



General Assembly

Distr.: General
6 October 2023

Original: English

**United Nations Commission on
International Trade Law**
Fifty-seventh session
New York, 24 June–12 July 2024

Report of Working Group I (Warehouse Receipts) on the work of its fortieth session

I. Introduction

Consideration of a draft model law on warehouse receipts

1. At its fortieth session, the Working Group took up new work towards the preparation of a model law on warehouse receipts on the basis of the draft model law developed by the joint UNIDROIT/UNCITRAL Working Group, and referred to it by the Commission.¹

II. Organization of the session

2. The Working Group, which was composed of all States members of the Commission, held its fortieth session in Vienna from 25 to 29 September 2023 at the Vienna International Centre.

3. The session was attended by representatives of the following States members of the Working Group: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Côte d'Ivoire, Czechia, Dominican Republic, Ecuador, Finland, France, Germany, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Mali, Mexico, Panama, Peru, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, Spain, Thailand, Türkiye, Ukraine, United States of America and Viet Nam.

4. The session was attended by observers from the following States: Chad, Egypt, El Salvador, Jordan, Lebanon, Madagascar, Malta, Myanmar, Paraguay, Philippines, Romania, Senegal and Sri Lanka.

5. The session was also attended by observers from the following international organizations:

(a) *Organizations of the United Nations system*: the World Bank Group;

¹ *Official Records of the General Assembly, Seventy-eighth Session, Supplement No. 17 (A/78/17)*, paras. 22(b), 174(a) and 177.



(b) *Intergovernmental organizations*: Andean Community (CAN), Cooperation Council for the Arab States of the Gulf (GCC) and International Institute for the Unification of Private Law (UNIDROIT);

(c) *Invited international non-governmental organizations*: European Law Institute (ELI), European Law Students Association (ELSA), International Law Association (ILA), International Law Institute (ILI), Law Association for Asia and the Pacific (LAWASIA), Moot Alumni Association (MAA), New York State Bar Association (NYSBA) and Shanghai Arbitration Commission (SHAC).

6. The Working Group elected the following officers:

Chair: Mr. Bruce Whittaker (Australia)

Rapporteur: Mr. Ngoran Justin Koffi (Côte d'Ivoire)

7. The Working Group had before it the following documents:

(a) Annotated provisional agenda ([A/CN.9/WG.I/WP.131](#)); and

(b) Note by the secretariat containing a draft model law on warehouse receipts ([A/CN.9/1152](#)).

8. The Working Group adopted the following agenda:

1. Opening of the session and scheduling of meetings.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of a draft model law on warehouse receipts.
5. Adoption of the report.

III. Deliberations and decisions

9. The Working Group commenced its consideration of a draft model law on warehouse receipts on the basis of the text contained in a note by the Secretariat ([A/CN.9/1152](#)). The summary of deliberations of the Working Group may be found in chapter IV below.

IV. Consideration of a draft model law on warehouse receipts

A. General remarks

10. The Working Group began its deliberations with a general exchange of views on the objectives and scope of the draft model law, for which general support was expressed. The importance of drafting a balanced text that would accommodate differences in national laws as well as the needs of developing countries, including as regards the use of electronic warehouse receipts, was emphasized. It was noted that, in line with the mandate of UNCITRAL and UNIDROIT, the draft model law itself did not deal with public law issues such as licensing, regulatory oversight or insurance obligations of warehouse operators, but it was envisaged that those matters would be mentioned in the guide to enactment to the model law. The draft model law, it was said, set forth general principles to be complemented by each enacting jurisdiction as necessary.

11. It was suggested that the principles of technology neutrality and functional equivalence should inspire the provisions on the use of electronic warehouse receipts, and that it may be desirable to make the UNCITRAL Model Law on Electronic Transferable Records (MLETR)² fully applicable to those warehouse receipts. In

² Ibid., *Seventy-second Session, Supplement No. 17* ([A/72/17](#)), annex I.

response, it was indicated that a functional equivalence approach presupposed the existence of a legal text drafted for the use of paper-based documents. It was emphasized that the approach of the draft model law, which placed electronic records and paper-based documents on the same level, would encourage transition towards the use of electronic warehouse receipts.

12. The Working Group proceeded to consider generally the treatment of electronic warehouse receipts in the light of current trends in digital trade law and the relevance of the MLETR for the use of electronic warehouse receipts. It was noted that under the medium-neutral approach adopted in the draft model law the same legal regime should apply to warehouse receipts regardless of their medium, but that that was not the case, for instance, in draft article 15.

13. It was indicated that the draft model law relied on the MLETR for its implementation, and it was suggested that additional provisions of the MLETR could be inserted in the draft model law for additional guidance. The question was raised whether, in doing so, the Working Group intended to confirm the medium-neutral approach or embrace the functional equivalence approach. It was emphasized that in both cases the principle of technology neutrality should be fully respected and that the relevant provisions of the MLETR should be reflected so as to ensure interoperability between systems and seamless data exchanges.

