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**UNIDROIT Working Group on a Model Law on  
Warehouse Receipts**

***Third session (hybrid)***  
**Rome, 1 – 3 September 2021**

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**SUMMARY REPORT**

**OF THE THIRD SESSION  
(1 – 3 September 2021)**

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1. The third session of the UNIDROIT Working Group on a Model Law on Warehouse Receipts (hereafter the “Working Group”) took place in a hybrid format between 1 and 3 September 2021. The Working Group was attended by 30 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 third 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.3 – Doc. 1](#), available in [Annex II](#)) and agreed with the proposed organisation of the session.

**Item 3: Adoption of the Summary Report of the Second Session (Study LXXXIII – W.G.2 – Doc. 4)**

4. *The Chair* noted that the Secretariat had shared the Summary Report of the Second Session with all participants. *The Working Group adopted the Summary Report* ([UNIDROIT 2021 – Study LXXXIII – W.G.2 – Doc. 4](#)).

**Item 4: Consideration of substantive matters**

5. *The Chair* drew the Working Group’s attention to Item 4 on the agenda, which contained consideration of substantive matters identified in the Issues Paper ([UNIDROIT 2021 – Study LXXXIII – W.G.3 – Doc. 2](#)).

**1. Preliminary matters**

6. *The Chair* referenced Section I of the Issues Paper, which discussed the preliminary matters that had been presented to the Working Group at its first and second sessions, including the composition of the Working Group. She informed the participants that, in view of the complexities of this topic and the limitations on in-person meetings, the Secretariat would propose to the UNIDROIT Governing Council at its 100<sup>th</sup> session in September to authorise the extension of the project by one calendar year for the Working Group to finalise the draft Model Law text. Experts expressed their support for the proposed extension.

**2. Content of the Model Law**

7. *The Chair* introduced Section II of the Issues Paper, which discussed the content of the Model Law on Warehouse Receipts (MLWR). She highlighted that the following sections were to be considered in conjunction with Doc. 3, which contained the preliminary draft provisions for the Model Law ([UNIDROIT 2021 – Study LXXXIII – W.G.3 – Doc. 3](#)).

8. One expert queried whether the Model Law would include a preamble and any guidance notes. The Working Group confirmed that inclusion of a preamble was likely and would be considered at a later date. It was noted that UNCITRAL model laws tended to be accompanied by a

separate guide to enactment, which explained the background to the provisions and various options the governments might have in implementing it. Whether the MLWR should be accompanied by a guide to enactment or other explanatory materials would be considered accordingly.

**(a) Scope and general provisions**

9. *The Chair* introduced the preliminary drafting suggestions for Chapter I, "Scope and general provisions", set out in Doc 3.

Scope of application and definitions

10. *The Chair* drew the Working Group's attention to draft Article 1, "Scope of application", in conjunction with Article 2, "Definitions". First, she presented four options for the definition of a "warehouse receipt".

11. All experts rejected options 1-3 and supported, in principle, the suggested option 4 with subparagraphs (b) and (c).

12. Several experts raised objections concerning subparagraph (a) of option 4, which stated that a warehouse receipt was a document that described itself as a warehouse receipt. One such argument concerned the scope of the MLWR. Some argued that, if a warehouse receipt was not labelled as a warehouse receipt but functioned as such, it should fall within the scope of the MLWR, which aimed to have a broad scope of application. The MLWR otherwise risked excluding informal transactions and transactions by smallholders from its scope. Furthermore, it was queried how the provision would apply to dual receipts. One expert argued that it was problematic to include the self-description as part of the definition because it constituted a form requirement.

13. Other experts noted that the actual purpose of the self-description was to give notice of the document's nature to every person in the negotiation chain. The requirement of a self-description might prevent a person from issuing a document that would be qualified as a warehouse receipt under the law, as it fulfilled the other terms of the definition, without the intention to do so.

14. *The Working Group agreed, in principle, on the definition of a warehouse receipt as suggested under option 4, subparagraphs (b) and (c) of draft Article 2. The Working Group decided to bracket subparagraph (a) for reconsideration.*

15. Next, *the Chair* drew the Working Group's attention to draft Article 1 on the scope of application, and she asked whether the MLWR should set out any exclusions from the scope.

16. Several experts stated that draft Article 1, paragraph 1 was too general to determine the scope of application. They suggested elaborating on the provision on scope to determine the functions that the Law applied to, such as the issuance, transfer and cancellation of warehouse receipts, as well as the rights and obligations of the parties.

