



GOVERNING COUNCIL
85th session
Rome, 8 - 10 May 2006

UNIDROIT 2006
C.D. (85) 10
Original: French
March 2006

Item No. 10 on the agenda : Uniform Rules applicable to Transport

(prepared by Mr Jacques Putzeys, member of the Governing Council *ad honorem*)

<i>Summary</i>	<i>The document is a letter from Mr Jacques Putzeys, member of the Governing Council ad honorem and representative of UNIDROIT to the UN ECE Inland Transport Committee Working Party on Road Transport, re the work done and future developments on the preparation of a Protocol to the CMR on the use of electronic consignment notes</i>
<i>Action to be taken</i>	<i>Examine the attached draft Protocol with a view to taking a position</i>
<i>Related documents</i>	<i>None</i>

DISCUSSION LEADING PARAMETERS AS PROPOSED BY THE SECRETARIAT

Priority	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	high	medium	low	to be determined

I. Strategic Plan

Yes, Strategic Objective No. 1.

II. Work Programme 2006-2008

No.

Staffing implications

So far, limited occasional assistance of one research officer.

Budget implications

None

**Recommendations/
Guidance sought/
Decisions to be
taken/
Alternatives?**

1. The Governing Council, at its 84th session, was informed of the on-going discussions at the UN ECE, Mr Putzey's work on behalf of the Council, as well as his submissions and the position placed on record during the negotiations in that forum. In the meantime, Mr Putzeys and Mr Angelo Estrella Faria of the UNCITRAL Secretariat have agreed on a proposal that is reflected in the letter to the Council dated 15 March 2006 (Appendix 1).

2. *The Secretariat would invite the Council to confirm the mandate given to Mr Putzeys and to support his proposal or to change its position in this regard.*

APPENDIX 1

To The President
The Secretary-General
UNIDROIT, Rome

Brussels, 15 March 2006

Mr President,
Mr Secretary-General,

Draft Additional Protocol to the CMR

In the course of its 78th session (item no, 7), held in Rome from 12 to 16 April 1999, the Governing Council was seised of a request of the Director of the Transport Division of the Economic Commission for Europe to prepare a draft additional Protocol to the CMR with a view to permitting the replacement of paper consignment notes (Articles 4 and 5 CMR) by electronic communication.

The Governing Council accepted this task and entrusted it to the undersigned.

At the time, as President of the *Commission on Legal Affairs* of the IRU (*International Road Transport Union*) I had already since 1990 taken part in manifold research work relating to the tele-transmission of data in the framework of the performance of contracts of carriage of goods, especially contracts of carriage subject to the CMR. The conclusions reached by this research were based on an exhaustive analysis of the regulations and the studies conducted in the field in "CMR countries" and of the rules applicable to the other modes of transport. Model agreements for the electronic interchange of data between commercial partners in the framework of these modes of transport were subsequently elaborated starting 1994.

From 15 October 1997 the Working Party on Road Transport (SC.1) of the Inland Transport Committee (UN ECE) had studied the possibility of preparing an additional Protocol (TRANS/SC.1/1997/7 and TRANS/SC.1/361, para. 37). It turned to UNIDROIT to do this, rather than to UNCITRAL (session of 19 – 21 September 1998 – TRANS/SC.1.1/360, paras. 40 – 41).

In October 1999 (session of 19 – 21 October 1999 – TRANS/SC.1/365, paras. 57 – 59), I reported to SC.1 and updated the documentation after considerable research work.

It resulted therefrom that the most appropriate method was not a revision of the CMR – which was impossible as the late lamented Malcolm Evans had demonstrated in 1986 – but the drafting of a concise *additional* protocol based on the principle of *functional* equivalence: electronics, fax, GSM = paper).

At the SC.1 session of 17 – 18 October 2001, I submitted a draft, which had already been submitted to the Governing Council¹ and approved by it (TRANS/SC.1/2001/7), presenting three variants drafted from the same perspective: it was a matter of adapting the text of Article 1 of the CMNI (Budapest, 3 October 2000), Article 6(9) of the COTIF/CIM (Vilnius, 3 June 1999), and Article 4(2) of the Montreal Convention (Montreal, 28 May 1999), that is, texts that had already been adopted by the international community. For the Governing Council this constituted a guarantee of the acceptability of a similar formulation by the contracting States of the CMR and the prospect of a rapid adoption. Law should not be too much in delay with respect to a broadly spread international practice.

