

Research Article

The Documentary Scope of the Carriage of Goods by Sea Articles Under the Qatari Maritime Law and International conventions¹

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Abstract

The contract of carriage of goods by sea is regulated under the Qatari Maritime Law No. 15 of 1980 in Articles 143-167. From these articles, it is inferred that they are only applicable to contract of carriage evidenced by a bill of lading. Thus, the documentary scope of the rules is very limited in a sense that it is inoperative on other types of documents evidencing the contract of carriage. The objective of this paper is to show whether the trend of the Qatari legislature in such regard is made in line with the international conventions pertaining to the carriage of goods by sea. The documentary scope of the QML is inconsistent with the international move toward widening the documentary scope to cover all documents made in connection with a contract of carriage, regardless of its type.

Keywords: The contract of carriage of goods by sea; Bill of lading; Qatari maritime law

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مقالة بحثية

النطاق الوثائقي لنصوص النقل البحري للبضائع وفقا للقانون القطري والاتفاقيات الدولية

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ملخص

إن عقد النقل البحري للبضائع منظم في القانون البحري القطري رقم 15 لسنة 1980 من المادة 143-167. بقراءة النصوص الخاصة بعقد النقل البحري للبضائع؛ يتضح أن نطاق تطبيقها ينحصر فقط على الوثيقة التي تثبت عقد النقل البحري للبضائع والتي يطلق عليها «سند الشحن». لذلك، يعد النطاق الوثائقي محدوداً على سندات الشحن ولا ينطبق على وثائق أخرى تثبت وجود عقد نقل بحري. تهدف هذه الورقة إلى بيان مدى تماشي توجه المشرع فيما يتعلق بالنطاق الوثائقي لنصوص عقد النقل البحري للبضائع مع الاتفاقيات الدولية المعنية بالنقل البحري للبضائع. النطاق الوثائقي الحالي في القانون البحري القطري لا يتفق والاتجاه الدولي الذي يوسع من النطاق الوثائقي ليشمل جميع الوثائق التي تثبت عقد النقل البحري للبضائع بغض النظر عن طبيعتها.

الكلمات المفتاحية: عقد النقل البحري للبضائع، سند الشحن، القانون البحري القطري

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Introduction

One of the evolving topics related to the contract of seaborne carriage is the documentary scope of the regime governing it. Such scope has widened since 1924, in the adoption of the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading of 1924 (“Hague-Visby Rules”), to 2008 in the adoption of the International Convention on Carriage of Goods Wholly or Partially by Sea, known as the Rotterdam Rules (“RR”).

The contract of the carriage of goods by sea is deemed as a commercial contract, as Law No. 27 of 2006 Promulgating the Trading Regulation Law lists carriage of goods by sea as one of the acts it regulates.¹ However, the Qatari Maritime Law (“QML”) is a special law regulating maritime carriage.

There are two intrinsic types of contract of the carriage of goods by sea: contracts that are evidenced by a bill of lading (“BOL”) or other similar documents; and carriage under charterparties. The focus of this paper is on the first type.² According to Article 143 of the QML, the contract of the carriage of goods by sea is defined as “a contract whereby the carrier whether a ship-owner or charterer, agrees to carry goods in a vessel to a specified port against payment.”

The contract of carriage definition is expressly mentioned and defined in the international conventions related to carriage of goods by sea: the Hague-Visby Rules Article 1(b),³ the International Convention on Carriage of Goods by Sea of 1978 (“the Hamburg Rules”) Article 1(6),⁴ and the RR Article 1(1).⁵ From the aforementioned articles, we can deduce that every convention has defined the contract with some distinctions as follows: the Hague-Visby’s poor drafting only focuses on the documentary scope of the application as the central aim of the convention was to regulate BOL. It says that the rules apply to the contract of carriage evidenced by a BOL or any equivalent document of title and a BOL issued under a charterparty when negotiated to a third party. The Hamburg Rules and the RR, however, move a step forward in defining the contract by emphasizing the position of the carrier who, as a party to the contract, undertakes to carry goods from one port to another, according to the Hamburg Rules and from one place to another, in the RR.

The definition provided in the QML is in line with the Hamburg Rules and the RR, with some differences pertaining to the lack of recognition of other modes of transport in the contract. The QML’s legislature succeeded over the drafters of the Hague-Visby Rules, as the Qatari version illustrates several elements of the contract of carriage in the definition, rather than focusing on the transport document.

The common feature between the international conventions as a whole and the QML is the absence of a formation requirement for the contract. However, some legal regimes provide that the contract of carriage can be evidenced by a BOL, or any equivalent document of title, or other transport documents. This necessitates

1- Art. 5(11) of the Law No. 27 of 2006 Promulgating the Trading Regulation Law: “[t]he following activities shall be deemed to be commercial businesses, if conducted professionally: 11. Land, sea and air transport...etc.”

2- This paper aims to shed light only on carriage under a BOL and other similar transport documents, because the purpose is to discuss the carriage of goods issues from a shipper’s perspective as Qatar is described as a shipper country. Charterparties are excluded because both parties to the contract have equal bargaining power. Thus, parties to the charterparty are free to agree on their obligations and liabilities.

3- Art. 1(b) of the Hague-Visby Rules: “[c]ontract of carriage’ applies only to contracts of carriage covered by a bill of lading or any similar document of title, insofar as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.”

4- Art. 1(6) of the Hamburg Rules: “[c]ontract of carriage by sea’ means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.”

5- Art. 1(1) of the RR: “[c]ontract of carriage’ means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.”

an examination of all the previously mentioned documents to understand the various types of sea transport documents to which the international conventions and the QML can be applied.

Various transport documents are used in practice to evidence the contract of the carriage of goods by sea. For example, the contract of carriage evidenced by a BOL or other documents of title assimilated to the BOL are regulated under the Hague-Visby Rules.

There are other transport documents such as sea waybills and data freight receipts that are not covered by the Hague-Visby Rules. However, they fall under transport documents in the Hamburg Rules Article 18¹ and the RR Article 35.² In addition, recent shipping practice reveals the use of electronic transport documents, such as the e-BOL and e-sea waybills, due to the advancement in technology. Transport documents taking electronic forms are called “electronic records,” and they are regulated under the RR chapter 3.

The analysis in this paper is on the QML’s definition of the contract of the carriage of goods by sea, and the position of international conventions pertaining to carriage of goods by sea. The stand taken by the QML on seaborne carriage is then compared to those of the international conventions. An analysis and conclusion are provided after every section.

The article is divided into the following parts: The Role of the Bill of Lading in Forming the Contract of Carriage; Other Documents Evidencing the Contract of Carriage; and The Recognition of E-BOL and E-Transport Documents

1. The Role of the Bill of Lading in Forming the Contract of Carriage

The BOL is the most popular document of seaborne carriage.³ However, the importance of this document has dramatically been challenged by the advent of other transport documents, such as sea waybills.⁴ Irrespective of that fact, the BOL has gotten the attention of the Qatari legislature, as the legislature provides detailed provisions regulating the BOL only. No reference has been made by the legislature to other transport documents.

There is no definition of BOL under the QML.⁵ However, one can deduce the definition from Article 144.⁶

1- Art. 18 of the Hamburg Rules: “[w]here a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is prima facie evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.”

2- Art. 35 of the RR: “[u]nless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper’s option: (a) A non-negotiable transport document or, subject to article 8, subparagraph (a), a non-negotiable electronic transport record; or (b) An appropriate negotiable transport document or, subject to article 8, subparagraph (a), a negotiable electronic transport record, unless the shipper and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one.”

3- See Mahmoud Ababneh, *The Provisions of the Contract of Carriage*, 80 (2015) (translated from Arabic).

4- Francis Reynolds, *Transport documents under the international convention*, in *The Carriage of Goods by Sea under the Rotterdam Rules*, 271, 276 (D. Rhidian Thomas ed., 2010).

5- Compare the lack of a BOL definition under the QML, with Art. 9 of the Jordanian Maritime Authority Law No. 47 of 2002 (defining the BOL) (“[t]he BOL is a document evidencing the contract of carriage and regarded as a prima facie evidence of the condition and reception of the goods, ready to be loaded and carried, by the carrier, and conferred its holder the right to claim delivery of the goods.”). See also Ababneh, *supra* note 9.