14. Another view was that the medium-neutral approach was preferable as it was more supportive of innovation. It was noted that, while the two approaches could lead to similar results, the underlying policy choices were different, and that focusing the model law on paper-based documents to enable the functional equivalence approach might not be the best approach to bring the promotion of digital trade financing to the forefront.

15. In response, it was also argued that the functional equivalence approach was preferable because it ensured consistency with existing UNCITRAL texts. That approach, it was added, could particularly support the transition to electronic warehouse receipts in developing countries, which were still largely using paper-based documents. It was recalled that the Commission had stressed the importance for the Working Group of adopting technology neutrality and functional equivalence as basic principles for its drafting effort.³ It was suggested that a chapter containing functional equivalence rules based on the provisions of the MLETR could be inserted in the draft model law.

16. It was suggested that the secretariat could prepare two alternative sets of draft provisions on the use of electronic warehouse receipts based, respectively, on the functional equivalence approach and on the medium neutral approach, for consideration of the Working Group at its next session. The Working Group expressed broad support for that suggestion. It was indicated that the availability of concrete drafting options would facilitate the consideration of the matter.

B. Draft model law on warehouse receipts

Article 1 – Scope of application

17. The Working Group considered a suggestion to move draft article 1, paragraph 2 to draft article 2 since its content amounted to a definition of “warehouse receipt”. Other delegations emphasized that draft article 1, paragraph 2 delimited the scope of the draft model law and therefore its placement in draft article 1 was appropriate.

18. The Working Group heard several drafting suggestions regarding draft article 1, paragraph 2:

(a) It was recalled that, for purposes of clarity and in order to place prospective holders on notice of the nature of the instrument they acquired, several

³ Ibid. *Seventy-seventh Session, Supplement No. 17 (A/77/17)*, para. 197.

treaties and national laws required negotiable instruments to contain words identifying the type of the instrument in question (e.g., “bill of exchange”). It was recalled that the draft model law contained a corresponding requirement to avoid extending to a document merely intended as a receipt for the goods all legal consequences attached to a warehouse receipts. However, it was also observed that under the draft model law only a warehouse operator could be authorized to issue a warehouse receipt, which mitigated the risk of inadvertent issuance. In addition, some delegations supported the deletion of the requirement since deliberately not identifying the document as a warehouse receipt could lead to circumventing the application of the law. An alternative suggestion was to make identification optional. Another suggestion was to move the identification requirement to draft article 9, paragraph 1;

(b) A suggestion to add a reference to a representative acting on behalf of the warehouse operator was not taken up by the Working Group because the issue pertained to domestic legislation on agency or similar law;

(c) In response to a suggestion to revert to the term for the word “goods” in the French version of the draft approved by UNIDROIT, it was explained that the term used in the French version before the Working Group was consistent with UNCITRAL texts on sale of goods. A definition of the word “goods” was felt to go beyond the scope of the draft model law.

19. After discussion, the Working Group agreed to retain draft article 1, paragraph 2 without modifications.

Article 2 – Definitions

“Depositor”

20. It was suggested that the definition of “depositor” should refer to the party to a storage agreement with the warehouse operator. It was noted that depositor and owner of the goods deposited did not always coincide, and that a third party could deliver the goods on behalf of the depositor, for instance in the multimodal transport context. Another suggestion was to refer to the “depositor” as the first holder of the warehouse receipt. It was also suggested that a definition of “deposit” should be inserted in the draft model law.

21. In response, it was noted that the draft model law dealt separately with issues relating to the storage agreement and to the warehouse receipt, and that the definition of “depositor” reflected that approach. It was added that the draft model law did not deal with the contract of bailment. For the same reason it was not necessary, as had been suggested, to insert a reference to the storage agreement in the definition, which would introduce an element of circularity when the definitions of “depositor” and of “storage agreement” were read jointly.

22. After discussion, the Working Group decided to retain the definition of “depositor” without modifications.

“Electronic record”

23. The Working Group decided to retain the definition of “electronic record” without modifications. It was noted that the definition was based on the definition contained in article 2 MLETR.

“Negotiable warehouse receipt”

24. It was suggested that the issuance of negotiable warehouse receipts to bearer should be optional, as such type of receipts entailed additional risks for warehouse operators. In reply, it was noted that the parties were free not to issue such type of receipts if their risk assessment advised so, and it was suggested that the issue could be discussed in the guide to enactment. After discussion, the Working Group decided to retain the definition of “negotiable warehouse receipt” without modifications.

“Non-negotiable warehouse receipt”

25. Different views were expressed on the definition of “non-negotiable warehouse receipt”. It was suggested that the definition should focus on negotiability. In response, it was noted that the definition referred to an issuance “in favour of a named person”, while the negotiable warehouse receipt was issued “to the order of a named person”, which reflected the different circulation regimes of the two types of receipts. After discussion, the Working Group agreed to add the word “only” at the end of draft article 2, paragraph 5 (see para. 69 below).