¹ C.D. 79/9 – C.D. 80/11 – C.D. 81/9 – see the comments by Messrs Loewe, Goode and Elmer.

The German delegation to the SC.1 made some objections and submitted a counter-proposal which was much broader as it involved specific rules to be applied to electronic communications, in particular to signatures.

SC.1 thereupon decided to conduct a survey. The conclusions of this survey were amply in favour of the UNIDROIT draft.

Despite this, having to take into account the German objections, which were partly supported by some others, I had to resolve to submit a new draft comprising more general clauses which, in my opinion, were superfluous and dangerous. It seemed to me to be dangerous to want, in an *additional* protocol intended to *permit* the *legal* utilisation of an electronic consignment note, to create imperative rules which would replace both practice (model laws,² model contracts, general conditions, agreements between enterprises,...), and national or community regulations,³ which are copious and constantly being reviewed. It would be unacceptable to imprison **only road transport** in a legislative straightjacket which the other modes of transport would not have in Europe or elsewhere in the world.

In 2005, the SC.1 session was confused (see my letter of 20 October 2005). It was "decided" to create a drafting committee that the Secretariat was supposed to set up ... and which it never did set up, leaving it to the care of the undersigned to come to an agreement with Mr Estrella Faria (UNCITRAL). This was because in the meantime UNCITRAL had intervened. The *United Nations Convention on the Use of Electronic Communications in International Contracts*⁴ had been completed and UNCITRAL could report on experience gained in this field (except as regards consignment notes!). A counter-draft had been submitted by this organisation, a draft which to me, and to those concerned with contracts of carriage, was totally unacceptable. This notwithstanding, there was scope for compromise in the hope of softening the attitude of Germany.

Thanks to the courtesy and understanding of Mr Estrella Faria, we were rapidly able to agree on a text of both the Protocol and the note appended hereto. Thereby we met the decision of SC.1 not to touch the substance and only to review the drafting.

Thus, on 14 March 2006, this draft, signed by Mr Estrella Faria and myself, was submitted to SC.1, which is to discuss it in Geneva in October 2006.⁵ To this, we added a draft inspired by the 1999 Montreal Convention, to which road transport operators, justly, in my *personal* view, turn. The Secretariat of the Inland Transport Committee considers that SC.1 will in a first vote take a position on the type of draft: short or long. Mr Estrella Faria and I will provide all explanations requested in an objective manner. There is reason to believe that SC.1 will select the joint draft. At that point, a second vote will take place on the content. It is not to be excluded that the German delegation will submit proposals for modification of the substance. As to the transport operators, who we did not invite to participate in the drafting so as to maintain strict neutrality, but whose draft we reproduce, they will oppose the choice and will no doubt urge the pure and simple abandoning of the drafts. It is true that the operators have adapted perfectly to the situation of "lawlessness" (the CMR does not impose the utilisation of paper and does not prohibit electronic communication as long as there is a functional equivalence – sic Elmer, C.D. (80) 21, para. 11 and the works of the 5th IRU Symposium "*Transport law in the electronic age*")

² In particular the UNCITRAL Model Laws on Electronic Commerce (1996) and Electronic Signatures (2001). See also GABRIEL, H.D., *The New United States Uniform Electronic Transactions Act* (...), Unif. L. Rev. 2000-4, 651 – 664.

³ Directive 1999/93 on electronic signatures. See SANCHEZ FELIPE, J.M., *La réglementation du commerce électronique dans l'Union européenne*, Unif. L. Rev. 2000-4, 665 – 682.

⁴ 23 November 2005. It should however be noted that electronic communications as regards "consignment notes" are **expressly excluded** from the application of this Convention (Article 2(2) – A/60/515)!

⁵ Documents submitted also to the Secretary-General on 14 March 2006.

– Lisbon, 1 October 2004). All these operators are equipped, even onboard vehicles, with the most recent up to date electronic appliances (for examples, the numerical chronotachygraph).

That which should have taken no more than two years at most, has lasted for **seven** years and has involved considerable costs, at my exclusive expense as UNIDROIT had no funds available for this project.