6- Art. 144 of the QML: “[t]he contract of maritime transport shall be proved by a document to be known as Bill of Lading (B/L). The Bill of Lading dated and signed by the carrier or the carrier representative must indicate: 1. the carrier’s name and domicile; 2. the shipper’s name and domicile; 3. the name or domicile of the consignee; 4. the nature, quantity and quality of the goods to be carried as well as of the number, quantity and weight of packages or pieces; 5. place and date of loading of the goods, destination place of the goods, and when the bill of lading is nominative, and their stamps, the description of the goods as the case may be according to the statements presented by the shipper; 6. the apparent condition of the goods and packages; 7. the place of issuance of the bill, and the number of copies issued. The remarks on the goods shall be sufficient for their verification and shall be legible till the end of the journey.”

BOL can best be defined as the document that evidences the contract of carriage of goods by sea.¹ The BOL is not the contract of carriage itself; rather it is the best evidence of an existing contract of carriage between the carrier and the shipper that should be signed by the carrier or a person acting on the carrier's behalf. The BOL has several functions. It serves as a document of the title of the goods, evidences the receipt of the goods by the carrier, and is *prima facie* evidence of the BOL particulars.²

The BOL is regulated differently in international conventions than it is in the QML. Under the Hague-Visby Rules and similar to the QML, there is no specific definition of BOL. It is understood from the definition of the contract of carriage pursuant to Article 1(b)³ of the Hague-Visby Rules that the BOL is a document covering the sea leg carriage of goods, making this article slightly wider in scope than the QML. This article expressly extends the coverage of the rules to documents similar to the BOL. That said, the Hague-Visby Rules failed to define documents of title similar to the BOL. The types or names of documents that fall under the ambit of "similar document of title" is an ambiguous issue.⁴ In our opinion, sea waybills are analogous to BOLs with a slight difference. The value of a sea waybill, as a non-negotiable receipt, is not less than the straight BOL. Like the BOL, a sea waybill evidences the contract of carriage of goods by sea, on which the name of the person entitled to delivery is written, and is regarded as a receipt of the goods.⁵ Unlike the non-negotiable BOL, the seaway bill holder is not required to surrender the bill to gain delivery of the goods. At the international level, the CMI Uniform Rules for Sea Waybills of 1990 allows, in Article 4(i),⁶ for the contract of carriage to be subject to national laws or international conventions. Thus, the sea waybills may be subject to the Hague-Visby Rules.⁷

The Hamburg Rules move a step forward and define BOL in Article 1(7).⁸ In this article, the functions of the BOL are inferred from the following wording: "a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier." An additional function—to serve as evidence to the order of the goods and goods' specifications at the time the carrier takes the goods into its charge—is found in Article 16 of the Hamburg Rules.⁹ Crucially, in contrast to the stand of the QML, the Hamburg Rules' application is not confined to the BOL. It also applies to other transport documents evidencing the contract of carriage as per Article 18.¹⁰ There is nothing in the rules that defines or mentions the designation or type of such other transport documents.

1- It is worth noting that the BOL is regulated under the QML, specifically in the contract of carriage of goods by sea chapter. However, under the U.S. jurisdiction, the BOL is regulated under the Federal Bill of Lading Act (The Pomerene Act), 49 U.S.C. §§80101-80116.

2- Robert Force, A. N. Yiannopoulos & Martin Davies, *Admiralty and Maritime Law*, 12 (2012). Oana Adascalitei, *Implications of the bill of lading usage in the process of goods transportation by sea*, 20, *Constanta Mar. Uni. Annals*, 183 (2013). Mustafa Kamal Taha, *The Maritime Law*, 302-303 (2009) (translated from Arabic). Beseed Balqayed, *The contract of carriage of goods by sea according to the Algerian Maritime Law and International Conventions*, 22 (2011-2012) (unpublished master's thesis, Abi Bakr Balqayed University).

3- See the Hague-Visby Rules Art. 1(b) *supra* note 4.

4- See generally John Richardson, *A Guide to The Hague and Hague Visby Rules*, 34 (3rd ed., 1994).

5- William Tetley, *Marine Cargo Claims*, 19 (4th ed., 2004).

6- Art. 4(i): "[t]he contract of carriage shall be subject to any International Convention or National Law which is, or if the contract of carriage had been covered by a bill of lading or similar document of title would have been, compulsorily applicable thereto. Such convention or law shall apply notwithstanding anything inconsistent therewith in the contract of carriage."

7- Richardson, *supra* note 16, at 20.

8- Art. 1(7) of the Hamburg Rules: "[b]ill of lading' means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking."

9- Art. 16(2): "[i]f the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition."

10- See Art. 18 of the Hamburg Rules, *supra* note 7.

The most vital change in the documentary scope of application at the international level originates in the RR definition of transport document and electronic transport record in Articles 1(14) and 1(18).¹ The RR do not limit application to the BOL, nor do they expressly mention the transport documents they apply to. However, the defining features and functions of such documents are mentioned in the convention; this will be clear later in this paper. The RR make a significant change from 1924 to 2008 by setting up the criteria for the documents that evidence the contract of the carriage of goods. Thus all types of transport documents written or electronically exchanged are subject to the provisions of the RR. According to Article 35 of the RR,² a carrier may issue a paper-printed transport document (“document”) after the conclusion of the contract of carriage, which usually happens orally or by issuing a booking note or through other correspondences between the carrier and the shipper. The carrier may also issue an electronic transport record (“record”) that enables him to send it to the shipper electronically. The RR state the functions of the document and the record.³ The document and the record serve as evidence of the receipt of the goods by the carrier or performing party, and as evidence of the contract of carriage and its terms. Furthermore, they are regarded as a *prima facie* evidence of the document particulars.⁴

1- Art. 1(14) and 1(18) of the RR: “14. ‘[t]ransport document’ means a document issued under a contract of carriage by the carrier 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 ... 18. ‘[e]lectronic 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.”

2- Art. 35 of the RR, *supra* note 8.

3- Art. 41 of the RR: “[e]xcept to the extent that the contract particulars have been qualified in the circumstances and in the manner set out in article 40: (a) A transport document or an electronic transport record is *prima facie* evidence of the carrier’s receipt of the goods as stated in the contract particulars; (b) Proof to the contrary by the carrier in respect of any contract particulars shall not be admissible, when such contract particulars are included in: (i) A negotiable transport document or a negotiable electronic transport record that is transferred to a third party acting in good faith; or (ii) A non-negotiable transport document that indicates that it must be surrendered in order to obtain delivery of the goods and is transferred to the consignee acting in good faith; (c) Proof to the contrary by the carrier shall not be admissible against a consignee that in good faith has acted in reliance on any of the following contract particulars included in a non-negotiable transport document or a non-negotiable electronic transport record: (i) The contract particulars referred to in article 36, paragraph 1, when such contract particulars are furnished by the carrier; (ii) The number, type and identifying numbers of the containers, but not the identifying numbers of the container seals; and (iii) The contract particulars referred to in article 36, paragraph 2.”

4- Art. 40 of the RR: “1. [t]he carrier shall qualify the information referred to in article 36, paragraph 1, to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper if: (a) The carrier has actual knowledge that any material statement in the transport document or electronic transport record is false or misleading; or (b) The carrier has reasonable grounds to believe that a material statement in the transport document or electronic transport record is false or misleading. 2. Without prejudice to paragraph 1 of this article, the carrier may qualify the information referred to in article 36, paragraph 1, in the circumstances and in the manner set out in paragraphs 3 and 4 of this article to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper. 3. When the goods are not delivered for carriage to the carrier or a performing party in a closed container or vehicle, or when they are delivered in a closed container or vehicle and the carrier or a performing party actually inspects them, the carrier may qualify the information referred to in article 36, paragraph 1, if: (a) The carrier had no physically practicable or commercially reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or (b) The carrier has reasonable grounds to believe the information furnished by the shipper to be inaccurate, in which case it may include a clause providing what it reasonably considers accurate information. 4. When the goods are delivered for carriage to the carrier or a performing party in a closed container or vehicle, the carrier may qualify the information referred to in: (a) Article 36, subparagraphs 1 (a), (b), or (c), if: (i) The goods inside the container or vehicle have not actually been inspected by the carrier or a performing party; a (ii) Neither the carrier nor a performing party otherwise has actual knowledge of its contents before issuing the transport document or the electronic transport record; and (b) Article 36, subparagraph 1 (d), if: (i) Neither the carrier nor a performing party weighed the container or vehicle, and the shipper and the carrier had not agreed prior to the shipment that the container or vehicle would be weighed and the weight would be included in the contract particulars; or (ii) There was no physically practicable or commercially reasonable means of checking the weight of the container or vehicle.”