17. On the other hand, several experts supported deleting the bracketed paragraph 2 in its entirety and not providing for exclusions, since the MLWR aimed to have a broad scope of application. *The Working Group did not clearly align on a path forward.*

18. *The Chair* drew the participants' attention to draft Article 2, "Definitions", and invited them to consider the definition of "depositor". Several experts questioned the usefulness of including a definition of the term "depositor" in the MLWR. One expert stated that it was useful to include a definition in order to distinguish the depositor from the holder. Several experts stated that the definition of depositor should be linked to the storage agreement. For example, the Model Law may specify that a depositor was a person who deposits goods for storage with a warehouse operator

"under the terms of a storage agreement" – which not all experts agreed with – or by defining the depositor as "a person who enters into a storage agreement with the warehouse operator". *The Working Group agreed to retain a definition of depositor in the Model Law but to consider modifications to the provision as drafted.*

19. Next, *the Chair* introduced the definition for a "holder" of a warehouse receipt. Several experts noted that this definition was drafted for paper warehouse receipts and that different concepts should be used for paper and electronic warehouse receipts. *The Working Group agreed that the definition of "holder" should be modified to differentiate between the "possession" of a paper warehouse receipt and "control" of an electronic warehouse receipt, whereby the person "in control" of the electronic warehouse receipt was considered to have "possession" thereof.*

20. An expert cited the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules) treatment of "holder" (Article 10, paragraph 1) as "the person who is in possession of the documents". Otherwise, the "holder" might be: "the person who is named in the document" (if not to the holder), "the bearer of the document" (if blank) or "the person to whom the document has been issued" (otherwise). *The Working Group agreed that the Drafting Committee should refine this provision's treatment of "control" as compared to "possession" for physical warehouse receipts, distinguishing whether the holder involved the named holder as opposed to the bearer in actual possession of the warehouse receipt.*

21. One expert proposed to add a definition of "protected holder" to the terms included under Article 2. Another added that the Working Group would look into whether or not this term would be included in a later provision and, if so, what the definition ought to capture. *The Working Group agreed to return to this suggestion later on in the drafting process.*

22. *The Chair* then presented two variations for the definition of a "storage agreement". One expert proposed that the provision avoid the suggestion that the goods must be deposited for a fee. Instead, the provision would say that the goods were stored in accordance with a storage agreement. *The Working Group did not express a perspective on either of the two approaches posed for discussion, leaving further resolution to the Drafting Committee.*

23. Lastly, *the Chair* introduced the definition for a "warehouse operator", noting that the Working Group had agreed to the key elements of this definition at its second session. *The Working Group endorsed the definition for a "warehouse operator" as drafted.*

#### Party autonomy

24. *The Chair* introduced draft Article 3 on party autonomy. Experts supported Article 3, while some noted that determining the articles referred to in paragraph 1 that might be derogated from or varied by agreement would be challenging.

25. *The Working Group agreed on the suggested Article 3.*

#### General standard of conduct

26. *The Chair* introduced draft Article 4, "General standard of conduct". One expert pointed out that Article 4 might be useful, depending on the provisions eventually included in the MLWR. For example, if it included the right to dispose of goods in the event of unpaid fees or danger from extended storage, this provision might be useful. Other experts agreed in principle, but added that perhaps this should not be a rule of general applicability and rather be included in specific provisions where needed.

27. Experts noted that Article 4 was a rather exceptional provision that was not present in other UNCITRAL texts. A similar provision was included in Article 4 of the UNCITRAL Model Law on Secured Transactions (MLST), but only existed because the MLST provided for self-help remedies for the secured creditor that were not previously available in all jurisdictions. It aimed to balance self-help with the interest of affected persons, particularly grantors, an underlying aim that did not apply to the MLWR.

28. It was also noted that the UNCITRAL Model Law on Electronic Transferable Records (MLETR) did not have a provision on good faith. The MLETR commentary explained the absence of a similar provision because good faith had a specific meaning for transferable documents or instruments, as distinct from the principle of good faith in international trade law. If the MLWR followed the precedent of the MLETR, it also should not have Article 4.

29. *The Working Group decided to remove Article 4 from the Model Law in its entirety.*

#### International origin and general principles

30. *The Chair* introduced Article 5, "International origin and general principles". Some experts noted that Article 5, paragraph 1 was important to remind the implementing domestic agencies and courts that the text was meant to harmonise legislation across jurisdictions. Some experts expressed concern with the inclusion of "good faith" because each country would have its own rules of interpretation, and this may interfere with those statutory standards.

