ownership, because one could have a right to dispose of the receipt without having ownership of the receipt. It was proposed that perhaps the wording “right to the receipt” was neutral enough. It was underlined that the MLWR then ought to be very clear what package of rights would be transferred, which was for example important in the case of insolvency of the debtor. It was highlighted that the issue of how these rights were treated in insolvency should be explained in the explanatory guide.

74. One expert cautioned the Working Group not to introduce a solution for warehouse receipts that did not exist for other similar documents of title in a particular jurisdiction, such as the bill of lading. In many common law countries, one could not pledge a warehouse receipt, but one could pledge a bill of lading.

75. Finally, several experts observed that “quiet possession” was an unusual term in a law on warehouse receipts and, in common law jurisdictions, usually related to land.

76. *The Working Group agreed that the purpose of the provision was to protect the possession against interference and clarifying that the holder might pledge the rights arising out of the receipt by endorsement or mere delivery of the receipt. The Group agreed that the Drafting Committee should propose a wording that implemented this purpose, that would be workable in any legal system, and that would not be susceptible to different interpretations.*

77. *The Chair* introduced draft Article 5 “Rights of a holder defeated in certain cases”, and invited the experts to consider whether such a provision should be included in the MLWR.

78. Some experts noted that draft Article 5 would provide certainty to the financiers of warehouse receipts and should be retained. However, as it connected to Article 49 of the MLST, it should be coordinated with the MLST for priority issues. It was proposed to consider how the suggested Article would work in conjunction with MLST Article 49 in more detail, and to reconsider the wording, for example whether the term “defeated” was sufficiently clear in the context. It was also noted that the reference to a “security right” was too broad, and that it should rather only apply against a “perfected security right”.

79. Other experts questioned the purpose of the suggested Article in the context of warehouse receipts and whom it should protect. They stated that there could be a different way of achieving this protection. Experts explained that the question of insufficient authority covered by draft Article 5 would be covered by the law of agency in most civil law systems, under which insufficient authority would lead to the invalidity of the action taken. Whether the law on warehouse receipts would be the appropriate place to address this situation, or if it should rather be governed by general agency law or other legislation, was debated.

80. *The Working Group noted that it would further consider draft Article 5 and whether such a provision should generally be included in the MLWR.*

(e) How to address both paper and electronic warehouse receipt in Model Law provisions

81. *The Chair* introduced the topic with reference to paragraphs 77–82 of the Issues Paper. She asked the Working Group which of the following two policy options it considered preferable: that the MLWR was aimed to modernise the existing rules on paper-based receipts, or that it was designed as a medium-neutral legislation. *The Working Group unanimously supported the medium-neutral approach.*

82. *The Chair* raised the question of whether more detailed provisions on control than those contained in the UNCITRAL Model Law on Electronic Transferable Records (MLETR) were needed for the purposes of the MLWR.

83. A few experts expressed the view that it might be very useful to provide more detail concerning the definition of control in the MLWR, and on how to implement that concept in domestic legislation.

84. Other experts questioned whether, in view of the rapid technological developments, it would be wise to incorporate more detailed provisions in the MLWR. Moreover, it was noted that seeking to provide more detail on the concept of control in the MLWR would risk opening a strong divide between the US and EU stances. It might therefore be advisable that the MLWR itself contain rather general provisions, while the different models regarding the concept of control could be described in the accompanying guide.

85. Several experts underlined the importance of designing a MLWR that was flexible enough to cover tokenised warehouse receipts and other existing technological models, and also able to adapt to future technological developments. At this juncture, it was also noted that a number of organisations were currently discussing the concept of control and related issues, and the Working Group should continue observing those discussions.

86. *The Working Group agreed in principle that the MLWR should be sufficiently flexible to accommodate all existing technological models as well as future technological developments.*

(f) Transfer of electronic warehouse receipts

87. *The Chair* introduced the topic with reference to paragraphs 83–90 of the Issues Paper. She asked the Working Group whether the MLWR should simply provide that an EWR was transferred when the requirements of the system in which it was held had been satisfied, or whether it should provide more detail on how those requirements would be satisfied. She noted that, alternatively, these mechanical details might be addressed in the accompanying guide.

88. Experts agreed that the law should not set out specific requirements for particular technologies, as those would quickly become obsolete. However, it was noted that the choice of a technological model had legal implications, which differed for a tokenised versus a registry-based model, and should be taken into consideration.

89. *The Working Group agreed that the MLWR should not set out specific requirements for particular technologies, and that any details should be provided in the accompanying guide.*

(g) Execution and priority of security rights

90. *The Chair* introduced the topic with reference to paragraphs 91–84 of the Issues Paper. Initially, she asked the Working Group whether the MLWR should incorporate the general regime for the creation of security rights as established by the MLST. All experts agreed that the MLWR should be aligned with the MLST. Moreover, some experts supported implementing only the fundamental principles from the MLST that were relevant for warehouse receipts in the MLWR; it was suggested that the MLWR could also include references to the MLST instead of adopting the content of its provisions where appropriate.

91. Next, *the Chair* asked whether the MLWR should replicate the perfection and priority regimes as well as the enforcement regime for security rights in warehouse receipts established by the MLST.

92. Experts noted that there might be minor differences between the MLST and the MLWR with regard to perfection. For example, under the MLST a person could perfect a security right without endorsement, which would not be possible for warehouse receipts under the MLWR.