Under the RR, there is no specific type of transport document the carrier is obliged to issue under a contract of carriage. The RR do not mention the name of the transport document or the electronic transport record, but only the specifications of the document or the record. This is indeed a wise choice, as that enables the RR to cover as many transport documents as possible to evidence the contract of carriage of goods.

As the carrier is at freedom to either issue a document or record, one may wonder about the differences between them. Records contain information communicated by electronic communication.¹ For instance, the carrier may create a record using a computer, including correspondences between him and the shipper, goods manifest, booking notes, the name of the port of final destination, the address of the shipper, and other information. This information is saved electronically.

2. Other Documents Evidencing the Contract of Carriage

Section 2 shed light on the types of transport documents covered and regulated by the QML and the international conventions pertaining to carriage of goods by sea. It is clear from the overall discussion that the QML applies solely to BOLs. However, this is not always the case in shipping practice, as the parties to the carriage of goods contract might not issue a BOL at all, or they might regulate their relationship by transport documents other than the BOL. These two scenarios should be examined. The main objective of this section is to illustrate to what extent the QML applies to cases when the BOL is absent (i.e., not issued at all) or when the parties choose to issue a distinct transport document.

If the contract of carriage of goods by water is evidenced by the BOL, the case is straightforward as the QML's provisions on such type of document will govern the dispute. However, the BOL is not the one and only transport document evidencing the carriage of goods by sea contract. In reality, such a contract may take the form of other transport documents. Sometimes the parties tend not to even have their agreement written; they instead conclude the agreement orally or by way of exchanging correspondences. Hence, it is questionable whether the QML applies to the aforementioned scenarios as the QML only regulates BOLs. One can argue that the QML has no application if no BOL has been issued, whether because other transport documents were used to regulate the relationship between the parties, or the parties chose not to issue one (e.g., when the BOL or other documents were contemplated). How does the Qatari law deal with the two situations?

Other transport documents may take the form of non-negotiable receipts, such as waybills, data freight receipts, and mate receipts.² Some carriage contracts may be concluded without any particular type of transport documents evidencing such fact. Furthermore, the transport document is only evidence to the existence of a contract of carriage. Thus, the real agreement is not the BOL itself, as the BOL only serves as the best evidence of the contract of carriage. Thus, the real contract, as described by the author William Tetley, is “the offer, the arrangement for shipment, the advertisements of the carrier, the booking note, the acceptance of the shipper, the statement of agents, etc., as well as the BOL itself, all taken together.”³ The QML asserts that the real contract of carriage is not the BOL in Article

1- Art. 1(17) and 1(18) of the RR: “17. ‘[e]lectronic 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...18. ‘[e]lectronic 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.”

2- See generally Tetley, *supra* note 17, at 446.

3- Id. at 526; see Adascalitei, *supra* note 14 at 183-184; Ababneh, *supra* note 9, at 73.

144, and that the BOL is only used as evidence.¹ The article requires that a BOL be issued in a written form to act as evidence to the contract of carriage. Thus, the BOL is not an element required to enter into a carriage of goods contract; rather, it is a requirement for proving the contract.² Accordingly, the parties may choose:

- To not write the BOL, though the BOL was intended.
- To conclude the contract by other means mentioned earlier by William Tetley. In other words, neither a BOL nor other transport document was issued.
- To issue another transport document such as a sea waybill.

In the three circumstances above, it is unreasonable to say there is no contract of carriage between the parties because the QML has not stated any penalty for the non-issuance of a BOL. The BOL is not a prerequisite to enter into a contract of carriage of goods by sea. To that end, it is still questionable whether the QML is applicable to the three mentioned possibilities. To answer that question, it is important to know whether there is an article regulating such issue in other laws of Qatar and to discern the opinion of Arabic legal jurisprudence on that particular matter. The elaboration on such a question is made in three points: the BOL was not written but was contemplated; no BOL or other transport document was written; and if the parties agreed to regulate their relationship by the issue of other transport documents. What follows is a discussion on what parties to the carriage of goods contract can issue to regulate their relationship.

For the first scenario, as the writing element of the BOL is required as a simple means of proving the contract of carriage, in case of dispute, if the BOL is not written, the parties can prove the contract by other means equivalent to writing, like admissions, oaths, or correspondences.³ A U.K. precedent supports this view. The judge in *Pyrene Co. v. Scindia Steam Navigation Co.*⁴ held that:

“[e]ven when no preliminary document and no bill of lading have been issued but a bill of lading was contemplated, the carrier’s normal bill of lading is the contract or at least evidence of the contract... once of the contract of carriage is concluded and a bill of lading will in due course be issued in respect of it, that contract from its creation covered by a BOL, and therefore from its inception a contract of carriage within the meaning of the rules and to which the rules apply.”

In the second scenario, when no BOL is issued, but there are signs from the circumstances and facts of a dispute such as letters, correspondence, telegrams, proving that a contract has been impliedly entered into by the parties, or the parties start implementing their obligations imposed by the contract as if the carrier were to load the vessel with the shipper’s cargo, then letters, correspondences, and telegrams can be approved by the court only if they are signed by the sender to be taken as evidence. The legal basis for such analysis is found in the Qatari Civil and Commercial Procedure Law No. (13) of 1990, Article 222.⁵ In Article 222, copies of the cables (such as letters, correspondences, and telegrams) are deemed to be consistent with their originals, unless evidence to the contrary is proved. In addition,

1- See Art. 144 of the QML, *supra* note 12.

2- See Wajdi Hatoom, *The Sea Carriage*, 31 (2011) (translated from Arabic).

3- *Id.* at 35.

4- *Pyrene Co. v. Scindia Steam Navigation Co.*, [1954] 1 Lloyd’s Rep. 321, 329 (U.K.).

5- Art. 222: “[l]etters duly signed shall have the evidential value of a conventional exhibit. Cables shall also have such value if the original deposited in the despatch office has been signed by the sender. A cable shall be considered to accord with its original until proof to the contrary has been established. However, if a cable has no original, the cable shall be relied upon solely for reference purposes.” The trend of the Egyptian Court of Cassation is to give the letters and telexes (cables) a value equal to the one given to conventional exhibits presented in any case as a written evidence, only if they have been signed by their senders (Albaroodi Ali, *The Principles Of Maritime Law*, 143 (1983)).

Article 222 provides that if there are no originals for such cables, they cannot be relied upon beyond reference purposes and only have persuasive legal effect. The cables must be a *prima facie* evidence of the carriage contract as well as of the conditions of the goods at the time the carrier takes over the goods.¹ Thus, the value of the cables is less than the BOL, as proof to the contrary is allowed against the parties to the contract including third parties.² This construction is similar to the Hamburg Rules Article 18,³ which regards other transport documents as having a *prima facie* evidence against the shipper and third parties.

In the third and last scenario, in which a transport document other than a BOL has been issued, the QML will apply to such document because based on the analysis of the second scenario (explained above), it is fair and logical for this document to be regarded as evidence between the parties of their agreement. If the second scenario has a role in defining a carriage contract and is deemed as a *prima facie* evidence to the contract of carriage, the issuance of another transport document is no exception as the terms and conditions agreed upon and found in other documents, just like when letters, cables and correspondences are all together considered the carriage of goods contract. The English Court of Appeal came to the same conclusion when a document other than a BOL was issued, which encompassed a number of the contract clauses.⁴ Moreover, the U.S. Supreme Court approved this conclusion in cases that have similar facts.⁵ Therefore, the U.K. and U.S. positions on the issue are alike and support the view presented for the third scenario (when document other a BOL has been issued).