31. Experts questioned the usefulness of paragraph 2. Some experts argued that, while international conventions commonly included a provision like paragraph 2, it was neither needed nor suitable in a Model Law, which was meant to be adopted as domestic legislation. Moreover, it was argued that the provision would introduce uncertainty as to what general principles paragraph 2 referred to.

32. *The Working Group agreed that Article 5, paragraph 1 should be retained, with the phrase "and the observance of good faith" in brackets for further consideration, while the suggested paragraph 2 should be deleted.*

#### **(b) Issuance of a warehouse receipt**

33. *The Chair* introduced draft Chapter II on the issuance of a warehouse receipt, set out in Doc. 3. This chapter had been revised by the Drafting Committee based on the outcome of the Working Group's discussions during its second session.

34. First, she drew the Working Group's attention to draft Article 6, "Issuance of a warehouse receipt". Experts noted that warehouses did not always issue warehouse receipts immediately after the deposit of the goods, and therefore the provision ("upon taking possession") ought to be reformulated. Furthermore, it was noted that the operator would not necessarily take possession of the goods from the depositor, and that the bracketed text "[from the depositor]" was unnecessary. It was also noted that the depositor referred to in the article ought to be the party to the storage agreement, and that this would need to be coordinated with the definition of "depositor". An expert noted that the warehouse operator was not under an obligation to issue a receipt to anyone but its contracting party and proposed adding "requested by the depositor or the holder", which would specify at whose request the warehouse receipt was issued.

35. *The Working Group agreed to replace "upon" with "after" or a similar term. The Working Group also agreed to delete the bracketed text "[from the depositor]". The Working Group decided*

to add, for reconsideration, at the end of the sentence the bracketed text "if requested by the depositor, [and/or the holder]".

#### Form of a warehouse receipt

36. *The Chair* introduced draft Article 7 on the form of a warehouse receipt. *The Working Group* agreed with the suggested provision.

#### Content of a warehouse receipt

37. *The Chair* drew the participants' attention to draft Article 8, "Content of a warehouse receipt", set out in Doc. 3.

38. *The Chair* began by outlining the content of a warehouse receipt as containing three kinds of information: essential, mandatory, and optional. First, "essential" information consisted of items without which the document would not qualify as a warehouse receipt. Second, "mandatory" information consisted of requirements without which the document, though a warehouse receipt, should be considered null and void. Third, "optional" information was framed as a suggestion for parties to consider including in a warehouse receipt.

39. Most experts found the distinction between "essential" and "mandatory" to be misleading and ambiguous. Several experts suggested that the fact that a document without one of the three "essential" requirements was not a warehouse receipt was problematic, whereas such a document might still be classified as a different type of legally enforceable agreement. Yet, a document with all three of the "essential" requirements was considered a warehouse receipt, whereas it became null and void if it was missing even only one of the "mandatory" requirements.

40. One expert pointed out that the United States did not make a distinction between essential and mandatory, rather it applied the standard concept of "seriously misleading", which might be too flexible for the MLWR.

41. To reframe the "essential" and "mandatory" distinction, the experts considered whether an alternate approach might be more appropriate to distinguish between the kinds of information in a warehouse receipt. The experts looked to the United Nations Convention on International Bills of Exchange and International Promissory Notes (the Geneva Convention), considering "default" insertions, and the Rotterdam Rules, considering limitations on contract enforcement. In the Geneva Convention, certain terms had to be provided in the original document, and no substitute was possible, whereas other requirements could be met via default solutions if absent from the document. The experts also considered the Rotterdam Rules, which likewise stipulated that certain information, such as the condition of goods, must be included at time of receipt. The absence of such information did not render the document itself invalid, but would have other consequences based on the information missing from the receipt. For example, a document without certain information might still be binding between the depositor and warehouse operator, but third parties could not hold another to the conditions of the warehouse receipt.

42. An expert suggested that, rather than rendering a document null and void, any damages suffered by the holder or depositor because of the lack or inaccuracy of a "mandatory" term should be the legal responsibility of the warehouse operator. Several experts cautioned that Article 8 should only focus on what qualifies as a warehouse receipt, not liability concerns, leaving questions of liability to a country's other legislation or, perhaps, elsewhere in the MLWR.

43. *The Working Group* agreed that Article 8 should be concerned solely with the characteristics of a valid warehouse receipt, not liability. *The Working Group* agreed that the distinction between

*"essential" and "mandatory", as drafted, should be reconsidered by the Drafting Committee, taking these concerns into account.*

44. *The Chair* drew the Group's attention to which provisions should be considered "essential" and introduced draft Article 8, paragraphs 1(a)-(c).