“Holder”

26. The Working Group decided to postpone the discussion of the definition of “holder” pending its consideration of the aspects relating to the use of electronic warehouse receipts as a package.

*“Protected holder”**“Storage agreement”*

27. The Working Group decided to retain the definitions of “protected holder” and “storage agreement” without modifications.

“Warehouse operator”

28. In response to a query, it was indicated that the draft model law applied primarily to warehouse receipts issued by warehouse operators that offered their services to the public and were subject to regulation, and that it did not apply to private storage facilities. However, it was added, the draft model law could apply also to private warehousing arrangements. It was indicated that the words “for reward” were redundant as a professional warehouse operator would by definition offer its services for remuneration. After discussion the Working Group decided to delete the words “for reward” from the definition.

Article 5 – Interpretation

29. Noting that this was a common provision in UNCITRAL legislative texts, the Working Group agreed to retain draft article 5 without modifications.

Article 6 – Obligation to issue a warehouse receipt

30. It was explained that three legislative options were possible with regard to issuance of a warehouse receipt: an obligation to always issue the warehouse receipt; an obligation to issue when requested by the depositor; or the option to issue upon parties’ agreement. It was indicated that an obligation to issue would promote trade financing, which was a main goal of the draft model law. However, it was also indicated that small and medium-sized warehouse operators might not be able to issue a warehouse receipt, and that mandating such obligation would eventually force them out of business.

31. In response, it was said that the assumption underlying draft article 6 was that all warehouse operators should be able to issue a warehouse receipt, and that the guide to enactment should highlight concerns about the capacity of warehouse operators and possible solutions. It was recalled that similar issues arose with regard to the entitlement of the shipper to require the carrier to issue transport documents. It was further indicated that the obligation of issuing a warehouse receipt had no impact on the contract of bailment.

32. It was explained that draft article 6 set two conditions, i.e., the deposit of the goods and the request of the depositary, and that there was no fixed time for that request. It was argued that the lack of issuance of a warehouse receipt would not affect the validity of the storage agreement, as evidenced in draft article 6, paragraph 2. A query was raised on whether the breach of the obligation to issue a warehouse receipt

would have administrative, statutory or contractual consequences in terms, for instance, of penalties, procedural remedies or damages. A suggestion was made to refer to the “goods deposited” in draft article 6, paragraph 1.

33. After discussion, the Working Group agreed to insert a reference to “goods deposited” in draft article 6, paragraph 1, and to reflect the above discussions in the guide to enactment.

Article 7 – Representations by the depositor

34. Several comments were raised with regard to draft article 7. Noting that the representations regarding third parties’ rights and claims were made exclusively by the depositor, it was suggested that the words “as agreed by” could be replaced with the words “as notified to” or “as disclosed to”. It was added that a similar issue arose with respect to draft article 20, subparagraph (b). It was clarified that the representations of the depositor could be contained in the storage agreement and did not require a separate declaration. It was further noted that the depositor may not wish or be able to disclose third parties’ rights and claims, e.g., due to confidentiality agreements. A question was also raised on the obligations of the warehouse operator with respect to disclosed third parties’ rights and claims. It was also indicated that the warehouse operator had no obligation to verify the representations of the depositor.

35. It was noted that draft article 6 referred to the time of taking possession of the goods while draft article 7 referred to the time of the deposit of the goods, and it was suggested to align the two provisions, which referred to the same point in time. It was also suggested that the word “authority” might not capture contractual rights in the goods. Yet another suggestion was to require disclosure of judicial claims only when supported by an enforceable title. After discussion, the Working Group agreed to defer consideration of draft article 7, subparagraph (b), to be discussed in the context of risk allocation and the right of the protected holder.

36. After discussion, the Working Group agreed to replace the words “as agreed by” with “as notified to the warehouse operator” in draft article 7 (see para. 34 above) and to add the words “and to request the issue of a negotiable warehouse receipt” at the end of subparagraph (a). It also agreed that notified rights and claims of third parties should be a mandatory information contained in the warehouse receipt under draft article 9, paragraph 1.

Article 8 – Incorporation of storage agreement in the warehouse receipt

37. Different views were expressed on which document should prevail in case of inconsistency between the terms of the warehouse receipt and of the storage agreement. It was explained that, while the storage agreement was of particular importance between the depositor and the warehouse operator, the warehouse receipt played a bigger role for potential transferees.

38. It was suggested that incorporation by reference should not be possible in a warehouse receipt. It was suggested to redraft the article as follows: “A warehouse receipt, by operation of this law, includes all terms of the storage agreement, except those inconsistent with the terms of the warehouse receipt”. A further suggestion was to divide the article into two distinct paragraphs to clarify, first, that the conditions of the storage agreement would apply to a warehouse receipt, and second, that only in case of inconsistency, the terms of the warehouse receipt would take precedence. The Working Group requested the secretariat to redraft the provision taking into account the discussion at its current session, for consideration at its next session.

