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COMITÉ MARITIME INTERNATIONAL COLLOQUIUM 2024





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Welcome Speeches

**Ann Fenech,
President CMI**



**Paula Bäckdén
President Swedish MLA**



Welcome Speeches

Arsenio Dominguez,
IMO Secretary - General



Welcome Speeches

**Ann Fenech,
President CMI**



**Paula Bäckdén
President Swedish MLA**

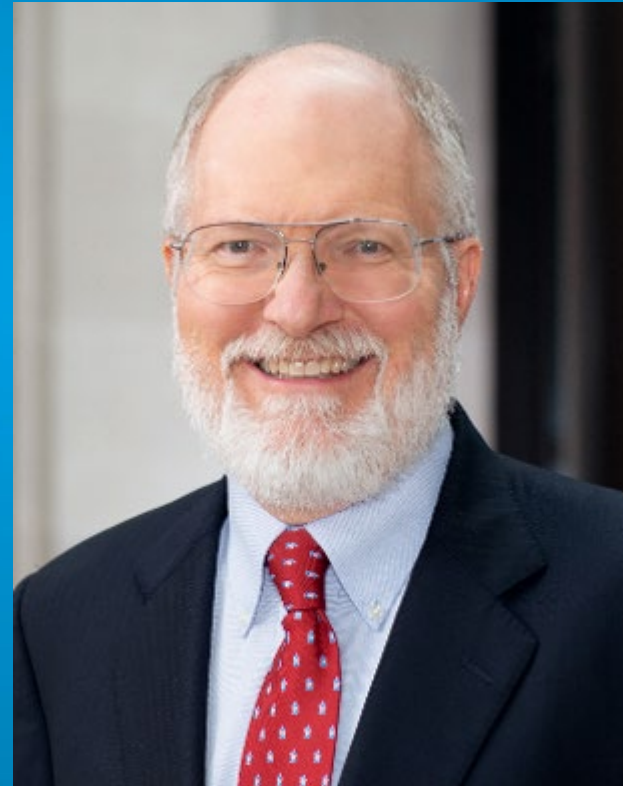




**100 YEARS OF UNIFYING CARRIAGE OF
GOODS BY SEA**

Berlingieri Lecture

Professor Michael
Sturley





**The Unification of Law on Carriage of Goods
– Currently and in the Future**

The Future of the Carriage of Goods by Sea

Unification of the Law in Carriage of Goods
Currently and in the Future

Stuart Hetherington

- Objectives of today's sessions

Speakers today

- Alexander von Ziegler
- Miriam Goldby
- David Farrell
- Andrew Robinson
- Tomotaka Fujita
- Manuel Alba
- Erik Rosaeg

Background

- Standing Committee

Raison d'être

- CMI Constitution "to contribute by all appropriate means and activities to the unification of maritime law".

Disuniformity

- 95 countries ratified the Hague Rules only 31 ratified the Hague Visby Rules. Only about 24 ratified the SDR protocol. Since then, in 1978, we had the Hamburg Rules which have been ratified by about 45 countries. Only five have to date ratified the Rotterdam Rules.

Critical improvements made to the Hague Rules regime by the Rotterdam Rules

- a) the elimination of nautical fault and management of the vessel defence available to shipowners under the Hague/Hague-Visby Rules regime
- b) the obligation of the carrier to exercise due diligence to make the ship seaworthy being extended to cover the entire voyage;
- c) the liability of the carrier for delay;
- d) greater transparency in relation to the identity of the carrier;
- e) it raises the limits of liability of carriers to reasonable amounts in modern currency;

- f) the inclusion of obligations in relation to deck cargo so that the carrier is not automatically exonerated from responsibility for such cargo;
- g) the extension of the notice period for loss or damage to cargo;
- h) the extension of the limitation period for time of suit extended to two years;
- i) clarification of the liability of maritime performing parties and confirmation of Himalaya clause protections;
- j) clear rules in relation to delivery of cargo and solutions to the problems associated with delivery of cargo by the carrier without presentation of negotiable documents;

- k) improved regime for deviation;
- l) clear rules in respect of undelivered cargo;
- m) solution to problems of concealed damage in multimodal carriage;
- n) the requirement that cargo owners have responsibility properly to identify their cargo;
- o) providing clarity in relation to roles, obligations and powers in relation to the complex issues occasioned by E commerce;
- p) makes specific reference to volume contracts;
- q) requirements for jurisdiction and arbitration provisions but gives flexibility to States as to whether to accept such provisions when giving effect to the Convention.

Themes - Benefits of Rotterdam Rules

- a) Clear, harmonised global regime for maritime transport
- b) Electronic commerce for modern, efficient shipping practices
- c) Door-to-door shipments under a single regime
- d) Modern containerised shipping accounted for throughout
- e) Inclusion of incoming and outgoing maritime carriage
- f) Use of a well-known limited network liability system
- g) Coverage of ALL transport documents in liner trade, not just B/Ls and Sea Carriage (noting Gertjan's comments in his 18 January email)

- h) Limited freedom of contract, with appropriate mandatory protection when needed
- i) Comprehensive and more systematic provisions on carrier and shipper liability and balanced allocation of risk
- j) Right of control, to assist shippers and financing institutions, and to pave way for E-Commerce
- k) Clarification of numerous legal gaps that exist under current conventions

- l) Codification of existing industry practices to provide legal certainty
- m) General adoption of commercially practicable solutions
- n) A win-win approach - industry driven, global solutions, comprehensive instrument modernises and harmonises, preserves unimodal transport regimes, reduced transaction costs and harms efficiency, commercial and legal predictability and transparency.