What the parties should issue to regulate their relationship is a matter that deserves further discussion. Referring to Article 150 of the QML,⁶ the carrier shall issue a received for shipment BOL to the shipper either before loading or a shipped BOL post-loading operations. Similarly, it is provided under Article 3(3) of the Hague Rules⁷ and the Hamburg Rules Article 14⁸ that the carrier shall issue a BOL at the request of the shipper after receiving the goods into its charge. The Hague-Visby Rules will not be applicable on documents other than the BOL unless these documents are similar to the BOL.⁹ The Hague-Visby Rules are applicable to cases in which the BOL was not issued but contemplated.¹⁰ Under the Hamburg Rules, the parties may agree on issuing other types of transport documents as per Article

1- See Hatoom, *supra* note 31, at 34-35.

2- See *id.*

3- See Art. 18 of the Hamburg Rules, *supra* note 7.

4- Tetley, *supra* note 17, at 529.

5- *Id.*

6- Art. 150 of the QML: "Art. 150, "[t]he carrier may hand over to the shipper a receipt of receiving the goods before the goods are loaded onboard the Vessel and he shall substitute this receipt with the bill of lading at the request of the shipper after unloading the goods. The receipt shall be considered as being equivalent to the bill of lading if it contains the information provided for in Article 144 and has the word shipped indicated on it."

7- Art. 3(3)(c) of the Hague-Visby Rules: "(c) The apparent order and condition of the goods. Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking."

8- Art. 14 of the Hamburg Rules: "1. [w]hen the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading. 2. The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier. 3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued."

9- Samuel Robert Mandelbaum, *Creating uniform worldwide liability standards for sea carriage of goods under the Hague, COGSA, Visby and Hamburg Conventions*, 23 *Transp. L.J.* 471, 486 (1995-1996).

10- Tetley, *supra* note 17, at 529.

18 (other than a BOL).¹ These transport documents are considered a *prima facie* evidence between the parties and against third parties.²

In Article 35 of the RR,³ the carrier and the shipper have the option of having a transport document or electronic transport record regulating their relationship.⁴ They also have a second option of not issuing any transport document as per their agreement customs, usage, or practice that does not necessitate producing one. Doubts relating to the three scenarios mentioned above never arise under the RR because the RR apply to all documents and records (the RR encompass written and electronic documents evidencing the contract of carriage). Therefore, if no document or record has been issued, there will definitely be some electronic or written correspondences of some kind evidencing the contract of carriage, such as a booking note, parties' correspondences, cargo manifest, documents for custom clearance, etc. It is noteworthy that Article 3 of the RR states that the following must be in a written form: notices, confirmation, consent, agreement, declarations, and other communications including electronic writing. Obviously, the writing requirement is important for evidentiary purposes.⁵

3.1 Analysis and Conclusion

The production of new transport documents in contemporary maritime practice is due to the advancement in the international shipping industry, which uses recent technology to support carriage of goods. These new document forms are also due to the multimodal carriage of goods from its origin to its final destination. One of the factors that may increase the number of combined transport documents is the implementation of an integrated transport system in Qatar, connecting the four modes of transport: air, sea, road, and rail.⁶ Furthermore, the expansion of the economy and the shipping industry in Qatar means that Qatar in the coming future will deal with parties from different parts of the world, including those from the most developed countries who will use various types of transport documents to facilitate shipping transactions. Although these documents may not have the whole functions of traditional ocean BOLs, they play a significant role in the course of carriage and in proving the existence of a contract of carriage of goods by sea.

The drafters of the RR and the Hamburg Rules were aware of the emergence of new transport documents besides the traditional BOL. However, the QML's application is expressly confined to the BOL, although the contract of carriage can be evidenced by other means of proof.

International conventions is moving in the direction of widening the documentary scope of the contract of the carriage of goods wholly or partly by sea.⁷ From the BOL and similar documents in the Hague-Visby Rules, the BOL and transport documents in the Hamburg Rules, to the transport documents and electronic transport records in the RR.

1- See Art. 18 of the Hamburg Rules, *supra* note 7.

2- Unlike the conclusive effect of the BOL, which estopped the carrier from invoking the BOL terms against third parties.

3- See Art. 35 of the RR, *supra* note 8.

4- It is worth noting that under the RR, the term BOL is not mentioned at all; instead the RR regulate "transport documents" and "electronic transport record." See Art. 1(14) and 1(18) of the RR, *supra*, note 23.

5- Art. 3: "[t]he notices, confirmation, consent, agreement, declaration and other communications referred to in articles 19, paragraph 2; 23, paragraphs 1 to 4; 36, subparagraphs 1 (b), (c) and (d); 40, subparagraph 4 (b); 44; 48, paragraph 3; 51, subparagraph 1 (b); 59, paragraph 1; 63; 66; 67, paragraph 2; 75, paragraph 4; and 80, paragraphs 2 and 5, shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated."

6- *Qatar keen on integrated transport system: Sulaiti*, Doha Tribune (Feb. 27, 2015), <http://archive.qatar-tribune.com/viewnews.aspx?d=20150227&cat=nation1&page=1>.

7- See generally Tetley, *supra* note 17, at 6.

The QML is very narrowly written and is limited in its application to the BOL shipped or received for shipment, a charterparty BOL, or a direct BOL. One would wonder whether the transport documents evidencing the contract of carriage under the QML are satisfactory to the extent that they serve the current shipping industry of Qatar. The coverage of the QML is even less than the Hague-Visby Rules that cover the least types of transport documents among other international conventions, because the Hague-Visby Rules apply not only to the BOL but also to similar documents of title.

For that reason, the documentary scope of the QML should be significantly wider to cover all current types of transport documents used in the contemporary maritime industry and those developed in the to thesby Rules apply not only iu trying to say that this is OK under the Hamburg Rules but not under the QML and the Hague Rulefuture. The broader the scope, the better protection the shipper gains, as the rules can be applied to a plethora of transport documents.

The RR have the best approach in enlarging the scope of documents to which the rules are applied. The RR regulate in great detail two types of documents: transport documents and electronic transport records. The scope of application on documents or records does not depend on a specific name, such as BOL or sea waybill. The RR deemphasize such classifications and instead provide specifications and functions for the documents and records; it is a wise choice to encompass as many as possible such transport documents evidencing contract of carriage. In reality, there are various transport documents pertaining to carriage of goods that need articulation and regulation. The open wording of the article allows the rules to cover a large spectrum of documents including those that will gradually emerge in the future with the advancement of the shipping industry.¹ Through the nature of this wider scope, sea waybills and non-negotiable receipts would gain protection due to the steady development and increasing usage of such types of contracts in the maritime practice.

Furthermore, the approach taken by the RR can dramatically lessen the confusion that relates to legal disputes involving other transport documents (other than the BOL). The court will be guided by law, and the parties to the contract can predict their prospective rights and liabilities. Otherwise, the court should examine the documents or correspondences on a case by case basis, which may raise the likelihood of cases deciding similar facts differently based on the judges' understanding of the case and interpretation of the contract of carriage.²

If the QML governs door-to-door carriage, then it must include and regulate documents such as multimodal documents or combined transport BOLs. Qatar's shipping industry is moving toward multi-modalism.³ The new method of carriage in Qatar must be addressed to promote the industry and to manage international trade and the economy.

3. The Recognition of E-BOL and E-Transport Documents

The world is rapidly changing, thanks to digital technology. The ways of doing business and trade have been subject to such change through the concept of going paperless and conducting paper- related work via keyboard clicks. One aspect that has been affected by technology is the way in which the

1- Gertjan van der Ziel, *Delivery of the goods*, in *The Rotterdam Rules 2008*, 189, 193 (Alexander Von Ziegler, Johan Schelin & Stefano Zunarelli eds., 2010).

2- It is worth noting that judges in civil law jurisdictions do not abide by judicial precedents (unlike the judges in common law jurisdictions); they decide cases based on statutory laws and apply the provisions of statutes on the disputed issues.