Article 9 – Information to be included in a warehouse receipt

Paragraph 1

39. The Working Group agreed on the following changes regarding draft article 9(1):

- Deleting subparagraph (a), as the actual clauses of the document should determine its nature;
- Noting that subparagraph (c) contemplated technical procedures that might limit transfer of rights (for example, because of accessibility or other features of the electronic platform), but being of the opinion that such factors should not be an obstacle to negotiability, the Working Group agreed to delete the subparagraph;
- Adding the words “and address” after “name” in subparagraphs (e) and (f) to better identify the parties but without affecting the application of private international law rules;
- Replacing the word “type” with “description” in subparagraph (g) to better capture the relevant features of the goods and clarifying in the guide to enactment that the obligation under subparagraph (g) was subject to the application of draft article 11;
- Amending subparagraph (k) to refer to date “and place” of issue to facilitate the application of private international law rules, subject to further adjustments, if any, to accommodate the use of electronic warehouse receipts;
- Delete the words “on demand” and add the words “on request by the current holder” after the word “available” in subparagraph (l) to specify the person entitled to request a copy of the storage agreement.

40. The Working Group heard several suggestions to add items to the list of mandatory information contained in draft article 9, paragraph 1, including: an extensive description of the goods and their quality; the value of the goods; the value insured; the date of deposit of the goods; the potential dangerousness of the goods and measures taken to avoid risks; the shelf life of perishable commodities. It was explained that such additional information would facilitate the evaluation of the goods and ultimately promote the use of negotiable warehouse receipts. Another suggestion was to define the word “person” to clarify that it included both legal and natural persons.

41. On the other hand, it was noted that it would be difficult to provide that information with sufficient clarity and objectivity. For instance, it was noted that the value of the goods might fluctuate, which could expose the warehouse operator to liability for incorrect information, and that the depositor may not wish to disclose the value of the goods. It was also noted that the warehouse operator might only have a generic insurance policy and any reference to the insured sum should not suggest a requirement to indicate the exact coverage of specific goods. It was added that the date of deposit did not provide significant additional information given that the date of issue of the warehouse receipt and the date of the storage agreement were available. In response, it was indicated that the date of deposit of the goods could be relevant to determine the running of a limitation period and also for allowing the future holder to assess the shelf life of stored goods.

42. It was generally felt that adding too many requirements on the shoulder of small warehouse operators could hinder their operations. Furthermore, it was observed that financial dealings on warehouse receipts required an independent valuation of the goods that would encompass most of those items. The usual practice of requiring detailed information in the licensing and regulatory framework of the enacting State was also noted, while legal information requirements were kept at a minimum.

43. It was noted that information on the quality of the goods was essential for certain goods, e.g., fungible goods, but not for other goods, and that it was preferable to leave to the regulator the identification of the relevant goods. It was added that the broad requirement to provide information on the description of the goods (see para. 39 above) could encompass also their quality. After discussion, the Working Group agreed to reflect the above considerations in the guide to enactment, including the interaction between draft article 9 and regulatory disclosure requirements as well as obligations of licensed warehouse operators to assess the quality of goods.

44. While considering draft article 9, paragraph 1, the Working Group reconsidered the requirement to identify the warehouse receipt in draft article 1, paragraph 2 (see para. 18(a) above). It was recalled that lack of identification under draft article 1, paragraph 2 entailed invalidity of the document, and therefore disapplication of the model law, while lack of information required under article 9, paragraph 1 gave rise to liability but did not affect the validity of the warehouse receipt. The concern that the application of the model law could be circumvented by omitting identification was reiterated. The interaction with the liability of the warehouse operator for not issuing a warehouse receipt under draft article 6 was also discussed. After discussion, the Working Group agreed to delete the identification requirement from draft article 1, paragraph 2 and place it as a new item under draft article 9, paragraph 1.

Paragraph 2

45. Some delegations suggested the draft model law should provide for the invalidity of a warehouse receipt in absence of certain core information requirements, such as the identification as a warehouse receipt, its negotiable or non-negotiable nature and its being issued to order of a named person or to bearer (draft article 2, paras. 4 and 5). It was noted that a similar approach was followed in UNCITRAL texts on maritime carriage of goods (e.g., art. 1, para. 7 and art. 15, para. 3 of the United Nations Convention on the Carriage of Goods by Sea, 1978).⁴ The Working Group agreed to insert at the end of the first sentence of draft article 9, paragraph 2 the following sentence: “provided that it nevertheless meets the requirements set out in paragraph 2 of article 1 [and of paragraphs 4 or 5 of article 2].”