Many of the matters listed in those slides will be referred to by today's speakers.

United States Senate Bill 1924

- (i) instead of "tackle to tackle" the liability of the carrier was extended to "the period from the time when the goods are received by the carrier until proper delivery thereof at the point of destination". (Compare Article 12 of the Rotterdam Rules)
- (ii) the responsibility of the carrier to make the ship seaworthy at the beginning of the voyage was expanded to an absolute obligation to make and keep the ship seaworthy throughout the voyage. (Compare Article 14 of the Rotterdam Rules)
- (iii) the time for giving notice of claim was extended to 10 days. , (Compare Article 23 of the Rotterdam Rules: 7 days)

United States Senate Bill 1924

- (iv) the time for suit provision permitted filing an action up to one year after the carrier declined to pay a claim. (Compare Article 62 of the Rotterdam Rules: 2 years)
- (v) the carrier's exception for negligence in the navigation or management of the ship was omitted in favour of an explicit provision holding the carrier liable for any act, neglect or default ... of the master, mariner, pilot, or other persons employed in or about such vessel or in connection with the navigation or management thereof. (**Compare Article 17 of the Rotterdam Rules**).

Introduction: Stuart Hetherington

Speakers: Alexander von Ziegler
Miriam Goldby

Introduction: Stuart Hetherington

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**The Unification of the Law on Carriage of Goods
– Currently and in the Future**

From Hague to Rotterdam

—

via Hamburg or Visby

Alexander von Ziegler

CMI Gothenburg Colloquium 22 – 24 May 2024

United Nations Convention on
Contracts for the International
Carriage of Goods Wholly or
Partly by Sea