3- See *The transport sector is the top amongst infrastructure projects*, *supra* note 46. See *Integrated transport system strengthens efforts to diversify the Qatari economy*, Al-Sharq Newspaper (Jan. 16, 2016), <http://www.al-sharq.com/news/details/397615> (translated from Arabic).

carrier and the shipper conclude a carriage of goods contract. Traditionally, the paper BOL is the most popular type of transport document parties tend to agree upon. Nonetheless, technology has found a more efficient, speedy manner to issue transport documents.

Upscale developments in the shipping industry, such as the advent of faster ships, the handling of containerized cargo that can be loaded and unloaded more quickly, and the emergence of multi-modal transport, necessitate the rise in using e-BOLs and e-transport documents such as sea waybills.¹

A technologically advanced way of issuing transport documents using an electronic data interchange system is a critical need in coping with developments in the way of doing business. The term “electronic data interchange” refers to a computer-to-computer exchange of information in predetermined formats.² Amelia H. Boss, a scholar in the field of international electronic commerce, states that “while electronic commerce is used for a relatively small percentage of international commerce, its eventual dominance as the primary method of conducting international business communication seems inevitable.”³

It is equally important to overcome the disadvantages of the traditional BOL, especially those related to its delay in arrival to the shipper, particularly when goods are carried by containers, as containerized cargo is loaded and unloaded more quickly nowadays. Consequently, the goods may arrive on time; however, the holder of the BOL cannot claim delivery because the BOL has not arrived yet. In addition, the BOL is the sole document of title accepted by banks for letters of credit in Qatar.⁴ If the BOL is delayed, the shipper cannot get financial support from a bank in a timely manner. Thus, the traditional BOL and other paper-based transport documents are nowadays being substituted by e-BOLs⁵ or e-transport documents.⁶ The rapidly increasing usage of electronic data interchange is due to the ease in conducting transactions between persons in different parts of the world. Given the undeniable importance of electronic transport documents, the national laws of maritime nations engaged in the shipping industry should recognize the fact that electronic documents are fast substituting paper-based documents.

In fact, the parties to the carriage of goods contract can issue either negotiable documents, such as negotiable e-BOLs,⁷ or non-negotiable transport documents. If the parties wish to issue a non-negotiable transport document made to a named person, the parties may agree to issue a non-negotiable e-BOL or e-sea waybills. The former is made to a named person and requires surrender to claim delivery based on a clause in the bill. However, the latter does not require surrender, just identification of the person claiming delivery. In general, non-negotiable documents are sought between the parties to secure payment of the carriage transactions. Non-negotiable electronic documents (such as e-BOLs and e-sea waybills) are more adaptable to electronic data interchange than negotiable electronic documents because the seller of goods in an international sale of goods contract may require the buyer to show a non-negotiable document to ensure payment.⁸ In this section, the aim is to answer

1- *Ocean Bills of Lading: Traditional Forms, Substitutes, and EDI Systems*, 21 (A. N. Yiannopoulos ed., 1995).

2- *Id.* at 21.

3- Amelia H. Boss, *The international commercial use of electronic data interchange and electronic communications technologies*, 46 *Bus. Law.* 1787, 1787 (1991).

4- Interview with Shipping Agency Department, Qatar Navigation Company [Milaha] (Apr. 19, 2016).

5- This term can be best defined as a BOL that is written and signed by electronic means. See Amal Mohamed Kelani, *Litigation in Contract of Carriage of Goods by Sea*, 92-93 (2012) (translated from Arabic). See generally Mohamed Ibraheem Musa, *Electronic Bills of Lading: The Reality and Hope* (2016); Wael Hamdi Ahmad, *The Electronic Contract of International Carriage of Goods by Sea* (2013) (translated from Arabic).

6- See Art. 1(18) of the RR, *supra* note 23 (the definition of “electronic transport record” encompasses any electronic-based document evidencing the contract of carriage of goods by sea).

7- This is an alternative to the traditional straight BOL.

8- Yiannopoulos, *supra* note 55, at 21-22.

these questions: Does the QML recognize e-BOLs, other e-transport documents such as e-sea waybills? What is the position of international conventions toward this particular issue?

It is unfortunate that the QML provides nothing about the possibility of issuing an electronic BOL or promoting electronic data interchange. Additionally, nothing has been mentioned about an electronic signature on the BOL.¹ Therefore, one could think that the QML would not apply in the cases in which a dispute arises from a carriage contract covered by an e-BOL, or in which the contract of carriage is found in a series of electronic communication² between the parties. As there is no article regulating the matter at hand in the QML, other legal bases must be found in other Qatari laws. Neither the Qatari commercial law nor the civil law provides any assistance to answer the question. The precise answer is instead found in the Qatari E-Commerce and Transaction Law No. (16) of 2010. This law defines electronic contracts and electronic signatures, the most important elements of a paperless transaction.

The Qatari legislature recognizes the electronic data interchange in e-commerce in general, but not in the context of maritime shipping industry. However, a judge sitting on a carriage contract case evidenced by electronic data interchange would most likely apply e-commerce and transactions law to decide on the requirements of electronic transactions,³ the evidentiary effects of e-contracts,⁴ electronic signatures,⁵ and so forth. An electronic transport document and electronic signature shall have evidentiary value equal to the ones given to the BOL⁶ under the QML, if certain conditions are met.⁷ In cases in which other electronic transport documents are used, they will only be regarded as a *prima facie* evidence against the shipper and third-party BOL holders, just like other paper or traditional transport documents mentioned under the previous section on “The Absence of a BOL or the Issuance of a Transport Document other than the BOL.” It is worth noting that if the requirements for electronic transactions are met, the acceptance of e-BOLs, other e-transport documents, and e-communications in commerce remain conditioned upon the validity of the electronic signature as provided by law.⁸ For the successful application of electronic signatures and transport documents, it is also important to have a secured IT system or software for exchanging electronic data as there is an increasing number of fraudulent transactions, especially in developing countries.

It is noteworthy that the Hague-Visby Rules were adopted in 1924 when technology and electronic data exchange were not feasible, thus the issue of electronic carriage contracts was not governed, a trend identical to that found in the QML. The Hamburg Rules, in contrast, were written during the beginning of the technology revolution, thus Article 14(3) recognizes the electronic signature, reflecting what the practice was in the shipping industry in the 1970s. Article 14(3) states that:

“[t]he signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.”

It is obvious that the Hamburg Rules widen the means by which the BOL is signed, means which are

1- But see Ahmad Sharaf Aldeen, *Egyptian legislature recognizes the electronic signature*, The Basis of Proof in Civil and Commercial Provisions, 110 (2004) (translated from Arabic). The French legislature also recognizes e-documents that fulfill the guidance of the EU and confers them the same evidentiary effect as paper-based documents (id.).

2- See art. 1(18) of the RR *supra* note 23.

3- See Decree Law on the Promulgation of the Electronic Commerce and Transactions Law No. 16 of 2010, Art. 4-19.

4- See id. Art. 20-27.

5- See id. Art. 28-34.

6- See generally Mohammed Shareef Abdulrahman Ahmed, *Proving Contracts Concluded by Audio and Visual Means* (2007).

7- See Decree Law on the Promulgation of the Electronic Commerce and Transactions Law No. 16 of 2010, Art. 20-27 (for Effects and Authenticity of Electronic Transactions under the Decree Law).