46. It was noted that draft article 9, paragraph 1, subparagraph (g), as amended, referred to the description of the goods as mandatory information, while draft article 1, paragraph 2, subparagraph (a) referred to the description of the goods as an essential element of the warehouse receipt. To harmonize the two provisions, it was suggested to replace the word “described” in draft article 1, paragraph 2, subparagraph (a) with the word “indicated” or similar word. The Working Group agreed with that suggestion.

47. Several comments were raised regarding the nature of the liability rule contained in the second sentence of draft article 9, paragraph 2. Concern was expressed that the provision could be interpreted as establishing a strict liability for the warehouse operator. It was explained that the provision was supposed to rely on national law for its implementation, e.g., with respect to degree of fault, burden of proof and mitigating factors. The Working Group agreed to add words such as “in accordance with relevant provisions of national law” at the end of the second sentence of draft article 9, paragraph 2. A suggestion to limit this provision to negotiable warehouse receipts did not receive support.

48. Upon further consideration, the Working Group agreed to replace the second sentence of draft article 9, paragraph 2 with words such as “However, this does not relieve the warehouse operator from any liability that it would have under other law to any person as a result of the statement being incomplete or incorrect”,

Paragraph 3

49. Mindful of its decision to delete subparagraph (a) in draft article 9, paragraph 1, the Working Group agreed to draft the paragraph along the following lines: “If, despite article 9, paragraph 1, subparagraphs (b) and (d), a warehouse receipt does not state the name of a person to whose order or in whose favour the receipt is issued, it is presumed to be a negotiable warehouse receipt that is issued to bearer.”

⁴ Also known as the “Hamburg Rules”: United Nations, *Treaty Series*, vol. 1695, No. 29215, p. 3.

Article 10 – Additional information that may be included in a warehouse receipt

50. It was suggested that a reference to the details of the insurance policy covering the goods should be added to draft article 10, paragraph 1, subparagraph (a) to better identify the insurance policy. The Working Group agreed with that suggestion.

51. It was also suggested that rights or claims of third parties represented by the depositor according to draft article 7, subparagraph (b) should be listed as an item of draft article 10. Another view was that such information should be included in draft article 9. However, it was responded that such issue should be dealt with when discussing protected holder and transfer of rights matters.

52. It was noted that under national law commingling of fungible goods could have significant consequences on the ownership of the goods, and it was suggested that the information required in draft article 10, paragraph 1, subparagraph (d) should be made mandatory and accordingly moved to draft article 9. In response, it was noted that adequate safeguard could be provided by replacing the word “if” with the words “to the extent that” in draft article 25, paragraph 2, so that the warehouse operator could commingle goods only to the extent stated in the warehouse receipt. The Working Group agreed to replace the word “if” with the words “to the extent that” in draft article 25, paragraph 2.

53. The Working Group agreed to redraft draft article 10, paragraph 2 considering the amendments made to draft article 9, paragraph 2 (see para. 47 above).

54. The Working Group also agreed on including in draft article 9 or in draft article 10 a provision indicating that any wording inserted in a negotiable warehouse receipt to limit its transferability was ineffective and asked the secretariat to draft that provision.

55. It was explained that draft article 10, paragraph 3 provided a default rule for the information listed in draft article 10, paragraph 1, subparagraph (c), and that in case of fungible goods the description of their quality was essential. A question was raised on the relationship of draft article 10, paragraph 3 with draft article 9, paragraph 1, subparagraph (g), on the one hand, and with draft article 8, on the other hand, querying whether the information on the quality of the goods could be incorporated in the warehouse receipt by reference to the storage agreement.

56. The Working Group agreed that the notion of “quality” in draft article 10, paragraph 3, which could have a subjective connotation in some language versions of the model law, should be explained in the guide to enactment.

Article 11 – Goods in sealed packages and similar situations

Paragraph 1

57. The Working Group noted the importance of the draft article in settling disputes between a holder who expected to receive goods as described in the warehouse receipt, and a warehouse operator who could only deliver goods of the type actually received. For purposes of clarity, it was suggested that when disclaiming responsibility for information about the goods under the draft article, the warehouse operator should also state in the warehouse receipt that the description of the goods was based on information provided by the depositor. The Working Group agreed with that suggestion and asked the secretariat to insert a corresponding provision in draft article 11, paragraph 1, subparagraph (a). The Working Group also agreed that the guide to enactment should illustrate the notion of “practicable or commercially reasonable”.

58. It was suggested that the reference to a sealed package in subparagraph (b) was redundant and that the words “In the case of goods in a sealed package” should be deleted. In response, it was noted that paragraph 1 might apply also in absence of a sealed package, while the resulting text could be interpreted as limiting its application to sealed packages. Moreover, it was noted that the application of subparagraphs (a)

and (b) was disjunctive, which however could be made clearer by using “or” instead of “and”.