UNITED NATIONS

The Hague 1921



New York 1893



The Hague Today



Visby 1968



Hamburg 1978



© Bernhard Kußmagk 15 05 1978

Rotterdam Today



Structure of the Rotterdam Rules

1: General Provision

2: Scope of Application

14: Jurisdiction

15: Arbitration

17: Matters not governed

18: Final clauses

4: Obligation of Carrier

5: Liability of Carrier

6: Additional Provisions

7: Obligation of Shipper

12: Limits of Liability

13: Time for suit

3: Electronic Transport

8: Transport Documents

9: Delivery of the Goods

10: Right of Control

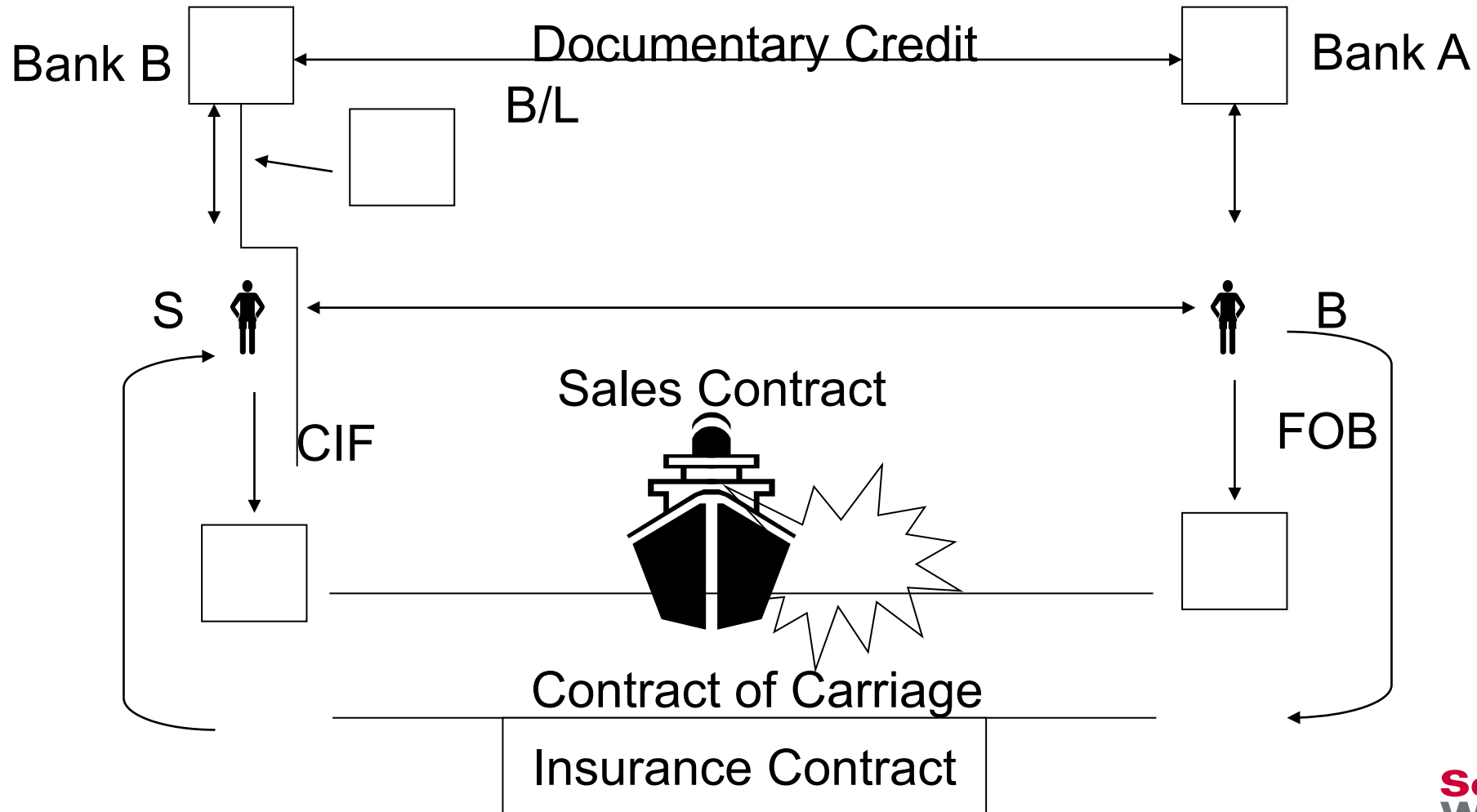
11: Transfer of Rights

16: Validity of Contractual
Terms / Volume Contracts

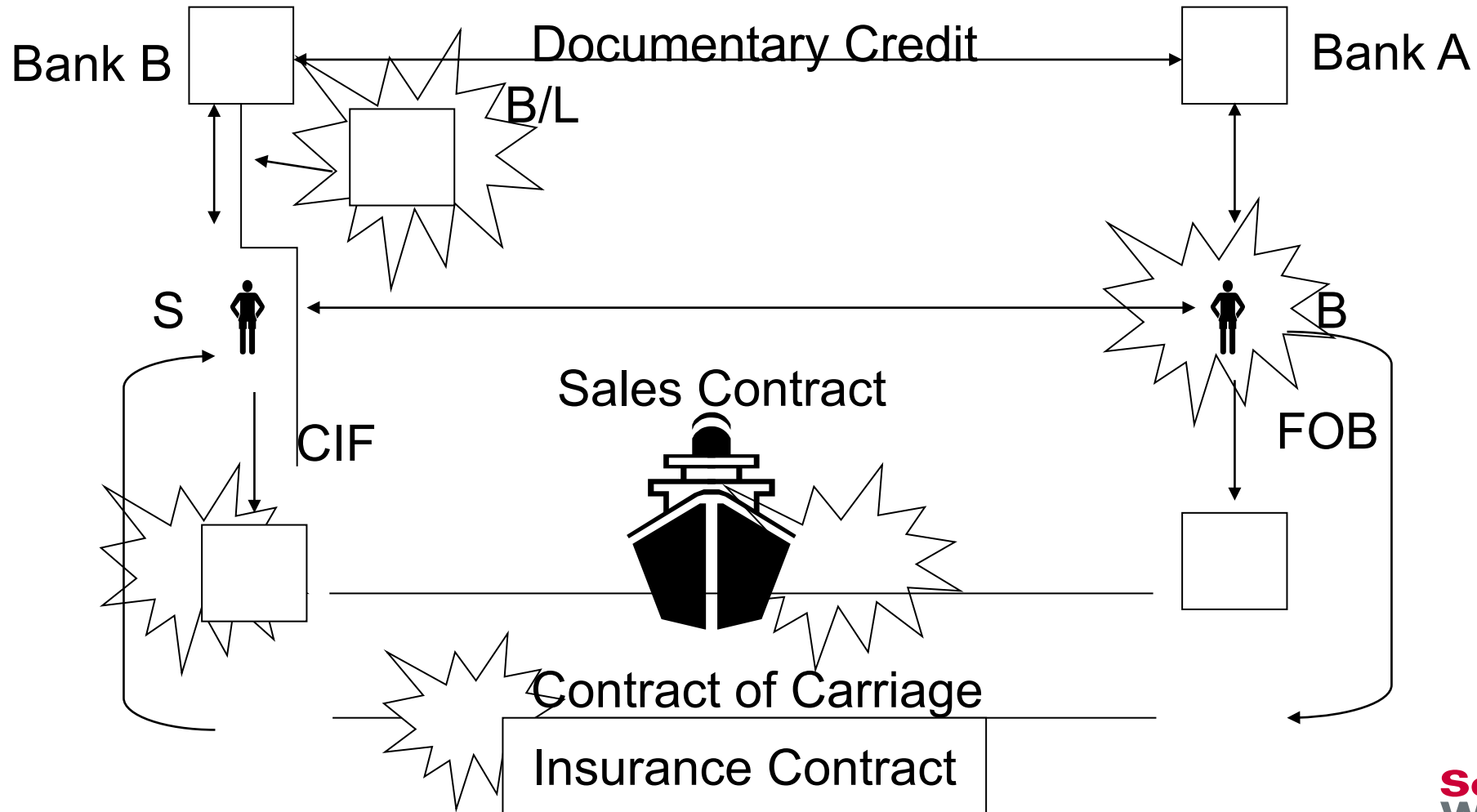
Adaptation to Electronic Trade Practices

- The electronic “Bill of Lading”
 - the electronic transport record
- The call for the functional equivalent, where the “master” for the “equivalent” is not harmonized
- Establishing the mechanics in which shipping and trading (trade finance) is traditionally operating
- Protection of the crucial interfaces between Shipping and Trade