45. The Working Group agreed that paragraph 1(a) – the name of warehouse operator and the location of the warehouse where the goods were deposited – was essential. *The draft provision was endorsed as written.*

46. The Working Group agreed that, within paragraph 1(b), the nature and quantity of the stored goods were essential, with no changes suggested. *However, the Working Group agreed that the quality of the stored goods should be reclassified as non-essential, because it could revert to default provisions if missing from the warehouse receipt.*

47. Initially, one expert argued that paragraph 1(c) – the signature of the warehouse operator – should not be an essential requirement. Another expert referred to promissory notes, which required the issuer to sign, as rationale for including paragraph 1(c) as essential. *The Working Group did not come to a clear decision on whether or not to include paragraph 1(c).*

48. *The Chair* drew the Group's attention to the provisions currently classified as "mandatory" in Article 8, paragraphs 2(a)-(f).

49. The Working Group did not discuss paragraph 2(a). It was noted that paragraphs 2(b) and (d) had been agreed upon during the Group's second session, and no modifications were suggested. Discussion of paragraph 2(c) was limited to one expert suggesting that, by default, the combination of a date and name could validly substitute a unique identification number.

50. The suggested paragraph 2(f), which provided for the specification of any existing security interests on the warehouse receipt, was controversial. The experts broadly agreed that it was unfair and inappropriate to impose this obligation on the warehouse operator, because the operator would not be in a position to find out about existing security interests. It was proposed to instead include the name of the depositor in the warehouse receipt, as suggested in paragraph 2(a). This would provide a potential purchaser with the name of the person against which to do searches in a secured transactions registry. *The Working Group agreed that draft paragraph 2(f) should be removed.*

51. *The Chair* then drew the participants' attention to the terms classified as "optional" in draft Article 8, paragraphs 4(a)-(d).

52. The Working Group did not discuss paragraphs 4(a) or (b), both of which it had agreed to reconsider at a later stage during its second session. On paragraph 4(c), storage fees, some experts noted that they did not have a strong opinion on whether these should be optional or mandatory. One expert did argue that fees could be variable (e.g. processing, fumigation) and their indication in a warehouse receipt should therefore be optional. *The Working Group did not reach a unified opinion on paragraph 4(c).*

53. On paragraph 4(d), terms and conditions, two experts expressed different perspectives. One expert suggested that terms and conditions were better suited to a storage agreement, not a warehouse receipt. This expert argued that it was important to maintain autonomy between what was considered a warehouse receipt, which concerned an obligation to deliver, and the underlying storage contract. Another expert objected that the terms and conditions were typically found on the back of a warehouse receipt and should not affect negotiability. *The Working Group, as a whole, did not express a unified opinion.*

54. *The Chair* asked for responses to draft Article 8, paragraph 5. Several experts cautioned that “incorrect” and “insufficient” were redundant, with the same material meaning.

55. Beyond this, the experts agreed that the language of “seriously misleading” would open up a “Pandora’s Box”, whereby courts might subjectively invalidate warehouse receipts. The “reasonable person” standard was the one that many experts thought should be applied.

56. One expert also stated that the reference to Rotterdam Rules Article 37 in Doc. 3 ought to be revised. Article 37 expressed an obligation to qualify information where the carrier knew that the information provided was inaccurate or misleading.

57. Another expert recommended looking at the Geneva Convention, which adopted the principle of non-contagion of incorrect statements. Under this principle, any inaccuracy should not impact the rest of the document except in very specific circumscribed situations, or if the inaccuracy was so evidently untrue that it tainted the document.

58. *With respect to Article 8, paragraph 5, the Working Group agreed to reconsider whether both “incorrect” and “insufficient” were needed and revise the part “unless the incorrect or insufficient information would seriously mislead a reasonable person” to reaffirm the validity of the receipt except for extreme cases. Moreover, the Working Group agreed to add a clause along the following lines: “this is without prejudice to any liability that the issuer might have for the inaccuracies of this information.”*

#### Loss of a warehouse receipt

59. *The Chair* drew the Working Group’s attention to draft Article 10, “Loss of a warehouse receipt”, as set out in Doc. 3.

60. Several experts raised issues with the terms of “holder” and “depositor” as used in Article 10, paragraph 1. First, in the case of loss, the individual who requested the replacement warehouse receipt was not actually in possession of a paper or electronic warehouse receipt. Second, it may have been useful to make a distinction between “holders” and “protected holders”. Third, the Model Law might need to specify protections for the original holder of the warehouse receipt.