93. It was also underlined that the MLWR should acknowledge that States might have a secured transactions regime in place that was similar to the one embodied by the MLST. However, other States seeking to adopt the MLWR might not have adopted the MLST regime. Therefore, the MLWR should provide rules that were sufficiently neutral and workable in any legal system, whether or not it had adopted the MLST regime.

94. With regard to enforcement, experts noted the importance of extra-judicial enforcement, in particular the need for expeditious enforcement, as warehouse receipts often covered commodities the value of which could diminish quickly. One expert highlighted that clear and explicit provisions on these issues were important for potential financiers and should be included in the MLWR.

95. *The Working Group agreed that the relevant policy choices that were embodied in the MLST provisions with regard to creation, perfection, priority and enforcement should be adopted in the MLWR to the extent appropriate for warehouse receipts. The Group underlined the leeway for adapting the provisions to the specific needs of warehouse receipts without replicating the MLST, while ensuring alignment unless the specific context of warehouse receipts required otherwise. The Group invited the Drafting Committee to prepare a first draft for the corresponding provisions for consideration by the Working Group at its next session.*

96. Lastly, *the Chair* raised the question of whether the MLWR should expressly establish that a security right in a negotiable warehouse receipt extended to the tangible asset covered by the receipt, provided that the issuer was in possession of the asset, directly or indirectly, at the time the security right in the receipt was created. *The Working Group agreed that the MLWR should expressly stipulate such an extension.*

Item 5: Organisation of future work

97. *The Chair* drew the attention of the Working Group to item 5 on the agenda and invited the Secretariat to address the organisation of future work. The Secretariat noted that the intersessional work would continue through the Drafting Committee and informal subgroups. The third Working Group session was scheduled for the third quarter of 2021 and the dates would be shared with all participants in due course. It was envisaged that the third session would be held in-person at the seat of UNIDROIT in Rome, while participants who could not travel would be able to participate via videoconference.

Item 6: Any other business

98. In the absence of any other business, *the Chair* thanked all participants for their contributions to the session and the fruitful three-day discussion, and declared the session closed.

ANNEX I**LIST OF PARTICIPANTS****EXPERTS**

Ms Eugenia G. DACORONIA (Chair)
Attorney-at-law - Professor of Civil Law
National and Kapodistrian University of Athens Law School

Mr Nicholas BUDD
Former Partner and Head of the Trade & Commodity Finance Groups
White & Case

Mr Adam GROSS
Director
Darhei Noam Limited

Mr Keith MUKAMI
Director - Head of Africa: Banking & Regulatory
CMS-RM Partners

Ms Dora NEO
Associate Professor
National University of Singapore

Mr Jean-François RIFFARD
Professor of Private Law
University Clermont Auvergne

Ms Teresa RODRIGUEZ DE LAS HERAS BALLELL
Associate Professor of Commercial Law
University Carlos III of Madrid

Mr Hiroo SONO
Professor of Law
University of Hokkaido

Mr Andrea TOSATO
Assistant Professor of Commercial Law
University of Nottingham (United Kingdom)
Lecturer in Law, University of Pennsylvania (USA)

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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)	Mr Panagiotis KARFAKIS Economist Economic and Social Development Department
	Ms Carmen Bullon Legal Officer Legal Office, Development Law Branch
	Mr Teemu Legal Consultant Legal Office, Development Law Branch
ORGANIZATION OF AMERICAN STATES (OAS)	Ms Jeannette TRAMHEL Senior Legal Officer Department of International Law
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)	Mr José Angelo ESTRELLA FARIA Senior Legal Officer International Trade Law Division
UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)	Ms Leonela Santana-Boado Economist Division on International Trade and Commodities
WORLD BANK GROUP	Mr John WILSON Senior Financial Sector Specialist Former Lead Economist Development Research Group

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	Mr Michael J. DENNIS Senior Advisor United States of America
	Mr Thomas M. JOHNSON Research Attorney United States of America
	Mr Robert M. TROJAN Senior Advisor United States of America

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ASSOCIATION OF GENERAL WAREHOUSES	Ms Elsa AYALA Executive Director
INDONESIA COMMODITY & DERIVATIVES EXCHANGE (ICDX)	Mr Lamon RUTTEN Chief Executive Officer
SECURED FINANCE NETWORK	Mr Richard KOHN Co-General Counsel
VOCACONSULT	Mr Krassimir KIRIAKOV Marketing Director & Senior Consultant

OTHER OBSERVERS

UNITED STATES DEPARTMENT OF STATE	Ms Sharla DRAEMEL Attorney-Adviser Office of Private International Law Office of the Legal Adviser
UNIVERSITY OF MELBOURNE	Mr Bruce WHITTAKER Senior Fellow

SECRETARIAT

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT)	Mr Ignacio TIRADO Secretary-General
	Ms Anna VENEZIANO Deputy Secretary-General
	Ms Philine WEHLING Legal Officer
	Ms Priscila ANDRADE Legal Officer
	Ms Gabriella PRADO Legal Consultant

ANNEX II**ANNOTATED DRAFT AGENDA**

1. Opening of the session by the Chair
2. Adoption of the agenda and organisation of the session
3. Adoption of the Summary Report of the First Session ([Study LXXXIII – W.G. 1 – Doc. 5](#))
4. Consideration of substantive matters:
 - a. Matters identified in the Issues Paper (Study LXXXIII – W.G. 2 – Doc. 2)
 - b. Preliminary drafts for the Model Law on Warehouse Receipts (Study LXXXIII – W.G. 2 – Doc. 3)
5. Organisation of future work
6. Any other business