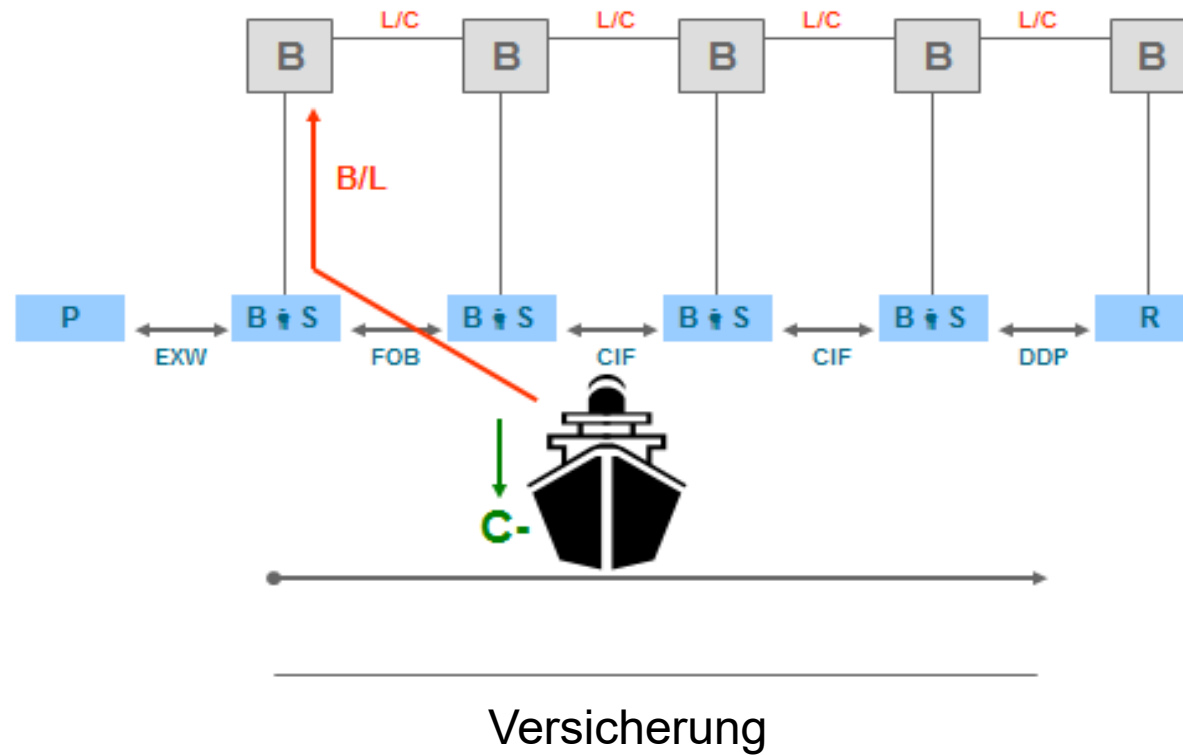
„Trade Mechanism” and Contract of Carriage: Cargo Damage / Loss



„Trade Mechanism” and Contract of Carriage: Trade Frictions



„Trade Mechanism” and Contract of Carriage → “String Sale”



Contractual Approach

- A wide pallet of contractual issues must be harmonized in order to provide the shipping (and trading) parties clarity on the operation of the contract of carriage.
- Contractual Carrier – Master Carrier – Maritime Performing Carrier
- Contractual Shipper – FOB / FCA documentary Shipper
- Changes to the Contract Terms / Right of Control
- Door-To-Door
- Delivery (as the main performing element of the carrier)
- Delivery to a non-contractual party (third party consignee)

Door to Door Approach

- To reflect today's logistics of a door-to-door service by Shipping Lines or NVOCC (freight Forwards as Contractual Carriers)
- One Contract – One Document – same validity over the entire transit
- Adaptation of the liability scheme based on mandatory land-based Conventions (Network System)
- Huge importance: Global legal anchor for the NVOCC B/L (House B/L; FIATA B/L)

Transport Documents and their function for Shipping and Trade

- Existing Conventions – despite of their Title “International Convention for the Unification of Certain Rules of **Law relating to Bills of Lading**” – only focused on the issue of liability of the carrier
 - conclusive evidence of B/L for third party (consignee) (Hague-Visby)
- Any modern regime must address **many more issues** – in particular in defining the “functional equivalent” for electronic trade.
- The Bill of Lading – the transferrable and negotiable document which is so important in Trade Finance – is today only **one of the many forms** in which the contract of Carriage is evidenced and by which trade receives its crucial information needed for its performance

Right of Control

- Crucial function to maintain and transfer the control over the goods / the cargo during transit
 - for the shipping contract
 - for the sales contract
 - for the trade finance arrangements
- The Right of Control must be regulated for each form of evidence of the contract of carriage / transport document
- Particular Position of the Right of Control when a Bill of Lading was issued
- The Right of Control is at the same providing an avenue for the Carrier, should he require instructions or information in the course of the performance of the contract.

Transfer of Rights

- How will the receiver (consignee in contract of carriage / buyer in Sales contract) be obtaining rights to claim the cargo at destination?
- Functions of the respective form of Transport Document
- Transfer of Rights on the basis of the “transfer” of the Transport Document