61. *The Working Group agreed that the use of “holder” and “depositor” should be revisited once the definitions of those terms were finalised in the Model Law. Otherwise, the Working Group agreed to Article 10, paragraph 1 as drafted.*

62. On Article 10, paragraph 2, *the Chair* asked whether this provision was needed at all or if it was redundant. If so, the Chair asked specifically whether the second sentence was necessary. The reason for removing Article 10, paragraph 2 entirely would be that the Model Law should not aspire to proscribe judicial remedies or procedures within a national system, and this provision came close to doing so. Furthermore, non-compliance with Article 10, paragraph 1 was sufficient to suggest a holder would have access to judicial redress.

63. Several experts stated that the Model Law should avoid proscribing judicial procedures, but Article 10, paragraph 2 should be retained and revised to underscore the urgency required in providing redress to the holder of the receipt. An expert highlighted that Article 10, paragraph 2, sentence 2 was important because it provided indemnity to a warehouse operator against the original holder of a lost or stolen warehouse receipt.

64. *On Article 10, paragraph 2, the Working Group agreed that the provision should be retained, but the Drafting Committee should consider whether to revise this provision to emphasise that a lost warehouse receipt must be replaced reasonably quickly.*

65. The Working Group discussed the process for reissuing a warehouse receipt, both physical and electronic. Some experts recommended revising the provision to emphasise that, in the case of the loss or destruction of a paper negotiable receipt, the warehouse operator would require protection against the presentation of the warehouse receipt by a third party who had purchased the receipt in good faith. Other experts agreed that countries had processes in place to prevent fraudulent activity in the event of loss and replacement. *In view of the foregoing, the Working Group agreed that greater specificity in Article 10 was not necessary.*

### **(c) Transfer of warehouse receipts**

66. *The Chair introduced Chapter IV on the transfer of warehouse receipts, set out in Doc. 3. She recalled that the provisions for this chapter had been presented during the Working Group's second session as examples of issues that might need to be addressed in the MLWR, although it was highlighted that the Group would need to find a "legal functional equivalent" to express those concepts in a more broadly acceptable manner across legal systems. Based on the Working Group's deliberations, those draft provisions had been revised for consideration by the Group at its third session.*

#### *Transfer of a negotiable warehouse receipt*

67. *The Chair introduced Article 11, paragraphs 1-3 on the terms for a transfer. The Working Group endorsed Article 11 as drafted but agreed to replace "tangible" with "paper". This revision would improve clarity on electronic warehouse receipts, addressed in Article 11, paragraph 3.*

#### *Rights of a person to whom a receipt has been transferred*

68. *The Chair called the participants' attention to Article 12 on the rights of a person to whom a receipt had been transferred.*

69. Beyond Article 12, several experts suggested revisions based on structural issues with Chapter IV as a whole. One expert noted that the Working Group's decision to avoid "negotiable" and "non-negotiable" had not yet been extended to this chapter, warranting further revision to ensure consistent terminology. Another issue involved the structure and contents of Articles 11 through 17: Article 12 discussed the rights of a holder of a non-negotiable receipt, but then the Model Law did not discuss transfer of non-negotiable receipts until Articles 16 and 17, and moving between negotiable and non-negotiable receipts may have made the purpose of the provisions themselves unclear.

70. Moreover, several experts agreed in identifying a repetition in the relationship between Article 12 and Article 14. Article 12 was intended to communicate that the rights of the transferee were at least equal to those of the transferor, whereas Article 14 added that – for protected holders – the rights of the transferee were not limited to the rights of the transferor.

71. *The Working Group agreed on a need for structural revisions to Chapter IV as a whole to reduce repetition and improve clarity.*

72. Several experts suggested revisions to Article 12, paragraph 1. One change concerned the phrase "was lawfully able to convey" (Article 12, paragraph 1). Several experts explained that many countries with warehouse receipt systems allowed a buyer of a negotiable receipt in good faith, to obtain better title than the seller had at the time of sale. Replacing "lawfully able" with "the power

to transfer” or “the power to convey” could address this issue, though one expert flagged that the term “power” could raise issues of agency and representation. *The Working Group agreed on the need to review Article 12, paragraph 1 but did not align on a specific replacement.*

73. *Experts disagreed on whether Article 12, paragraph 1 should reference a transfer according to Article 11.*

74. *The Working Group agreed to reduce “such title to the receipt” (Article 12, paragraph 1) to “such rights”, since the person might be transferring more or less than the title itself.*

75. *In Article 12, paragraph 3, the Working Group similarly agreed to replace “ownership” with “rights”.*