The following observations force themselves upon me and I submit them to the Council for consideration:

First, the inconsistencies of the Council:

In the course of its 83rd session (2004), the “Governing Council unanimously adopted the new edition of the *UNIDROIT Principles of International Commercial Contracts*” (Unif. L. Rev. 2004-1, 98). In the Principles, the following lapidary and satisfactory statement is to be found – according to the Council:

“Article 1.11 – Definitions:

“Writing” means any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form”.

It is to be noted that the *European Principles* are just as concise:

“Article 7:301: Meaning of Terms ...

*(6) “Written” statements include communication made by telegram, telex, telefax and electronic mail, and other means of communication capable of providing a reliable record of the statement on both sides”.*⁶

The *Cape Town Convention on International Interests in Mobile Equipment*, to which the Governing Council devoted meticulous attention and which saw the agreement of the international community, expressly states:

“Article 1 – Definitions:

In this Convention, except where the context otherwise requires, the following terms are employed with the meanings set out below:

(nn) “writing” means a record of information (including information communicated by teletransmission) which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means a person’s approval of the record”.

It is useful to note, above all for the members of the Governing Council who did not participate in the preparatory work, what Sir Roy writes about it:

*“41. “writing” is defined widely so as to embrace not only documents but also electronic and other forms of teletransmission. However, the teletransmission must indicate by reasonable means a person’s approval of the record and must be capable of reproduction in tangible form on a subsequent occasion”.*⁷

In these two instruments, on which the Governing Council worked for long hours and during long work sessions, there is not a single word on the way in which the teletransmission should be organised or made safe.

Finally, the most recent uniform law:

the *ACTRM – Acte uniforme de l’OHADA relatif aux contrats de transport de marchandises par route* (Uniform Law of OHBLA on contracts for the carriage of goods by road), which constitutes

⁶ Unif. L. Rev. 2004-2, 336.

⁷ Sic: Unif. L. Rev. 2002-2, 440.

the common law in central Africa (the Central African Republic has just adhered to it) and which was drafted by Ms Lacasse under the auspices of UNCITRAL (Mr Ferrari) on the model of the CMR, provides in Article 2(c) that:

“writing: a sequence of letters, characters, numbers or any other sign or symbol with an intelligible meaning and placed on paper or on a means of information technology.

*Unless the persons concerned have provided otherwise, the requirement for a writing is satisfied irrespective of the means and the modalities of transmission, as long as the integrity, stability and permanence of the writing are assured”.*⁸

Fortunate Africa, which can refer to electronics with no further formality ... and without informatics!

In the “draft UNCITRAL Convention on the carriage of goods [wholly or partly] [by sea]”,⁹ former draft for multimodal transport, from which the joint draft submitted to you takes inspiration, Article 3 states that:

“The notices, confirmation, consent, agreement, declaration and other communications referred to in articles [...] must be in writing. Electronic communications may be used for these purposes, provided the use of such means is with the express or implied consent of the party by which it is communicated and of the party to which it is communicated.”

There is above all Article 5 *Use and effect of electronic communications*:

Subject to the requirements set out in this Convention:

(a) Anything that is to be in or on a transport document in pursuance of this Convention may be recorded or communicated by using electronic communications instead of by means of the transport document, provided the issuance and subsequent use of an electronic transport record is with the express or implied consent of the carrier and the shipper; and

(b) The issuance, control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document”.

As to “Procedures for use” and “Replacement”, they concern only registrations and **negotiable** documents (Articles 6 and 7), which can be justified.

As to the recent Vienna Convention on the use of Electronic Communications in International Contracts (2005), the joint draft takes care not to refer to it as it is not applicable, and for good reason, to transport documents.

NO convention or draft convention in the field of transport, not even those of UNCITRAL, has any rule for the utilisation of a NON-negotiable electronic consignment note. This must be said, and repeated.

The initial draft (Montreal¹⁰ or other version) could have been adopted using a simplified procedure, by opening it to signature. As amended, the draft must be submitted to a diplomatic conference which, in UNCITRAL's experience, will sit for years, only to arrive at an uncertain result, maybe at nothing. It is therefore greatly to be feared that the CMR Protocol will follow the other “still-born” Conventions: CRTD 1990, TCM 1980, Hamburg Rules 1992 (which noone wants to know about!), Terminal Operators 1991, not to cite all those that have been adopted by only

⁸ Translation by the UNIDROIT Secretariat. See the comments by Ms Lacasse and the undersigned, ETL, 2003, 691.