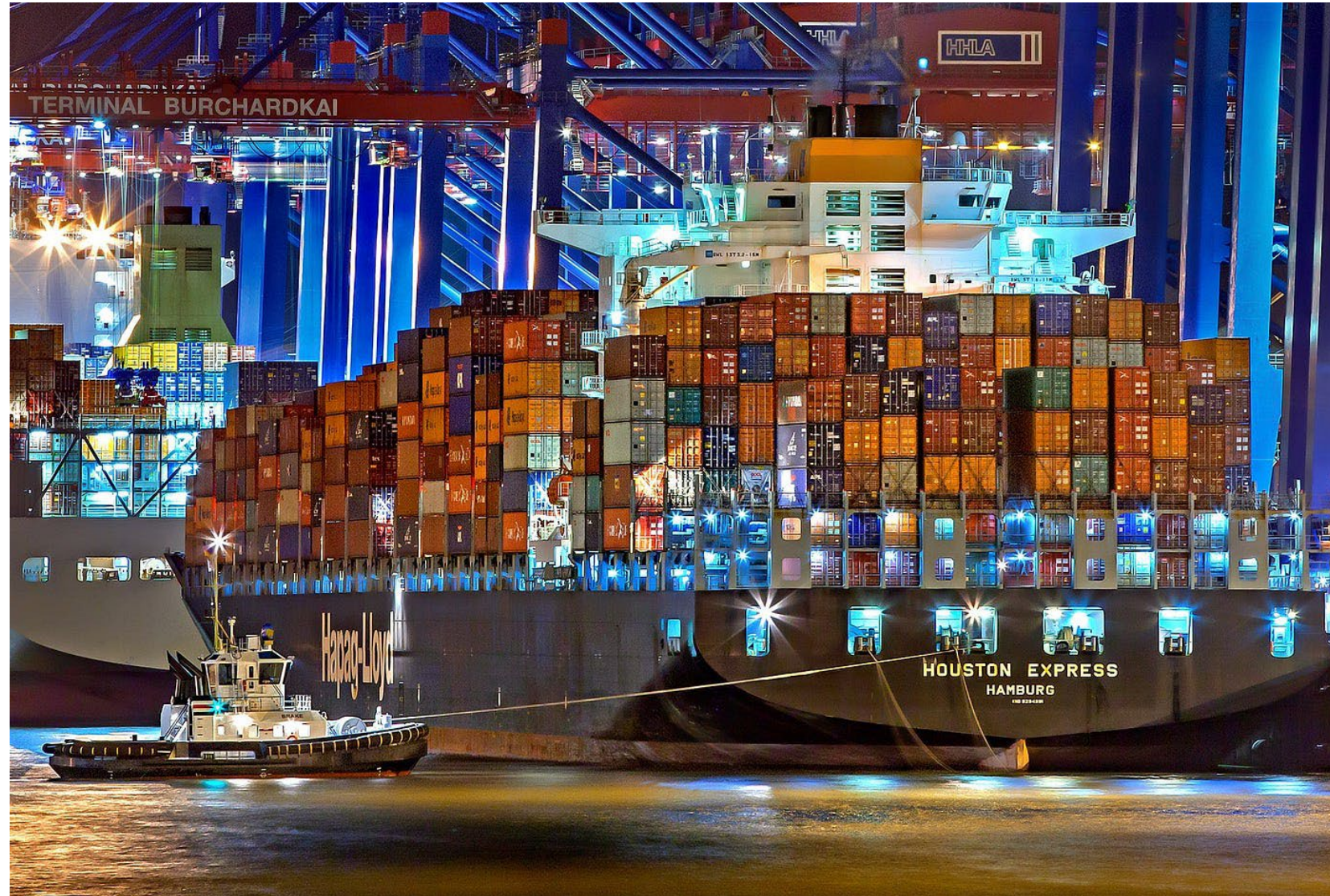
Issues at Delivery

- The only element regulated by prior instruments touching on the delivery was the determination of damages or losses upon delivery, including the notice of damages /losses and some techniques to obtain evidence at arrival.
- The main mechanics of the delivery at destination, the issues of frictions at deliveries that occur on a daily basis are only regulated in the Rotterdam Rules.
- Once in the contractual and door-door- approach modus, the provisions on delivery receive a crucial importance.
- Without the Rotterdam Rules, the issues must be (and are today) litigated, and this form jurisdiction to jurisdiction, producing conflicting and unsatisfactory results. All of this, on costs for the involved industries and their insurers.

Modern Liability System

- “Ice Breaker”: Break the “trench-war” between “Haguers and Hamburgers”
- Re-Open the liability issue in a conservative way, but adjust only what is considered necessary to adapt the Hague regime to a modern liability regime
- Allocation of Risks and Responsibilities to where the respective risk lies.
- Put liability issues in perspective to the whole values of the Rotterdam Rules, providing a more wholistic answer to the issues which a modern and harmonized law on the contract of carriage by sea must address.

Current Carriage of Goods by Sea and the Future: Conclusion



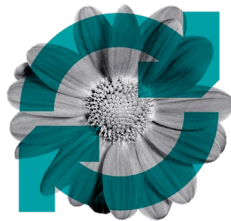
Back –but towards what Future?



Into the Future via Rotterdam!



Thank you.



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**Schellenberg
Wittmer**

Introduction: Stuart Hetherington

Speakers: Alexander von Ziegler
Miriam Goldby

Can the Rotterdam Rules co-exist with laws based on the MLETR?

CMI Colloquium

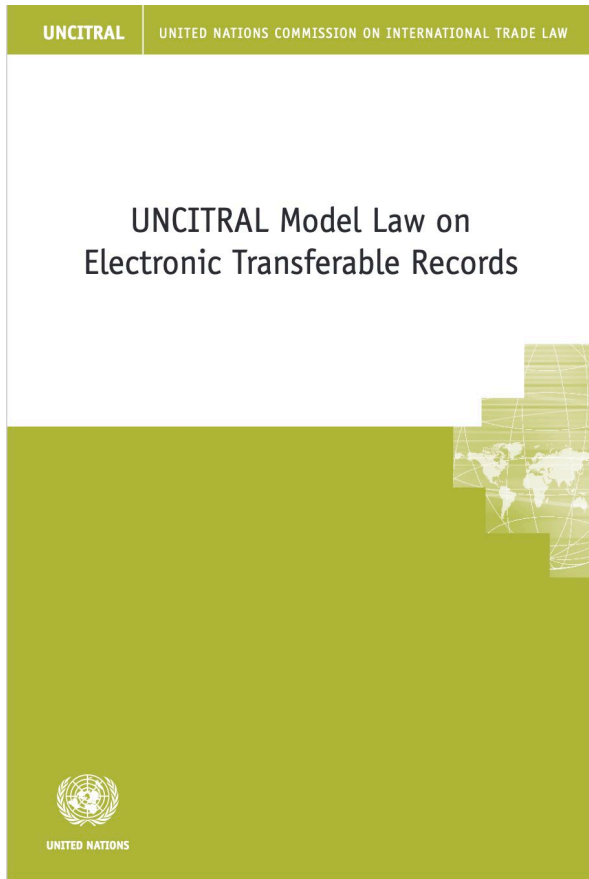
100 Years of Unifying Carriage of Goods by Sea