76. The experts discussed the complexity underlying the term “defeated” (Article 12, paragraph 3). An expert flagged that “defeated” could refer both to one who acquires a superior right or to one who completely cuts off another’s rights. The expert suggested that both concepts were appropriate in this document, but the Model Law needed to make a distinct reference to either a judicial levy or a buyer or transferee. Another expert recommended replacing “defeated”, which lacked clarity as to whether it required a ruling or litigation, with a phrase such as “without prejudice to”. *The Working Group agreed that the term “defeated” should be replaced but did not align on a specific replacement.*

#### Transfer of a negotiable warehouse receipt to a protected holder

77. *The Chair introduced Article 13, which covered the transfer of a negotiable warehouse receipt to a protected holder or other type of holder as specified by the enacting State.*

78. Experts noted that “taking” was seen as associated more with tangible objects, and the “taking” of a negotiable document elsewhere was used to refer to possession. *The Working Group agreed to use “acquired” instead of “took” in Article 13(b).*

79. Several experts recommended removing “for value”. This term was not adopted, for example, in the corresponding provisions of the Geneva Convention or the UNIDROIT Convention on Substantive Rules for Intermediated Securities. *The Working Group agreed to remove the term or place it in brackets for States to decide whether to include this terminology.*

80. Experts expressed divided opinions on whether to refer to “good faith”. In support of a good faith clause, one expert pointed out that there were two types of good faith standards: (i) objective standards, like the good faith clause that the Working Group previously agreed to remove, and (ii) subjective standards, like the good faith clause in this paragraph. Also in support, some experts suggested that inclusion of a “good faith” reference here was standard and could address a “wilful blindness” scenario. However, some experts pointed out that the definition of “good faith” varied according to jurisdiction, so inclusion of this principle could lead to confusion. Several experts added that good faith could equate to knowledge, and that this overlap could cause confusion.

81. Several experts supported revising Article 13, paragraph 3 to include “the knowledge of prior existing security interests does not constitute knowledge of adverse claims.” *The Working Group did not adopt a decision in this regard.*

#### Rights of a protected holder

82. *The Chair introduced Article 14 on the rights of a protected holder after a transfer.*

83. Experts reiterated the need for structural revisions to align Articles 12 and 14 in the context of Chapter IV. One expert preferred the structure of Article 14 since the sub-sections were more clearly defined.

84. Generally, one expert pointed out that the Model Law ought to avoid language suggesting that a transferee could receive more rights than those of the transferor, explaining that, fundamentally, a person could not transfer greater rights than they had. For protected holders, the doctrine was more accurately that the recipient of a transferred warehouse receipt was shielded, as a “protected holder”, against claims concerning the receipt’s prior holder. *The Working Group decided to explain this distinction in the guide to enactment or commentaries to the Model Law.*

85. On Article 14, paragraph 1(a), experts noted that the term “quiet possession” needed to be reviewed. Several experts were in favour of, or not opposed to, deletion. One expert cited the Cape Town Convention’s clause on the rights of the debtor as the reason for its initial inclusion, however acknowledged that the context did not translate as well to negotiable warehouse receipts. Another expert recommended broadening the clause from “quiet possession” to more general ownership of an asset. *The Working Group agreed that the term “quiet possession” in Article 14, paragraph 1(a) should be revised.*

86. On Article 14, paragraph 1(b), one expert suggested that the revisions on Article 14 focus only on the position of the “protected holder” and not on title. Though the Working Group did not broadly agree on this, another expert did suggest adding notes to explain this provision on the grounds that it represented a departure of sorts from how English law jurisdictions operated. *The Working Group invited the Drafting Committee to revisit this phrasing.*

87. On Article 14, paragraph 1(c), experts agreed that there was no real difference between direct and indirect obligations, suggesting the use of “obligation” without qualifiers. Some experts suggested adding “whatever rights and obligations are stated under the law”. Another expert stated that revisions should capture the underlying idea, which was that the protected holder was “protected” against claims of the warehouse operator against the depositor. Finally, an expert pointed out that “acquired the obligation” should be revised, because obligations were not “acquired”. *The Working Group invited the Drafting Committee to revisit these other proposed changes.*

88. *The Chair* turned the Working Group’s attention to Article 14, paragraph 2. The Chair recalled the Working Group’s prior concern with the terminology of “defeated” and recommended an alternate option: “A protected holder acquires the rights arising out of the warehouse receipt notwithstanding the fact that ...”. One expert suggested a revision adding a new preface to Article 14, paragraph 2(a)-(c): “The rights to the warehouse receipt of a protected holder, and the rights to the delivery of the goods of a protected holder, are not subject to any claim that another person might have to the warehouse receipt or to the goods, except a valid claim arising from the transaction between the protected holder and the person who raises the claim. In particular, the protected holder is not subject to ...”. *The Working Group generally agreed to replace defeated and to insert this phrase.*

#### *Rights of a holder defeated in certain cases*

89. *The Chair* introduced Article 15, on the rights of a holder that may be defeated in certain cases.