⁹ A/CN.9/WG.III/WP.56.

¹⁰ On the documentation (consignment notes), see MILDE, M. *Liability in International Carriage by Air – the new Montreal Convention (28 May 1999)*, in Unif. L. Rev., 1999-4, 835 – 861, at 852.

a few States, with the exception, it is true, of the *1980 United Nations Convention on Contracts for the International Sale of Goods*.

The discussion which took place in the Governing Council at its 83rd session (para. 11) perplexes me and, you must admit, in all honesty begs the question of the continuation of my task. Mr Bollweg attributes to me the paternity of a draft ***which belongs to the Governing Council***, of which I was but the mouth-piece. Mr Bollweg declares that he cannot go along with the decisions of the Council. The same applies to Mr Adensamer. This creates insecurity on the level of the continuation of actions, as the Council concludes without *"taking a stand on the approach adopted by the former (sic) Council in 2003..."*.

What I would not be able to accept, Mr Secretary-General, is that by invoking the fact that *"the possibilities of UNIDROIT collaborating with other organisations and following their work was limited by the fact that it had no resources available"* you could have let it be believed – wrongly, and I am persuaded against your conviction – that the Council in some way was forced to trust *"my judgment"*, as the draft *"had not actually been discussed in depth"*. This would, if it were to be understood in this way, be to make short shrift of the opinions, certainly reflected upon and authorised, of Messrs Roland Loewe, Goode and Elmer (C.D. 79/9, 80/10, 81/9 and 82/7).

I have also read and re-read with attention Mr Elmer's comments, backed by Ms Trahan, Mr Widmer and the President, but this "approach" ought to be clarified. I am not able to estimate its scope, as I did not participate in the discussions. Is it a matter of advocating a "substantial revision" of the draft protocol limited to the electronic consignment note (to which the work at UNCITRAL did not relate), or is it a matter of "up-dating the CMR", which would involve a new convention desired by no one?

Taking into consideration the conclusion of these discussions –of which I had no knowledge last year – I do not know whether I can still give a positive answer to the request *"to continue, if possible, to represent UNIDROIT at the Inland Transport Committee"*.

I would be grateful to you if you would submit the contents of this letter to the Governing Council which, meeting in Rome in the month of May, could take the decisions necessary, in particular, if it so desires, as regards the orientation to be given to the draft which is the Council's by my modest intermediation.

Mr President, Mr Secretary-General, I am,

Yours truly,

Jacques Putzeys

APPENDIX 2

Brussels - Vienna, 14 March 2006
Working Party on Road Transport – Inland Transport Committee
DRAFT ADDITIONAL PROTOCOL TO THE CMR

In its 99th session, the Working Party on Road Transport (*TRANS/SC.1/377 dated 28 November 2005*) "entrusted an editorial committee with finalizing the drafting of the text on the basis of the comments made orally or in writing during the session but requested that the substance should not be modified" (item 26).

Consequently, the undersigned rapporteurs hereby submit to the Committee the attached Draft Additional Protocol to the CMR.

As the IRU representative emphasized that "it would be desirable that it should draw its inspiration from the Montreal Convention of 1999 on carriage by air, ratified by 66 countries of which 29 were Contracting Parties to the CMR, and containing very brief provisions in this regard", the text put forward by the IRU is also attached.

Given the vast number of explanatory documents issued since 1999 towards the drafting of this Protocol, the rapporteurs deem it unnecessary to develop the draft's grounds other than by means of footnotes in the new draft.

However, they express the wish that the Committee Members send them their observations as soon as possible, preferably individually and directly, so that the draft may be finalised during the session in October 2006, and thank them in advance for their cooperation.