Goteborg, Sweden

The Unification of the Law on Carriage of Goods Currently and in the Future

Thursday 24th May 2024

Developments towards Digitalisation



URGENT
3 April 2020

ICC MEMO TO GOVERNMENTS AND CENTRAL BANKS ON ESSENTIAL STEPS TO SAFEGUARD TRADE FINANCE OPERATIONS

SUMMARY

The International Chamber of Commerce (ICC) is increasingly concerned about the impact of the novel coronavirus (COVID-19) pandemic on the functioning of the global trade finance market.

COVID-19 induced dislocation in this market may have significant negative implications for essential global trade flows and, moreover, the viability of many micro-, small- and medium-sized enterprises (MSMEs).

As a consequence of necessary public-health interventions to tackle the pandemic, banks are facing increased difficulties processing trade finance transactions. These operations typically require significant levels of in-person staffing to review hard-copy paper documentation, which is required as a matter of national law in many jurisdictions.

While ICC and banks are taking rapid—and unprecedented—steps to limit potential disruption to the processing of trade transactions, **only effective government intervention to enable an immediate transition to paperless trading will fully mitigate the potential implications of COVID-19 related workplace restrictions on the financing of trade.**

In this context—and with a view to safeguarding global trade flows—**ICC calls on all governments to take emergency measures to immediately void all existing legal prohibitions on the use of electronic trade documentation.**

International legal standards can be readily adopted in national laws to provide legal clarity for banks to accept e-documents in order to expedite the financing of trade transactions and the release of goods through this unprecedented crisis.



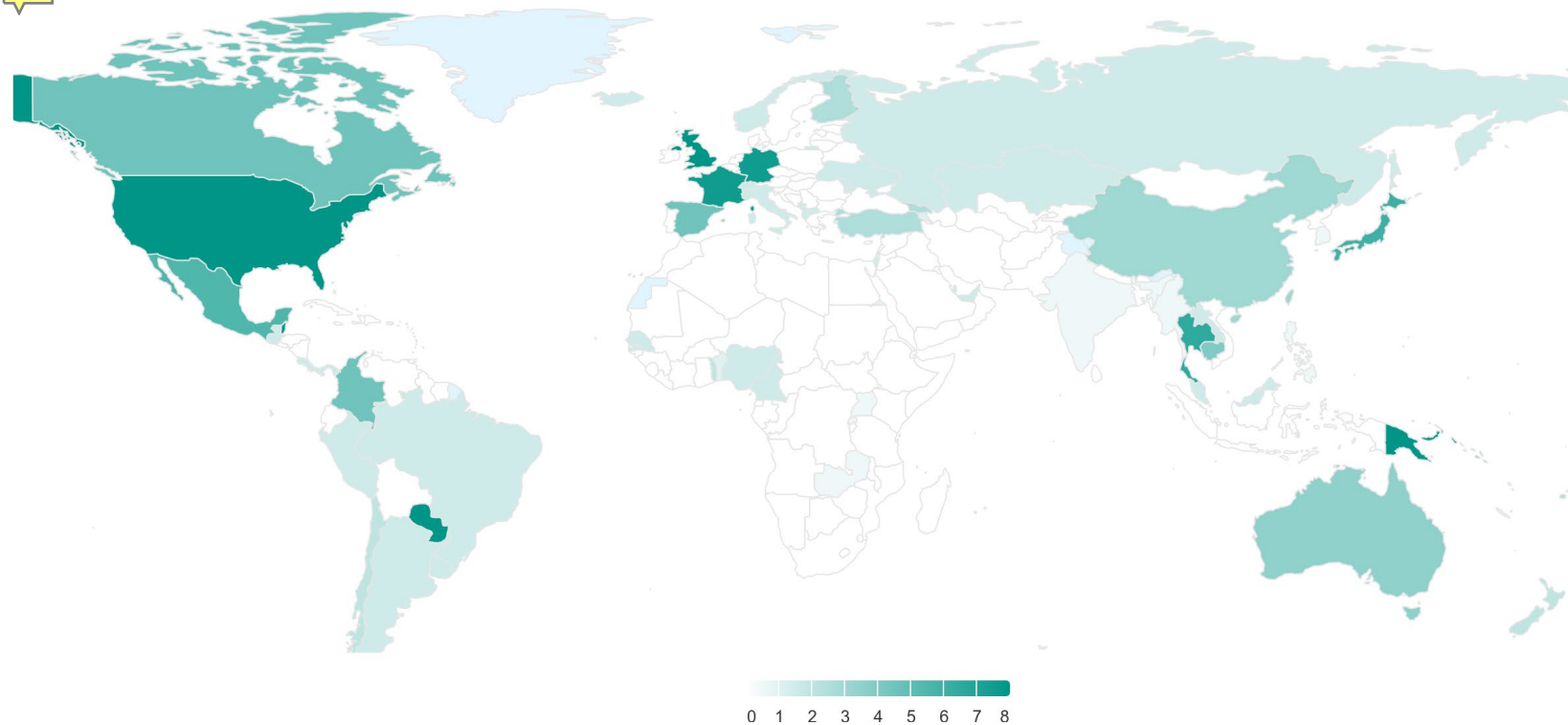
1. Address Domestic Legal Barriers

- We will work to **PROMOTE** the adoption of legal frameworks compatible with the principles of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Transferable Records 2017. This will be done with the acknowledgement that different domestic systems will require different legal solutions. Laws enabling electronic transferable records should be technology neutral, future proof and applicable to all transferable records¹.