8- See id. Art. 4-19 (for the requirements of electronic transactions); see also id. Art. 24-28 (pertaining to electronic signature).

altogether new ways advanced by technology that significantly encourages paperless transactions. Furthermore, the Hamburg Rules recognize the e-BOL, which is a substantial means of evidencing a contract of carriage imposed by the new international carriage practice.¹

The RR further expand the use of electronic means in maritime transactions. What have been added in the RR pertaining to electronic transactions are wider than the Hamburg Rules' attempt. The RR is a forward-looking convention as it regulates "electronic transport record" and promotes "electronic communication" as a major effort in regulating the increasingly used paper substitute, which has emerged to serve consumers, shippers, and merchants and to speed up business transactions.² The workable step taken by the RR propels the shipping industry toward a paperless era of commerce, the apparently twenty-first-century way of doing business.³ A great endeavor from the drafters of the RR relates to the articles' flexibility and efficiency to reflect the needs of modern international commerce and the shipping industry, thus allowing parties to the carriage contracts to conclude their agreement by electronic means.⁴ The RR set up the legal framework for the use of an electronic alternative to traditional paper-based transport documents. The relevant provisions are found in Article 1(17),⁵ "electronic communication"; Article 1(18),⁶ "electronic transport record";⁷ and Article 1(20),⁸ "non-negotiable transport record." Hence, the RR give the parties two options for electronic transactions: either to issue a negotiable electronic transport record (such as a negotiable e-BOL) or a non-negotiable transport record (such as a non-negotiable e-BOL or an e-sea waybill).

In fact, chapter 3 of the RR confers an equal value to both the written transport document and the electronic transport record. The electronic transport record evidences the receipt of the goods by the carrier or performing party, and evidences the contract of carriage and its terms. It is additionally a *prima facie* evidence of the document particulars.⁹ Therefore, the evidentiary effects of both types of transport documents (whether electronic or paper-based) are alike. This can be contrasted to an analysis of the QML, which reveals that cables or other documents used to evidence the contract of carriage have less evidentiary effect than the traditional BOL. Chapter 3 of the RR also sets out the conditions for the use of electronic transport records and the replacement of a written transport document with an electronic transport record.¹⁰ The parties have the option of replacing the paper

1- Kelani, *supra* note 59, at 50-51.

2- For example, e-BOL, e-waybills, and DFRs.

3- Shareef Mohammed Ghannam, *The Obligations and Liability of the Shipper*, 38 (2012) (translated from Arabic).

4- See generally Miriam Goldby, *Electronic alternatives to transport documents: A framework for future development*, in *The Carriage of Goods by Sea under the Rotterdam Rules*, 225 (D. Rhidian Thomas ed., 2010).

5- See Art. 1(17) of the RR, *supra* note 27.

6- *Id.*, Art. 1(18).

7- Electronic transport records may be used to substitute negotiable BOLs.

8- Art. 1(20) of the RR: "[n]on-negotiable electronic transport record' means an electronic transport record that is not a negotiable electronic transport record."

9- See Art. 40 of the RR, *supra* note 29

10- Francesco Berlingieri, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the AMD, Marrakesh, 57 (2009) (a comparison of the geographical scope of the international conventions pertaining to the carriage of goods by sea is provided). Art. 10 of the RR: "[i]f 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."

transport document with an electronic transport record and vice versa. That record must be signed electronically by the carrier or a person acting on the carrier's behalf in accordance with Article 38(2).¹ It must be stated that if the carrier wishes to embody the contract of carriage in the form of an electronic transport record, it should do so based on the shipper's prior consent.

Thus far, the QML is in line with the Hague-Visby Rules in that it provides no options for the electronic signature. This can be contrasted with the Hamburg Rules Article 14(3)² and the contracting by electronic means as provided by the RR. Although the Qatari legislature provides no articles on the electronic means of issuing e-BOL or other e-transport documents, it regulates electronic commerce and transactions under the Decree Law on the Promulgation of the Electronic Commerce and Transactions Law No. 16 of 2010. The QML is unlike the RR because the latter regulate in detail and have quite a complete scheme on the issuance of electronic transport records as the equivalent of paper transport documents, and provide a definition of electronic communication. In contrast, the QML regulates e-commerce and transactions in general, not paying attention to the special nature, intrinsic features, and the roles and interests of parties involved in sea carriage (e.g., the rules applicable to the negotiability and non-negotiability of transport document or its electronic counterpart, like the RR electronic transport record).

4.1 Analysis and Conclusion

Modern maritime practice is moving toward a continuous development of electronic communication and increasing reliance on e-commerce. The electronic means of doing business in the shipping industry prompt the emergence of new documents evidencing the contract of carriage other than the traditional BOL. The BOL is one of the documents that was able to cope with the recent developments in the modern maritime industry. Nowadays, the e-BOL has been used in the shipping industry, though sea waybills are equally used.³

Although the QML is silent on the regulation of e-BOLs and e-transport documents whether negotiable or non-negotiable, these kinds of documents are subject to another body of law—the Decree Law on the Promulgation of the Electronic Commerce and Transactions Law No. 16 of 2010. Despite the existence of this law, e-BOLs and e-transport documents require special rules on, for instance, their negotiability, surrender, and e-communication.

The inclusion of e-BOLs and e-transport documents is necessitated by the practice in sea carriage, as Qatar encounters such types of contracts.⁴ However, there is no legal framework regulating such documents in the maritime context. Consequently, this absence of a special law in the context of maritime field adds more difficulties to the courts rendering decisions in cases involving e-BOLs or e-transport documents.

There must be a body of law that acknowledges the electronic alternative to the traditional paper BOL and regulates the issue of liability to facilitate the parties to the contract of carriage transaction and promote the maritime industry.⁵ The more boundaries and restrictions there are

1- Art. 38(2): “[a]n electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf. Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier's authorization of the electronic transport record.”

2- Art. 14(3) of the Hamburg Rules: “[t]he signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.”

3- See Manuel Alba, *Electronic commerce provisions in the UNCITRAL Convention on contracts for the international carriage of goods wholly or partly by sea*, 44 Tex. Int'l. L.J. 387-388 (2009).

4- Interview with Captain Essam, Qatar Ports Managements Company (June 10, 2014).

5- Goldby, *supra* note 74, at 238.

in international transactions, the more adverse effects the economy and business encounter. The current situation in Qatar negatively affects the shipping industry as the absence of an adequate legal framework to conduct an e-maritime transaction does not encourage the parties to enter the e-commerce world.¹ The QML must have a sustainable plan for future and upcoming generations.

On several platforms, the Ministry of Transport and Communication have stressed the important role that e-commerce will play for Qatar to become a Smart Nation.² He therefore urged companies to take into consideration recent technological and digital ways of doing business.³ Thus, shipping companies must transform to the digital way of doing business to cope with the current development in the business sector. They are otherwise threatened of being diminished and being disabled from competing nationally and internationally in the future.

Electronic transport documents and e-BOLs were driven by the latest technologies and the use of electronic data systems in the context of maritime trade. The lack of legislative rules regulating such types of transport documents will threaten the shipping companies in Qatar because of their hesitancy to adapt to the new technology, which is not yet legally recognized in the country. Also, digital transformation in Qatar's economic sector has been hampered, as described by the Qatari Authority for Customs. This governmental body developed an online system to substitute the use of paper-based documents. However, the lack of legal rules regulating such documents was a major obstacle.⁴

Qatar's Hamad Port is receiving more vessels and will deal with more persons involved in the carriage chain from the rest of the world and from large maritime nations.⁵ In addition, Qatar is highly likely to see a rise in litigation on issues not covered by the current Decree Law on the Promulgation of the Electronic Commerce and Transactions Law No. 16 of 2010. Thus, the QML must recognize the electronic substitute of paper transport documents. The regulation of e-transport documents will serve as guidance for the courts to decide cases having similar key facts in the same manner. Accordingly, justice is secured and the rights of the parties are protected under a mandatory law.

Legal recognition of e-BOLs and e-transport documents would reduce the disadvantages of the paper-based BOL, which is heavily relied upon in Qatar, especially those disadvantages related to a BOL's delay in arrival to the shipper or consignee by mail.⁶ Technology has found a more efficient and speedy manner to conclude transport documents to overcome the disadvantages of the traditional BOL.

1- Michael F. Sturley, *General principles of transport law and the Rotterdam Rules*, in *The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, 63, 80 (Meltem Deniz Guner-Ozbek ed., 2011).

2- H.E. Minister of Transport & Communications inaugurates 5th Annual Arab Future Cities Summit 2016 Monday, *supra* note 34. See also *MOTC organizes seminar on digital transformation*, <http://www.ictqatar.qa/en/news-events/news/motc-organizes-seminar-digital-transformation> (last visited Aug. 9, 2016).