José Angelo ESTRELLA FARIA
*United Nations Commission on
International Trade Law, Vienna*

Jacques PUTZEYS
*International Institute for the
Unification of Private Law, Rome*

Jacques PUTZEYS, avenue Van Beesen, 13, B- 1090 Brussels – fax: +32.2.426.04.98
E-mail: jacques.putzeys@drt.ucl.ac.be

José Angelo ESTRELLA FARIA, *UNCITRAL*, Vienna International Center, Room E.417
P.O.Box 500 - A-1400 Vienna, Austria – fax: +43.1.26060.5813
E-mail: jose.estrella-faria@uncitral.org

APPENDIX 3

**ADDITIONAL PROTOCOL TO THE
CONVENTION ON THE CONTRACT FOR THE INTERNATIONAL CARRIAGE OF GOODS
BY ROAD (CMR)
CONCERNING THE ELECTRONIC CONSIGNMENT NOTE**

THE PARTIES TO THIS PROTOCOL

BEING PARTIES to the Convention on the Contract for the International Carriage of Goods by Road (CMR), done at Geneva on 19 May 1956,

WISHING TO supplement the Convention in order to facilitate the making out of the consignment note by means of procedures used for the electronic registration and treatment of data,

HAVE AGREED as follows:

Article 1

For the purposes of the present Protocol

“Convention” means the Convention on the Contract for the International Carriage of Goods by Road (CMR);

“Electronic communication” means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference;¹¹

“Electronic consignment note” means information in one or more messages issued by electronic communication by a carrier or any other party entitled thereto in the performance of a contract of carriage to which the Convention applies, including information [logically¹²] associated with the electronic communication by attachments or otherwise linked to the electronic communication contemporaneously with or subsequent to its issue by the carrier, so as to become part of the electronic consignment note;¹³

¹¹ New definition proposed to expand the field of application of the Protocol so as to allow the use of electronic means of communications beyond the consignment note itself (see CMR Convention, Articles 8(3), 9(2), 12(1), 12(4), 12(5), 14(1), 15, 30(2)) and to express the wide range of technical means available for that purpose. The reference to accessibility of the information so as to be “usable for subsequent reference” represents the condition for the functional equivalence between information in electronic form and traditional documents, as set forth in Article 6 of the *UNCITRAL Model Law on Electronic Commerce* and various domestic laws inspired thereby (see, for instance, Article 16, §2° of the Belgian law of 11 March 2003 (*Loi sur certains aspects juridiques des services de la société de l’information*)).

¹² IRU suggests to delete this word.

¹³ New definition proposed to make it clear that information normally stated in a consignment note may be contained in several electronic records and that it may not necessarily be recorded in a single electronic folder.

“Electronic signature” means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.¹⁴

Article 2

1. Subject to the provisions of this Protocol, the consignment note referred to in articles 4 and 5 of the Convention, as well as any demand, declaration, instruction, request, reservation or other communication relating to the performance of a contract to which the Convention applies may be made out by electronic communication.¹⁵

2. Such a consignment note shall be considered to be equivalent to the consignment note referred to in articles 4 and 5 of the Convention and shall therefore have the same evidential value and exercise the same effects as that consignment [*as long as the goal of a requirement or a duty required by the Convention is achieved, even if the procedures used differ from those mentioned in the Convention*¹⁶].

Article 3

1. The electronic consignment note shall be authenticated by the parties to the performance of a contract of carriage by means of a reliable electronic signature method that ensures its link with the electronic consignment note. The reliability of an electronic signature method is presumed, unless otherwise proved, if the electronic signature

(a) it is uniquely linked to the signatory;

(b) it is capable of identifying the signatory;

(c) it is created using means that the signatory can maintain under his sole control; and

(d) it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.¹⁷

2. The electronic consignment note may also be signed by any other electronic signature method permitted by the law of the country where the electronic consignment note has been made out.¹⁸

3. The information contained in the electronic consignment note shall be accessible to any party entitled thereto.

¹⁴ New definition based on Article 2, paragraph 2, of the Directive 1999/93/EC, of the European Parliament and the Council, of 13 December 1999 on a community framework for electronic signatures (“Directive on electronic signatures”).

¹⁵ Article expanded so as cover other relevant communications.

¹⁶ Addition proposed by IRU.

¹⁷ New provision proposed to address concerns expressed by some members of the Working Party (such as Austria and Germany) concerning the authentication of electronic consignment notes. The text is based on Article 2, paragraph 2, of the Directive on electronic signatures, in the manner it was incorporated into French law by Article 1 of *Décret* n° 2001-272 of 30 March 2001 on electronic signatures, which implemented the new Article 1316-4 of the French Civil Code (“When it is in electronic form, [*the signature*] consists of using a reliable identification procedures that ensures its link to the act to which it relates. The reliability of the procedure is presumed, except as otherwise proved, if the electronic signature is generated, the identity of the signatory is assured and the integrity of the act is guaranteed in accordance with the conditions established by a decree of the Council of State.”). The same reliability criteria are also contained in Article 2, paragraph 2 of the Belgian law of 9 July 2001 (*Loi fixant certaines règles relatives au cadre juridique pour les signatures électroniques et les services de certification*).