90. One expert flagged that the intent of Article 15 was to preclude someone who had fraudulently acquired goods and then attempted to use a warehouse receipt to “cleanse” the defect from acquiring the physical goods. Such a provision was also found in the MLST. The provision did

not prevent the original owner of the goods, who had been defrauded, from pursuing a legal recourse against the person who defrauded them, but it did shield later purchasers of the warehouse receipt. The baseline rule, under draft Article 15, was that the protected purchaser wins where the protected purchaser was either an outright buyer or secured creditor.

91. Another expert emphasised that this presented a question of risk allocation, asking whether it might be better to require proof of ownership by the depositor in order for the warehouse operator to issue the receipt in the first place. However, other experts did not agree that the Model Law should require a depositor to show proof of ownership, and they also cautioned against placing the warehouse operator under any duty to conduct investigation into the source of the depositor's rights.

92. In comparing this article to other standards on stolen goods, an expert cautioned that it was possible to own stolen property if acquired in good faith in a number of countries. Thus, Article 15 addressed issues that might best be avoided. A number of experts agreed to delete this provision altogether.

93. *The Working Group decided to remove Article 15 from the Model Law.*

#### Transfer of a warehouse receipt by assignment

94. *The Chair introduced Article 16, "Transfer of a warehouse receipt by assignment". The Working Group endorsed the provision as drafted.*

#### Warranties on the transfer of a warehouse receipt

95. *The Chair brought the Working Group's attention to Article 17, "Warranties on the transfer of a warehouse receipt".*

96. The experts discussed three possible options for the revision of Article 17, paragraph 1: (i) eliminate the provision, (ii) revise the provision either to reflect the general contract law or to shorten it, or (iii) remove the clause "unless agreed otherwise" as a liability exemption.

97. Several experts questioned whether this "unless agreed otherwise" clause, in the context of the provision as drafted, would unintentionally allow a transferor to escape liability where the transferor engaged in fraud with an illegitimate receipt. Other experts thought that this warranty option was implied for bona fide transactions, not such knowingly fraudulent agreements, so it was not necessary here. If Article 17 was included, one expert suggested including "unless agreed otherwise" in brackets with an explanation.

98. One expert supported this clause as a type of "implied warranty", which is common in complex transactions. Another expert cited the Convention on Bills of Exchange and Promissory Notes express provision of liability for a breach of representation as a potential model.

99. *The majority of the Working Group favoured the retention of Article 17, paragraph 1. However, the Group invited the Drafting Committee to review the "unless agreed otherwise" clause to determine whether it should be retained, revised, or removed.*

100. One expert noted that Article 17, paragraph 1 should apply to both negotiable and non-negotiable receipts, due to the quantity and nature of non-negotiable receipts. *The Working Group asked the Drafting Committee to confirm and clarify whether Article 17, paragraph 1 should apply to both negotiable and non-negotiable receipts.*

101. The experts briefly addressed Article 17, paragraph 2. One expert noted that the current draft was a long piece of text on a very specific issue and might need to be revised. *Since the decision on whether to revise or remove this provision depended on the decision made for Article 17, paragraph 1, the Working Group agreed to return to this question.*

#### Other provisions

97. *The Chair brought the participants' attention to draft Articles 18, 19, and 20. The Working Group decided to consider those articles at the next session.*

#### **(d) Format of warehouse receipts: single and double receipts**

102. *The Chair referred to Annex II to the Issues Paper and informed that the issue of single and double receipts was being examined in-depth by a small group of experts for consideration by the Working Group at its fourth session.*

#### **(e) Electronic warehouse receipts**

103. *The Chair introduced Article 9 and its provisions on electronic warehouse receipts, referring to the relevant section of the Issues Paper. She asked the Working Group to consider whether the Model Law should include provisions to specifically target new technological solutions yet to come, to account for emerging and future technological innovations. This question – specificity versus generality – remained the underlying consideration for the Working Group's discussion of electronic warehouse receipt provisions.*

104. First, the Working Group reviewed the two main models for electronic warehouse receipts, as detailed in the Issues Paper: registry-based systems (where a document was transformed into a layer of information) or token-based (where information from the paper warehouse receipt was included in a digital unit of data that could circulate). Countries have started to adopt one or both of these systems, and these electronic models were based on supporting rules or legislation (e.g., a commodity exchange's operational framework for access to electronic digital records).