3- *MOTC organizes seminar on digital transformation*, *supra* note 87. See *H.E. Minister of Transport & Communications inaugurates 5th Annual Arab Future Cities Summit 2016 Monday*, *supra* note 87.

4- *3.5 million customs transactions processed through the Alnadeeb System*, *Alraya Newspaper* (Feb. 25, 2016) <http://www.raya.com/news/pages/c06b55ec-5228-468c-aad2-fd376bd7aba4> (translated from Arabic).

5- *Vessel arrivals at Hamad Port surge 47% in August*, *Gulf Times* (Oct. 10, 2017), <http://www.gulf-times.com/story/566886/Vessel-arrivals-at-Hamad-Port-surge-47-in-August>; *Hamad Port is the Biggest Port in the Middleast*, *Al Jazeera*, <http://www.aljazeera.net/encyclopedia/citiesandregions/2017/6/17/%D9%85%D9%8A%D9%86%D8%A7%D8%A1-%D8%AD%D9%85%D8%AF-%D8%A8%D9%88%D8%A7%D8%A8%D8%A9-%D8%A8%D8%AD%D8%B1%D9%8A%D8%A9-%D8%B9%D9%85%D9%84%D8%A7%D9%82%D8%A9-%D8%AA%D9%83%D8%B3%D8%B1-%D8%AD%D8%B5%D8%A7%D8%B1-%D9%82%D8%B7%D8%B1> (last visited Oct. 11, 2017).

6- This causes delays in financing the carriage of goods by sea transactions by a bank, as the BOL is a prerequisite for processing letters of credit.

The concurrent issue of e-BOLs and e-transport documents in connection with maritime carriage is a gap that must be filled by a special body of law analogous to chapter 3 of the RR for several reasons. First, the RR include a detailed legal framework for e-transport records whether negotiable or non-negotiable, and cope well with the current shipping industry, which is heavily dependent on communicating through electronic means. Second, the rules that provide a substitute to paper-based transport documents are applicable in the future whatever the system developed by technology to conduct an e-transaction.¹ Third, developing a comprehensive system for e-transport documents similar to that of the RR will highly likely lead to the use of less paper (less pollution), the reduction of mistakes and financial expenses, and an increase in efficiency and speed in operations.²

One could argue that e-transactions are risky due to hackers who can easily steal the information of the users, thereby affecting the credibility of the e-contract. Nevertheless, the risks associated with the use of electronic means may be overcome just like using e-banking services and SWIFT, which enable users to transfer huge amounts of money globally by electronic means.³ If a system for e-transport documents is invented, it must take into consideration the security issues, the negotiability of the document, and the protection of the rights of the parties. Nowadays, many carriers design special systems for secured electronic transactions to track cargo and other e-transport documents services. In fact, there is a special system currently in use and adopted by the Doha Port to receive e-BOLs. However, the absence of laws governing electronic documents of the maritime industry has led to the difficulties expressed above in the recommendations. It is time to modernize the QML by regulating electronic maritime transactions and facilitating the shift to paperless commerce.

4. Summary of Findings

The main purpose of this paper was to examine how the documentary scope of the contract of carriage of goods by sea under the QML compares to, and might be made harmonious with, international conventions on the carriage of goods by sea. Should the current QML be kept unchanged, or is reform necessary? An examination of the QML in comparison to corresponding articles existing in the international conventions reveals that the QML has a hybrid system. The QML is identical to neither international convention. The paper suggests that the Qatari legislature ought to revisit the existing law to bring the QML in harmony with international conventions.

The QML's limited documentary scope is no longer the norm in the shipping industry. The current shipping industry is relying on documents other than BOLs that need to be governed by law. A broad provision of the types of transport documents evidencing the contract of carriage is strongly suggested to cover current and future transport documents. Certain other documents have emerged in the shipping industry due to the increasing use of technology, such as e-BOLs and e-sea waybills. The features of such documents allow parties to exchange documents faster, thus facilitating the conclusion of the carriage contract. As Qatar encourages business owners to include the digital means of doing business in their companies, such kinds of contracts should be addressed and given a value and evidentiary effect equal to what a traditional BOL enjoys.

Qatar's shipping sector is very promising for several reasons. First, to achieve the Qatar National Vision of 2030,⁴ the country is investing in infrastructure projects, especially those related to land, air, and

1- Berlingieri, *supra* note 80, at 57.

2- Ghannam, *supra* note 73, at 39.

3- See generally Yiannopoulos, *supra* note 55, at 21.

4- *Qatar National Vision 2030*, http://www.qu.edu.qa/pharmacy/components/upcoming_events_material/Qatar_National_Vision_2030.pdf, 1 (last visited Oct. 2, 2017).

sea.¹ The high-quality infrastructure projects resulted in Qatar ranking 14 out of 140² in the Global Competitiveness Report index published by the World Economic Forum (“WEF”).

Second, one of the significant steps the country is taking nowadays is shifting from traditional ways of doing business to using electronic means in commerce and business. The Ministry of Transport and Communication hosted a series of events about transforming Qatar into a digital city and using new technological developments in doing business.³ The aim of such encouragement is to ensure the sustainable development of the business sector in Qatar and to accelerate the processing of documents. A clear example of such ventures is using electronic BOLs instead of conventional paper ones. The Qatari General Authority of Customs has developed a new system to substitute the custom clearance service done by papers to a paperless trend.⁴ However, the Qatari General Authority of Customs declared that the absence of a legal framework for electronic documents hampers the smooth handling of such type of documents.⁵ Qatar’s Information and Communication Technology Landscape 2016 business report showed that the Qatari electronic business sector has been expanding over the years.⁶

Third, providing a world-class infrastructural backbone with highly developed shipping and handling facilities built on recent technology would encourage shipping companies to choose Hamad Port as the port of call. Using smart technology to render these services means less cost and faster services. Hamad Port handled 47.3 percent more tonnes of goods compared to last year, according to the Ministry of Development Planning and Statistics in the forty-fourth edition of Qatar: Monthly Statistics, Statistics of August 2017.⁷ The biggest port in the Middle East at \$7.4 billion would be a regional shipping and transport hub. Thus, it is expected that more clients using different transport documents that need a law to regulate them are going to stop in Hamad Port for trading purposes.

Fourth, one of the remarkable achievements of the State of Qatar is the development of multimodal transport. The integrated transport system would connect all modes of transport: sea, air, road, and rail.⁸ Hamad International Airport,⁹ Hamad port,¹⁰ land,¹¹ and rail transport for goods¹²

1- *Report Qatar 2015: Upgrades to Qatar’s transport infrastructure kick off*, Oxford Business Group (2015), <http://www.oxfordbusinessgroup.com/overview/upgrades-qatars-transport-infrastructure-kick>. *Starting Trans 4 with local and Gulf wide participation*, Alwatan Newspaper (Nov. 27, 2013) <http://archive.al-watan.com/viewnews.aspx?n=C556ED96-D436-49E6-9ED4-98D3040518B7&d=20131127> (translated from Arabic).

2- *Global Competitiveness Index*, World Economic Index, <http://reports.weforum.org/global-competitiveness-report-2015-2016/economies/#economy=QAT> (last visited Oct. 1, 2017); *Qatar Makes Giant Leaps in Roads, Ports and Airport Infrastructure Quality*, <http://mot.gov.qa/en/MediaCenter/Pages/Qatar-Makes-Giant-Leaps-in-Roads,-Ports-and-Airport-Infrastructure-Quality.aspx> (last visited Oct. 1, 2017) (translated from Arabic).

3- H.E. Minister of Transport & Communications inaugurates 5th Annual Arab Future Cities Summit 2016 Monday, *supra* note 87; MOTC organizes seminar on digital transformation, *supra* note 87.

4- 3.5 million customs transactions processed through the Alnadeeb System, Alraya Newspaper (Feb. 25, 2016) <http://www.raya.com/news/pages/c06b55ec-5228-468c-aad2-fd376bd7aba4>.

5- *Id.*

6- *New report reveals how ICT is helping to transform businesses in Qatar*, <http://www.ictqatar.qa/en/news-events/news/new-report-reveals-how-ict-helping-transform-businesses-qatar> (last visited Oct. 6, 2017).