¹⁸ Provision added to ensure consistency with Article 5(1) of the CMR Convention, which permits some signature methods other than the hand-written signature (“printed” signatures or “stamps”).

Article 4

1. The electronic consignment note shall contain the same particulars as the consignment note mentioned in articles 4 and 5 of the Convention.¹⁹
2. The procedure used to issue the electronic consignment note shall ensure the integrity of the particulars contained therein from the time when it was first generated in its final form.²⁰ The criteria for assessing integrity shall be whether the particulars have remained complete and unaltered, apart from any addition or change which arises in the normal course of communication, storage and display.²¹
3. In the cases authorized by the Convention, the particulars contained in the electronic consignment note may be supplemented or amended:
 - (a) in transit;
 - (b) by the parties entitled thereto for the purposes of the performance of a contract of carriage, locally or remotely, or
 - (c) by a third party, locally or remotely, that is responsible for the electronic registration and treatment of the electronic consignment note or other information to which this Protocol refers.
4. The procedure used for supplementing or amending the electronic consignment note shall make it possible to detect as such any supplement or amendment to the electronic consignment note and shall preserve the particulars originally contained therein.²²

Article 5

1. The parties making use of the consignment note referred to in this Protocol shall agree on the procedures and their implementation in order to comply with the requirements of this Protocol and the Convention, in particular as regards:
 - (a) The method for the issuance and the delivery of the consignment note to the entitled party;
 - (b) An assurance that the electronic consignment note retains its integrity;
 - (c) The manner in which the party entitled to the rights arising out of the electronic consignment note is able to demonstrate that its entitlement; and
 - (d) The way in which confirmation is given that delivery to the consignee has been effected.

¹⁹ New provision.

²⁰ New provision proposed to address concerns expressed by some members of the Working Party (such as Austria and Germany) with respect to the integrity of electronic consignment notes. The text is based on Article 8 of the UNCITRAL Model Law on Electronic Commerce. The notion of integrity appears in several domestic laws on electronic commerce, such as the new Article 1316 of the French Civil Code ("A writing in electronic form is admitted as evidence in the same way as a paper-based document, provided that the person from whom it originates can be duly identified and that it has been made out and retained in a manner capable of assuring its integrity.").

²¹ New provision proposed to establish conditions for the accessibility of electronic communications over time. The text is based on Article 10 of the UNCITRAL Model Law on Electronic Commerce.

²² New provision proposed in view of observations made by the Netherlands and Norway to the effect that modifications must be clearly apparent.

2. The procedures in paragraph 1 must be referred to in the contract particulars to which the consignment note relates and be readily ascertainable.²³

Article 6

1. The carrier shall in any case hand over to the sender, at the latter's request, a receipt for the goods and all information necessary for identifying the shipment and for access to the consignment note to which this Protocol refers.

2. The documents referred to in article 6, paragraph 2 (g) and article 11 of the Convention may be furnished by the sender to the carrier in the form of an electronic data recording, if the documents exist in this form, if the parties have agreed to procedures enabling a link to be established between these documents and the consignment note to which this Protocol refers in a manner that assures their integrity²⁴ and if the documents comply with the conditions set out in paragraph 1 (b) and in paragraph 2 (b) of this article.

FINAL PROVISIONS

[...]

²³ New provision proposed to offer a minimum framework for agreements between the parties. The text is based on Article 6 of the UNCITRAL "draft convention on the carriage of goods [wholly or partly] [by sea]".

²⁴ Phrase added following the observations by the Netherlands and Norway concerning the integrity of documents.