105. *The Chair suggested that the Working Group seemed to be favourable to a "medium neutral model", which would encompass both the registry and token-based electronic warehouse receipt models but also allow room for future innovation and adaptation.*

106. Second, an expert raised the question of how to define "control" and proposed a set of solutions: (i) adopt a definition of control from another international instrument, (ii) write a new definition on control specific to warehouse receipts, or (iii) draft definitions on control specific to each type of an electronic warehouse receipt that existed to date (e.g. by registry model, token-based model).

107. One expert flagged that a truly technologically neutral definition was hard to achieve and would be too generic, referring as an example to UCC Article 7.106, which contained provisions for electronic warehouse receipts that included the parameters establishing control. Another expert considered it important for the provision to be general enough to support different models but specific enough to help a jurisdiction, which has yet to implement electronic warehouse receipts. One expert cautioned that pursuing a greater degree of specificity might not benefit legislators. Additional detail might therefore be better suited to explanatory materials.

108. *The Working Group supported the second approach, with a definition specific to warehouse receipts but leaving open operational provisions related to the type of electronic warehouse receipt system.*

109. Third, the Working Group turned to draft Article 9. One expert noted a need to revise “electronic transferable record” to “electronic warehouse receipt”, since this had been transcribed from the MLETR. Several experts discussed whether the Model Law should distinguish between public and confidential information with specificity or in reference to assist with designing systems. *The Working Group agreed that this topic should be revisited during the intersessional work.*

110. *Apart from the revision of “transferable record” to “warehouse receipt”, the Working Group agreed that the level of detail on electronic warehouse receipts to include in Article 9, and in the Model Law more generally, should be evaluated during the intersessional work.*

**Item 5: Organisation of future work**

111. *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. All participants were invited to actively contribute to the intersessional work. The fourth Working Group session was scheduled for the first quarter of 2022 and the dates would be shared with all participants in due course. It was envisaged that the fourth 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**

112. In the absence of any other business, *the Chair* thanked all participants for their valuable contributions and a fruitful 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

Ms Paula Maria ALL  
Professor of Private International Law  
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Mr Nicholas BUDD  
Former Partner and Head of the Trade & Commodity Finance Groups  
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Ms Yu GUO  
Associate Professor  
Director of the Maritime Law Research Centre  
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Mr Adam GROSS  
Director  
Darhei Noam Limited

Mr Keith MUKAMI  
Director - Head of Africa: Banking & Regulatory  
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Ms Dora NEO  
Associate Professor  
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Mr Jean-François RIFFARD  
Professor of Private Law  
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Ms Teresa RODRIGUEZ DE LAS HERAS BALLELL  
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Mr Hiroo SONO  
Professor of Law  
Hokkaido University

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

Mr Bruce WHITTAKER  
Senior Fellow  
University of Melbourne

### **INTERGOVERNMENTAL ORGANISATIONS**

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)	Mr Teemu VIINIKAINEN Legal Consultant Legal Office, Development Law Branch
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KOZOLCHYK NATIONAL LAW CENTER (NatLaw)	Mr Marek DUBOVEC Executive Director United States of America <u>Advisor to UNIDROIT Secretariat</u>
	Mr Michael J. DENNIS Senior Advisor United States of America
	Mr Thomas M. JOHNSON Research Attorney United States of America
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**PRIVATE SECTOR REPRESENTATIVES**

ASSOCIATION OF GENERAL WAREHOUSES	Ms Elsa AYALA Executive Director
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SECURED FINANCE NETWORK (SFN)	Mr William STARSHAK Principal

**OTHER OBSERVERS**

UNITED STATES DEPARTMENT OF STATE	Ms Sharla DRAEMEL Attorney-Adviser Office of Private International Law Office of the Legal Adviser
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**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 Myrte THIJSSSEN Legal Officer

**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 Second Session ([Study LXXXIII – W.G.2 – Doc. 4](#))
4. Consideration of substantive matters:
  - (a) Matters identified in the Issues Paper (Study LXXXIII – W.G.3 – Doc. 2)
  - (b) Preliminary drafting suggestions for the Model Law on Warehouse Receipts (Study LXXXIII – W.G.3 – Doc. 3)
5. Organisation of future work
6. Any other business