7- *Vessel arrivals at Hamad Port surge 47% in August*, Gulf Times (Oct. 10, 2017), <http://www.gulf-times.com/story/566886/Vessel-arrivals-at-Hamad-Port-surge-47-in-August>.

8- *Qatar keen on integrated transport system: Sulaiti*, *supra* note 50; *Integrated transport system strengthens efforts to diversify the Qatari economy*, *supra* note 54.

9- *Hamad International Airport was opened in May 2014*, Report Qatar 2015: Transport, Oxford Business Group (2015), <http://www.oxfordbusinessgroup.com/qatar-2015/transport>.

10- Jamal Elshayyal, *Qatar’s emir officially inaugurates Hamad Port*, Al Jazeera, <http://www.aljazeera.com/video/news/2017/09/qatar-emir-officially-inaugurates-hamad-port-170905110351179.html> (last visited Oct. 11, 2017).

11- *Report Qatar 2015: Upgrades to Qatar’s transport infrastructure kick off*, *supra* note 96; *95% of the infrastructure projects is allocated for road transport investment*, Alraya Newspaper (June 19, 2015) <http://www.raya.com/Mob/GetPage/f6451603-4dff-4ca1-9c10-122741d17432/18e8191f-ecfd-4c8e-984b-73bcf85a87d4>.

12- *Id.*

would all be connected in the future. The State of Qatar is currently working on such huge project. Multi-modalism in goods carriage ensures less cost when all these modes of transport are connected. The usage of multimodal transport documents by shipping companies is expected to increase to provide door-to-door service. The problem here lies in the absence of a set of legal rules that regulate such types of documents. Thus, a new version of the QML similar to the RR is recommended. The absence of a legal framework for multimodal transport documents means imposing different laws on every carriage leg and imposing a different liability system for the carrier. The current QML only covers mandatory provisions for the liability of the carrier during the seaborne carriage, hence the carrier may easily escape liability in case loss of, or damage to, cargo occurred prior or subsequent to the seaborne carriage. This fact threatens shippers in Qatar as Qatar is a shipper country.¹ It is worth mentioning that the RR carrier liability period covers the time when the carrier takes over the goods to the point of delivery to the legitimate holder of a transport document. After discussing such reasons, it is quite clear that the role of a new QLM that covers the gaps and meets the new demand of the Qatari shipping industry is critical in ensuring a healthy, stable, less disputed business environment.

Despite the achievement of the State of Qatar in the maritime sector, one could still argue that the State of Qatar is currently under a blockade imposed by four Arab states, namely the Kingdom of Saudi Arabia, United Arab Emirates, Kingdom of Bahrain and Arab Republic of Egypt, and thus it is hard to believe that the shipping sector is actually growing considerably. To address this concern, we first shed light on what happened and then respond to this argument.

On June 5, 2017, the aforementioned four Arab states announced cutting diplomatic ties with the State of Qatar, suspending their maritime, air, and land borders, and ultimately imposing unjustified blockade on the State of Qatar.² Hence, no Qatari is allowed to neither travel to their countries nor to trade with them. Trading with these countries has been banned. No food, medicine, or general products of any kind are received from these countries.

The blockade will not affect Qatar's growing shipping industry for many reasons. First, the entities in Qatar namely the Qatar Chamber of Commerce, Qatar Ports Management Company, and Hamad Port are continuously taking measures to facilitate the flow of goods and attract domestic and international investments.³ To circumvent the blockade, "Hamad port would allow Qatar to get around the sanctions by importing goods directly from countries ... instead of through a major re-export hub in Dubai."⁴ Hamad Port launched new direct shipping lines with Kuwait, India, Oman, Turkey and Pakistan in a very short period of time.⁵ New navigational routes to Europe and East Asia will be announced soon by Hamad Port.⁶ The new shipping lines connect Hamad Port with global ports to receive imports and

1- A pro-shipper legislation is always recommended in a country considered a shipper country.

2- *Qatar: 'No justification' for cutting diplomatic ties*, Al Jazeera, <http://www.aljazeera.com/news/2017/06/qatar-justification-cutting-diplomatic-ties-170605073154112.html> (last visited Oct. 11, 2017).

3- *Qatar Chamber encouraging industries to relocate*, The Peninsula (July 10, 2017). <https://www.thepeninsulaqatar.com/article/10/07/2017/Qatar-Chamber-encouraging-industries-to-relocate>.

4- *Qatar says new port will help circumvent Arab sanctions*, Reuters, <https://www.reuters.com/article/us-gulf-qatar-port/qatar-says-new-port-will-help-circumvent-arab-sanctions-idUSKCN1BG1RP> (last visited Oct. 11, 2017).

5- *Qatar says new port will help circumvent Arab sanctions*, *supra* note 111; *Alkhanji: Continuous launching of shipping routes*, Al-watan (Sept. 6, 2017), <http://www.al-watan.com/news-details/id/95209>.

6- Alaa Albahhar & Anwar Alkhatee, *Qatar is expanding by air and sea: Launching new navigational routes*, Al Araby, <https://www.alaraby.co.uk/economy/2017/6/15/%D9%82%D8%B7%D8%B1-%D8%AA%D8%AA%D9%88%D8%B3%D8%B9-%D8%AA%D8%AF%D8%B4%D9%8A%D9%86-%D8%AE%D8%B7%D9%88%D8%B7-%D9%85%D9%84%D8%A7%D8%AD%D9%8A%D8%A9-%D9%88%D9%88%D8%AC%D9%87%D8%A7%D8%AA-%D8%AC%D9%88%D9%8A%D8%A9-%D8%AC%D8%AF%D9%8A%D8%AF%D8%A9> (last visited Oct. 11, 2017).

carry exports. The maritime sector in Qatar is expanding to new countries of the world, facilitating trade exchange with new commercial partners, thanks to the blockade.

Second, at the beginning of the blockade, shipping costs increased; however, with the help of Hamad Port operations, the cost has decreased by 31 percent.¹ “The siege nations tried to create an emergency like situation in Qatar but what had happened is just the opposite, shutting ports did not confine Qatar, hurt its economy, restrict the overall development in different segments, or slow down development and construction ventures, particularly those associated with facilitating 2022 World Cup.”²

Third, because of the world-class facilities and shipping and handling services rendered by Hamad Port to carriers, more shipping companies will choose Hamad Port as their port of call. In support of this fact, the Minister of Transportation and Communication declared that Hamad Port is currently handling 27 percent of the regional trade, with the percentage expected to reach 35-40 percent by the following year.³ More companies dealing with Qatar would likely mean that different global transport documents will be used; thus, to modernize the QML to cover all such document is a must.

Morocco, Syria, Lebanon, Egypt, and Jordan ratified the Hamburg Rules, which widened the scope of application to all documents evidencing the contract of carriage of goods by sea.⁴ Like Qatar, these states are shippers states and thus a broad documentary scope is needed to ensure the minimum rights of shippers are not abused by carriers. If the laws do not regulate all such documents, carriers can escape liability by resorting to the general principles of law embodied in the civil code.⁵ International conventions throughout the years have been concerned about the clauses carriers include in the contract of carriage to lessen their liability or ultimately exculpate themselves from liability. A state would allow carriers to do so, should gaps in the law exist. To the best of the author’s knowledge and profound search, there is no reference arguing against widening the documentary scope of the law governing the contract of carriage of goods by sea. The international trend⁶ supports the widening of modernized legislation to meet the needs of the modern shipping industry. Finally, yet importantly, the recommendation to widen the documentary scope of the QML law is in line with the development of Qatar’s maritime and shipping sector, and thus no further recommendations are needed.

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4- “With the tide of the New International Order flowing within the precincts of the United Nations General Assembly, the developing countries which are largely cargo owners, seized the opportunity to sweep away the regime of the Hague Rules for one that holds an equity...” in H. M. Joko-Smart, *The United Nations Convention on the Carriage of Goods by Sea: The Hamburg Rules 1978*, 2 (1989).

5- See the Qatari Civil Law, Art. 170.

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