ISO/WD 5909

Data interchange processes of blockchain based negotiable maritime bill of lading related to e-Commerce platform

Status : **Under development**



MLETR Status

STAGE	TERM	DEFINITION
1	MLETR SOCIALIZATION	MLETR information has been conveyed and socialised with relevant policymakers within the government and ownership of MLETR as an issue has been established within the government
2	POLITICAL SUPPORT	Jurisdiction has committed to adopt or align to MLETR through (i) public statements; (ii) political declarations (e.g. G20 communiqués, G7 ministerial statements etc.); or (iii) trade agreements
3	DOMESTIC ANALYSIS	Jurisdiction has identified gaps in legal frameworks relevant to electronic transferable records
4	READINESS ASSESSMENT	Jurisdiction has undertaken or received through technical assistance an assessment of laws requiring amendment
5	STAKEHOLDER CONSULTATION	Jurisdiction has consulted with stakeholders, including industry
6	LEGISLATIVE DRAFTING	Jurisdiction has drafted legislation to adopt or align to MLETR
7	PASSAGE OF LEGISLATION	Draft legislation has passed through relevant parliamentary or executive processes to become law
8	ENTRY INTO FORCE	Relevant law has entered into force

Bahrain
Belize
Kiribati
Papua New Guinea
Paraguay
Singapore
Timor Leste
United Arab Emirates
Abu Dhabi Global Market
United Kingdom of Great Britain and Northern Ireland

RR and MLETR: Scope

- Both the UNCITRAL Convention on Contracts for the Carriage of Goods Wholly or Partly by Sea 2008 (the Rotterdam Rules – RR) and the UNCITRAL Model Law on Electronic Transferable Records 2017 (MLETR) provide for the use of documents in electronic form.
- As the purpose of the RR is to regulate a certain type of contract, they focus exclusively on electronic transport records and articulate the contractual rights deriving from their use.
- The MLETR's focus is on enabling the use of all transferable documents in electronic form (including documents of title to goods, and negotiable instruments) with equivalent legal effect to their use in paper form. The MLETR does not articulate what these effects are.

RR and MLETR: Requirements

- The RR and MLETR differ in their articulation of the criteria to be met by information in electronic form before it is capable of functioning as a negotiable electronic transport document (RR) or an electronic transferable record (MLETR).
- The RR adopt a regime based on consent and contractual freedom, setting out the minimum aspects of issue and use for which the contract between the parties must provide.
- The MLETR articulates clear minimum criteria that must be met by an electronic record for it to be recognised as an electronic transferable record and to have equivalent effect to its paper counterpart.

RR Art 1, Definitions

18. “Electronic transport record” means information in one or more messages issued by electronic communication under a contract of carriage by a carrier, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issue by the carrier, so as to become part of the electronic transport record, that:

- (a) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and
- (b) Evidences or contains a contract of carriage.

19. “Negotiable electronic transport record” means an electronic transport record:

- (a) That indicates, by wording such as “to order”, or “negotiable”, or other appropriate wording recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not explicitly stated as being “non-negotiable” or “not negotiable”; and
- (b) The use of which meets the requirements of article 9, paragraph 1.

RR Art 9, Procedures for use of negotiable electronic transport records

1. The use of a negotiable electronic transport record shall be subject to procedures that provide for:
 - (a) The method for the issuance and the transfer of that record to an intended holder;
 - (b) An assurance that the negotiable electronic transport record retains its integrity;
 - (c) The manner in which the holder is able to demonstrate that it is the holder; and
 - (d) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to articles 10, paragraph 2, or 47, subparagraphs 1 (a) (ii) and (c), the electronic transport record has ceased to have any effect or validity.
2. The procedures in paragraph 1 of this article shall be referred to in the contract particulars and be readily ascertainable.

MLETR, Art 2 Definitions

“Transferable document or instrument” means a document or an instrument issued on paper that entitles the holder to claim the performance of the obligation indicated in the document or instrument and to transfer the right to performance of the obligation indicated in the document or instrument through the transfer of that document or instrument.

“Electronic record” means a record generated, communicated, received or stored by electronic means, including, where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not;

“Electronic transferable record” is an electronic record that complies with the requirements of article 10;

Criteria to be met by an ETR under MLETR

Art. 10, Transferable documents or instruments

10.—(1) Where a rule of law requires a transferable document or instrument, that requirement is met by an electronic record if —

- (a) the electronic record contains the information that would be required to be contained in the transferable document or instrument; and
- (b) a reliable method is used —
 - (i) to identify that electronic record as the authoritative electronic record constituting the electronic transferable record;
 - (ii) to render that electronic record capable of being subject to control from its creation until it ceases to have any effect or validity; and
 - (iii) to retain the integrity of that electronic record.

(2) For the purposes of subsection (1)(b)(iii), the criterion for assessing integrity is whether information contained in the electronic record, including any authorised change that arises from its creation until it ceases to have any effect or validity, has remained complete and unaltered apart from any change that arises in the normal course of communication, storage or display.



RR and MLETR: Approach

- The RR and MLETR differ in their approaches to enabling digitalization.
- The RR adopt a regime for electronic transport records based on “control” that operates in parallel to the regime for transport documents, based on possession. This parallel regime does not explain what constitutes “exclusive control”, however, it articulates the legal effects of having “exclusive control” between carrier and holder.
- The MLETR integrates electronic transferable records into the regime that applies to paper documents, using the functional equivalence approach. It does not articulate what the legal effect of establishing control is, as this depends on the regime governing possession of the equivalent paper document.