APPENDIX 4

Draft by the International Road Transport Union (IRU),
Geneva, 10 March 2006

**ADDITIONAL PROTOCOL
TO THE
CONVENTION ON THE CONTRACT FOR THE INTERNATIONAL CARRIAGE
OF GOODS BY ROAD (CMR)
CONCERNING THE
CMR CONSIGNMENT NOTE**

THE PARTIES TO THIS PROTOCOL,

BEING CONTRACTING PARTIES to the Convention on the Contract for the International Carriage of Goods by Road (CMR), done at Geneva on 19 May 1956,

WISHING to supplement the Convention in order to facilitate the making out of consignment note by all possible means to this end,

HAVE AGREED as follows:

Article 1

For the purposes of this Protocol,

“Convention” shall mean the Convention on the Contract for the International Carriage of Goods by Road (CMR), done at Geneva on 19 May 1956);

“CMR consignment note” shall refer to consignment notes, the content of which is set by the Convention.

Article 2

1. To confirm the contract for the carriage of goods by road, to which the Convention applies, a CMR consignment note shall be issued as per Articles 4, 5 and 6 of the Convention.

2. Any other means confirming the contract of carriage and information relating to its performance may be substituted for the issue of a paper-based CMR consignment note. If such other means are used, the carrier shall, if so requested by the sender, deliver to the sender a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.²⁵

²⁵ This provision was drawn up based on Article 4 of the Convention for the Unification of Certain Rules for International Carriage by Air signed in Montreal on 28 May 1999 and accepted by the following 29 (out of 46) Contracting Parties to the CMR Convention: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Mongolia, Netherlands, Norway, Poland, Portugal, Spain, Slovakia, Slovenia, Sweden, Switzerland, United Kingdom and Turkey.

It should also be noted that the provisions of the Montreal Convention on consignment notes are very similar to the related provisions of the CMR.

[3. A CMR consignment note, substituting for the issue of a paper-based CMR consignment note, shall be considered to be equivalent to the latter, and shall therefore have the same evidential value and exercise the same effects as the latter, provided that a requirement or function set by the Convention is achieved, even if the procedures used ²⁶ to meet such requirement or function are different from those foreseen by the Convention for paper-based consignment notes.] ²⁷

Article 3

The documents referred to in Article 6, § 2, letter g and Article 11 of the Convention shall be provided by the sender to the carrier in the form in which they were originally conceived.²⁸ Carriers may refuse a document whose reading or integrity cannot be guaranteed by the means available on board their vehicle. ²⁹

FINAL PROVISIONS

[...]

²⁶ The CMR Convention refers to manual procedures such as: "the carrier hands to", "the carrier retains", "the consignment note accompanies", the documents are "deposited with the carrier", etc. Similar terms are used in the Montreal Convention. Even though electronic documents cannot be "handed", but rather transmitted, cannot be "retained", but recorded, cannot be "deposited" with a carrier, but transmitted to the latter, the States participating in the drafting of the Montreal Convention did not deem it necessary to adjust the wording so as to reconcile it with both procedures referring to paper-based documents and those specific to electronic messaging.

²⁷ This provision does not seem indispensable, which is why it is placed in brackets. The Montreal Convention, whose provisions on consignment notes are very close to the relevant provisions of the CMR Convention, does not include such a clause. The IRU has placed it here to ease the concerns which some countries expressed at SC1 meetings.

²⁸ In practice, the sender of the goods transmits to the carrier:

- documents drawn up by himself,
- official documents (sanitary certificate, consular invoice, certificate of origin to be confirmed by a consul of the importing country or certificate of origin drawn up by a chamber of commerce, certificate of inspection prior to carriage, quality certificate, etc.),
- private documents drawn up by third parties (e.g. manufacturer's instructions for dangerous or perishable goods).

Whereas documents drawn up by the sender or manufacturer's instructions may be originally designed on an electronic medium, official documents, mainly issued by public authorities, must be handed by the sender to the carrier in the form in which they were established. If they were established on an electronic medium, they must be handed in an electronic version. If they were drawn up on paper, including original signatures and stamps (which is still the most common practice), the sender must transmit them as is (the sender may not, for example, scan the documents and send them to the carrier electronically, for such documents would not be accepted in the importing country). Article 3 takes into account the various possible situations.

In addition, one should remember that the scope of the CMR Convention is restricted to the contract of carriage and that, consequently, this Convention may not interfere with such practices as may be governed by other legal instruments, and in particular, as may come under national administrative law.

²⁹ As a precaution, the last paragraph in Article 3 covers any software incompatibility or transmission errors. In practice, the loader (who must not imperatively be the sender) or a third party providing an official or private document may have computer equipment whose software is incompatible with the carrier's.