Paragraph 2

59. It was suggested that paragraph 2 should be aligned to draft articles 9, paragraph 2 and 10, paragraph 2 to refer to general liability law. In response, it was explained that paragraph 2 of draft article 11 contained a special rule that was an essential element of the model law. The Working Group agreed to replace the words “false or misleading” with the words “incomplete or incorrect” to align the provision with draft article 9, paragraph 2, and to insert the words “as a result of the description being incomplete or incorrect” after the word “person” to clarify the operation of the exemption from liability.

Article 12 – Alteration of a warehouse receipt

60. The Working Group heard several comments regarding the applicability and intended effect of draft article 12. It was noted that that provision was primarily relevant for the use of paper-based documents, since an electronic warehouse receipt system might not allow the issuance of an incomplete document. Furthermore, the article applied only to completing blank fields, but not to the modification of information contained in the warehouse receipt.

61. In response to a query whether the article should require identification of the author of an insertion made in a warehouse receipt, it was said that such rule would limit circulation of warehouse receipts. The draft article, it was said, assumed, in accordance with usual commercial practice, that the warehouse operator assumed the risk of leaving fields of the warehouse receipt blank, which was consistent with negotiable instruments law. A proposal to require the warehouse operator to correct any missing or incorrect information upon request of the holder did not receive support.

62. After discussion, the Working Group agreed to add a paragraph to draft article 12 to clarify that any change made to the warehouse receipt without the warehouse operator’s authorization other than the one provided for in draft article 12 would be ineffective against the issuer. The Working Group also agreed to clarify in the draft provision or in the guide to enactment, as appropriate, that the protection under draft article 12 would apply separately to each subsequent holder based on individual lack of knowledge.

Article 13 – Loss or destruction of a warehouse receipt

63. There were doubts about the need for the draft article, since most domestic laws dealt with the loss or destruction of negotiable instruments or documents of title. It was also queried whether the replacement procedure foreseen in the draft model law was sufficient to prevent fraud by a holder alleging loss of warehouse receipts. The Working Group was mindful of those concerns and agreed that draft article 13, paragraph 1 should require the holder to submit adequate proof of the loss or destruction.

64. The risks arising from the simultaneous circulation of replaced and replacement warehouse receipts were emphasized, particularly for negotiable warehouse receipts. Accordingly, the Working Group agreed that draft article 13, paragraph 1 should clarify that only the replacement warehouse receipt entitled the holder to claim the goods, and that a person who, in good faith, acquired the warehouse receipt believed to have been lost or destroyed might be entitled to damages only. The Working Group further agreed to illustrate in the guide to enactment issues arising from the loss or destruction of warehouse receipts and related liability aspects.

65. The Working Group deferred consideration of draft article 13, paragraph 2 to its next session.

66. The Working Group agreed to explain in the guide to enactment that the indemnity referred to in draft article 13, paragraph 3 should cover the full period for which the warehouse operator might be exposed to liability, which may be different from the time period relevant for the statute of limitations.

67. The Working Group agreed to insert in draft article 13, paragraph 4 a requirement to indicate in the replacement warehouse receipt the identification number of the replaced warehouse receipt.

Article 14 – Change of medium of a warehouse receipt

68. The Working Group deferred consideration of draft article 14 to its next session.

Article 15 – Transfer of a negotiable warehouse receipt

69. The Working Group heard that in some legal systems a warehouse receipt endorsed to a named person could be negotiable unless it was clearly stated that it was not. The Working Group agreed that the amendments made to the definition of “non-negotiable warehouse receipts” (see para. 25 above) strengthened the presumption of negotiability for warehouse receipts generally and clarified the effects of the endorsement of a warehouse receipt to a named person.

70. The Working Group deferred consideration of draft article 15, paragraph 2 to its next session.

Article 16 – Rights of a transferee generally

71. It was indicated that the inclusion of a reference to transfer of ownership in draft articles 16 and 18 raised delicate issues of property law, and it was suggested that the matter was outside the scope of the model law. It was recalled that different mechanisms for transfer of property existed under domestic laws, and for that reason, the matter had been excluded from other uniform law texts prepared by UNCITRAL, such as the United Nations Convention on Contracts for the International Sale of Goods.⁵ It was added that transferring ownership of the goods with the warehouse receipt was against existing commercial practices in certain States, and that it would expose the owner to the loss of goods when the depositor did not have ownership of the goods. For these reasons, it was suggested that references to transfer of ownership should be deleted. Instead, the draft model law should adopt a functionally neutral approach and merely state that the transfer of a warehouse receipt had, in respect of the acquisition of property rights to the goods, the same effects as the transfer of physical possession of the goods. Moreover, draft article 16, which applied both to protected holders and ordinary holders, should only provide that the transfer of the warehouse receipt meant also the transfer of the rights arising from the storage agreement, which was in line with the general law of negotiable instruments.