Meaning and Effect of “Control”: RR

Article 1 Definitions

10. “Holder” means:

...

(b) The person to which a negotiable electronic transport record has been issued or transferred in accordance with the procedures referred to in article 9, paragraph 1.

21. The “issuance” of a negotiable electronic transport record means the issuance of the record in accordance with procedures that ensure that the record is subject to exclusive control from its creation until it ceases to have any effect or validity.

22. The “transfer” of a negotiable electronic transport record means the transfer of exclusive control over the record.



Meaning and Effect of “Control”: RR

Article 12, Period of responsibility of the carrier

1. The period of responsibility of the carrier for the goods under this Convention begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered.

Article 47, Delivery when a negotiable transport document or negotiable electronic transport record is issued

1. When a negotiable transport document or a negotiable electronic transport record has been issued:

(a) The holder of the negotiable transport document or negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier shall deliver the goods ... to the holder:

...

(ii) Upon demonstration by the holder, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder of the negotiable electronic transport record;

(b) The carrier shall refuse delivery if the requirements of subparagraph (a) (i) or (a) (ii) of this paragraph are not met....



Meaning and Effect of “Control”: RR

Article 50, Exercise and extent of right of control

1. The right of control may be exercised only by the controlling party and is limited to:
 - (a) The right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage;
 - (b) The right to obtain delivery of the goods at a scheduled port of call or, in respect of inland carriage, any place en route; and
 - (c) The right to replace the consignee by any other person including the controlling party.
2. The right of control exists during the entire period of responsibility of the carrier, as provided in article 12, and ceases when that period expires.

Article 51, Identity of the controlling party and transfer of the right of control

4. When a negotiable electronic transport record is issued:
 - (a) The holder is the controlling party;
 - (b) The holder may transfer the right of control to another person by transferring the negotiable electronic transport record in accordance with the procedures referred to in article 9, paragraph 1; and
 - (c) In order to exercise the right of control, the holder shall demonstrate, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder.

Meaning and Effect of “Control”: MLETR

Art.11, Requirement for possession or transfer of possession

(1) Where the law requires or permits the possession of a transferable document or instrument, that requirement is met with respect to an electronic transferable record if a reliable method is used —

(a) to establish exclusive control of that electronic transferable record by a person; and

(b) to identify that person as the person in control.

(2) Where the law requires or permits the transfer of possession of a transferable document or instrument, that requirement is met with respect to an electronic transferable record through the transfer of control over the electronic transferable record.

Provisions on change of medium

- Both instruments provide for the possibility of changing from paper to electronic and vice-versa.
- The requirements for and effects of a valid change of medium are virtually identical – there are no material differences.
- Unlike the RR, the MLETR explicitly requires the replaced document or record to be “made inoperative” but this requirement is implied in the RR.

Change of Medium: RR

Article 10, Replacement of negotiable transport document or negotiable electronic transport record

1. If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record:
 - (a) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;
 - (b) The carrier shall issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport document; and
 - (c) The negotiable transport document ceases thereafter to have any effect or validity

2. If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document:
 - (a) The carrier shall issue to the holder, in place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and
 - (b) The electronic transport record ceases thereafter to have any effect or validity.

Change of Medium: MLETR

Article 17. Replacement of a transferable document or instrument with an electronic transferable record

1. An electronic transferable record may replace a transferable document or instrument if a reliable method for the change of medium is used.
2. For the change of medium to take effect, a statement indicating a change of medium shall be inserted in the electronic transferable record.
3. Upon issuance of the electronic transferable record in accordance with paragraphs 1 and 2, the transferable document or instrument shall be made inoperative and ceases to have any effect or validity.
4. A change of medium in accordance with paragraphs 1 and 2 shall not affect the rights and obligations of the parties.

Article 18. Replacement of an electronic transferable record with a transferable document or instrument

1. A transferable document or instrument may replace an electronic transferable record if a reliable method for the change of medium is used.
2. For the change of medium to take effect, a statement indicating a change of medium shall be inserted in the transferable document or instrument.
3. Upon issuance of the transferable document or instrument in accordance with paragraphs 1 and 2, the electronic transferable record shall be made inoperative and ceases to have any effect or validity.
4. A change of medium in accordance with paragraphs 1 and 2 shall not affect the rights and obligations of the parties.

Conclusion: can they co-exist peacefully?

- While the approaches of the RR and the MLETR are distinct, the distinction stems from their different purposes, not from any divergence in principle.
- The RR creates a parallel regime for electronic records based on exclusive control, explicitly setting out the consequences of having such control.
- The MLETR sets out the criteria that need to be fulfilled by an electronic document for it to be treated as its paper equivalent: an essential criterion is that it has to be capable of exclusive control. This enables the paper regime, based on possession, to apply to the electronic document: the MLETR does not (and does not have to) spell out the consequences of having control.
- There do not appear to be any material differences in terms of outcomes: an electronic document that satisfies the requirements of the MLETR is almost certain to satisfy also the requirements of the RR.
- The requirements set out in the MLETR can be viewed as providing a welcome supplement to the agreement-based regime in the RR.



Queen Mary
University of London

Thank you for your attention!
Questions?

m.goldby@qmul.ac.uk

11:00 – 11:30

FIKA

11:30 – 13:00

**Parallel 1: The Future of Carriage of Goods by
Sea**

**Parallel 2: Emerging Issues in International
Maritime Law**