72. In response, it was indicated that transferring ownership with the warehouse receipt was essential to enhance the marketability and tradability of warehouse receipts by reinforcing confidence in their legal effects and, ultimately, to promote trade financing, which was the main goal of the model law. It was therefore indicated that draft articles 16 and 18 should be retained in their current form.

73. Additional difficulties of contemplating transfer of ownership with the warehouse receipt would arise where the goods were not owned by the depositor, which was possible under draft article 7, but the owner did not consent to transfer ownership. Moreover, the interests of a financier that acquired a warehouse receipt in the course of a financing transaction, such as under a letter of credit, might not be those of a full-fledged owner. The possible conflict between holders of a bill of lading and of a warehouse receipt relating to the same goods was mentioned. After discussion, the Working Group asked the secretariat to add alternative language in draft article 18 or to prepare alternative versions of draft article 18 to the effect that

⁵ United Nations, *Treaty Series*, vol. 1489, No. 25567, p. 3.

the protected holder would acquire such rights in the goods as it would have acquired by transfer of their possession.

Article 17 – Protected holder of a negotiable warehouse receipt

74. The Working Group agreed that the Guide to Enactment should explain the notions of “acting in good faith” and of “without knowledge”.

Article 18 – Rights of a protected holder of a negotiable warehouse receipt

75. It was suggested that draft article 18 should allow the warehouse operator to raise a defence under general contract law, for instance for mistake, error, or duress when issuing the warehouse receipt. Likewise, it was suggested that draft article 18 should allow the warehouse operator to raise a defence for direct claims against the holder other than those covered by a lien.

76. The Working Group heard about cases where a warehouse receipt might be invalid due to error or similar grounds under general contract law, which in some legal systems would limit the operator’s delivery obligation. In support of that argument, it was indicated that where a warehouse operator could assert the invalidity of the warehouse receipt, it would be obliged to compensate the holder. It was, however, felt that the status of the protected holder should be preserved to promote the use of warehouse receipts in trade financing. The Working Group agreed to clarify in the guide to enactment that the model law did not affect any right of indemnity that may be available to the holder against the warehouse operator under other law.

Article 19 – Third-party effectiveness of a security right

77. It was explained that security interests matters were left for other law except for draft article 19, whose subparagraph (a) would apply only in jurisdictions that had laws providing for a registry for security interests. Secured transactions laws may not give rights similar to that of a protected holder, a circumstance which the guide to enactment should discuss by explaining their interaction with the model law.

Article 20 – Representations by a transferor of a negotiable warehouse receipt

78. In subparagraph (b), it was agreed that the words “the transferor does not” should replace “it does not”, and that the words “as notified to” should replace “as agreed by”.

Article 21 – Limited representation by intermediaries

79. The Working Group agreed to delete the words “or with collection of a negotiable instrument or other claim” and to redraft the article in light of article 18 of the Convention providing a Uniform Law for Bills of Exchange and Promissory Notes.⁶

Article 22 – Transferor not a guarantor

80. It was agreed to replace the words “in relation to” with “evidenced by” or similar.

Article 23 – Application of this chapter

81. The Working Group agreed to delete draft article 23, made redundant by the new draft of article 9, paragraph 2, and to consider possible provisions on the assignment of rights under non-negotiable warehouse receipts at the next session.

Article 24 – Duty of care

82. It was explained that the warehouse operator may vary its obligations to the depositor under paragraph 1 by the terms of the storage agreement or its obligations

⁶ League of Nations, *Treaty Series*, vol. 143, p. 257.

to the holder under paragraph 1 by the terms of the warehouse receipt. It was agreed to explain in the guide to enactment how the notion of duty of care may vary depending on elements such as nature of the goods and warehousing fees.

Article 25 – Duty to keep goods separate

83. The Working Group agreed to:

- Add the words “and in the storage agreement” at the end of paragraph 2;
- Discuss in the guide to enactment the treatment of competing holders in case of over-issuance of warehouse receipts regarding commingled goods.

Article 26 – Lien of the warehouse operator

84. There was agreement to:

- Add “reasonably” before “necessary” in paragraph 1, subparagraph (b);
- Discuss in the guide to enactment enforcement procedures relevant for the lien of the warehouse operator on the goods, and the priority of the lien against other claims;
- Clarify the relationship between draft articles 26 and 31.

Article 27 – Obligation of warehouse operator to deliver

85. The Working Group agreed to replace the words “to deliver the goods to it” with “as to the delivery of the goods” in subparagraph (a) to accommodate instructions to deliver to a third party; to request the secretariat to propose adequate language in subparagraph (b) to refer to the surrender of control of the electronic warehouse receipt; and to replace the word “secured” in subparagraph (c) with a term unrelated to security rights.

Article 28 – Partial delivery

86. The Working Group agreed to reflect in draft article 28 the changes made to draft article 27.

Article 29 – Split warehouse receipt

87. The Working Group agreed to replace the word “may” with “must” and to insert language requiring the holder to compensate the warehouse operator for the costs of splitting the receipt. It also agreed to explain in the guide to enactment the relevance of regulation in related matters such as setting minimum quantities for covered goods and recovering costs for splitting requests.

Article 30 – Excuses from delivery obligation

88. The Working Group agreed to:

- Replace the words “excused from delivering the goods” with “relieved of its obligation to deliver the goods”;
- Provide in the guide to enactment examples of relief from delivery of goods, including implications for insurance coverage;
- Add at the end of subparagraph (b) the words “or to article 31, paragraph 2”.

Article 31 – Termination of storage by the warehouse operator

89. The Working Group agreed to:

- Combine paragraphs 1 and 2 to allow sending a single notice for payment of the lien amount and removal of goods, and for sale of goods;
- Clarify that notice should be given both to known persons and to the public;

- Discuss in the guide to enactment the length of a reasonable notice (e.g., 30 days);
- Amend paragraph 3 to allow the warehouse operator to dispose of hazardous goods in any lawful manner, including by sale, instead of requiring the warehouse operator to first attempt a sale.

Chapter V – Pledge bonds

90. The Working Group held a discussion on the rationale for including chapter V in the model law. Some states, it was noted, used dual systems effectively, but it was queried whether it was an approach that UNCITRAL should be promoting in a model law. It was clear that some delegates lacked a sufficient understanding at this stage regarding how a dual system functioned, and how it might produce outcomes that could not be achieved by a single system. This, it was said, made it difficult for some delegations to form a view on that difficult question. Recognizing the importance of the question and that the Working Group would need more time to reflect on it fully, the Working Group agreed to continue reviewing chapter V on the basis as if it were to be retained and to inform itself more fully before its next session. In that context, the Working Group welcomed information on the operation of their dual system in countries that used such a system, to assist in informing the Working Group as a whole.

Article 32 – Scope and general provisions

91. It was first agreed to replace paragraph 1 with text along the following lines: “A warehouse receipt must be issued in the form of two separate documents that contain the same information, a warehouse receipt and a pledge bond”. It was then agreed to replace the word “Law” with “Chapter” in the first line of paragraph 2.

92. The Working Group was reminded that it had previously decided to remove the requirement that the warehouse receipt identify itself as a warehouse receipt in the definition of “warehouse receipt” in paragraph 2 of article 1. It was pointed out that, in the case of a dual system, that language would need to be reinstated in the warehouse receipt and that the pledge bond similarly would have to identify itself as a pledge bond.

Article 33 – Issue and form of a pledge bond

93. It was noted that because of the manner in which it was agreed to expand paragraph 1 of draft article 32, paragraph 1 of article 33 might no longer be needed. It was also agreed to include in draft article 33 an equivalent of the language in draft article 6, paragraph 2. It was further agreed that, in redrafting those provisions, the secretariat should reconsider the operation of paragraph 2 of draft article 33 to ensure that it produced no undesirable outcomes.

Article 34 – Effect of a pledge bond

94. It was agreed in paragraph 3 that the paragraph should be clarified to make it clear that the payment was to be made to the holder of the pledge bond. The paragraph should also be amended to state that the holder of the pledge bond should then surrender it to the holder of the warehouse receipt. There was some discussion as to whether paragraphs 3 and 4 of draft article 34 should be deleted, but the Working Group decided to retain both paragraphs.

Article 35 – Transfers and other dealings

95. The Working Group considered whether the language in paragraph 2 was appropriate or perhaps too limiting. The Working Group decided however to leave that language in its current form. It was suggested that a different word could be used in paragraph 2 to replace the word “note”, at least in the Spanish language version. There was further a discussion of the extent to which chapter V could properly coexist with draft article 19. It was concluded that the two sets of provisions were not

incompatible. It was then agreed that paragraph 3 of draft article 35 should be reviewed in the same manner as agreed for paragraph 2 of draft article 33.

Article 36 – Rights and obligations of the warehouse operator

96. The Working Group then turned to draft article 36. First, it discussed the language in square brackets in paragraph 2. It was agreed that the square bracketing should be reworked to make it clear that the text in square brackets presented two options and that a State could choose to use one of those options or both. It was then also noted that paragraph 3 should be reconsidered in the same manner as draft article 33, paragraph 2, and draft article 35, paragraph 3.

Article 37 – Entry into force

Article 38 – Repeal and amendment of other laws

97. The Working Group then turned to draft articles 37 and 38. There were no comments on these articles. It was queried whether the model law should include provisions dealing with conflicts of law. No decision was reached on that question.

98. Finally, the Working Group considered a suggestion that the definitions in draft article 2 of “negotiable warehouse receipt” and “non-negotiable warehouse receipt” might need some adjustment to ensure that no gap was inadvertently left between those two definitions and the secretariat was asked to consider that in its redraft of the text.
