REPORT
OF THE
UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW
on the work of its twenty-second session

---

16 May - 2 June 1989

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-FOURTH SESSION

SUPPLEMENT No. 17 (A/44/17)

UNITED NATIONS

REPORT
OF THE
UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW
on the work of its twenty-second session

16 May - 2 June 1989

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-FOURTH SESSION

SUPPLEMENT No. 17 (A/44/17)

UNITED NATIONS

New York, 1989

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0251–9127

[Original: English]

[20 July 1989]

CONTENTS

Chapter		Paragraphs	Page
INTRODUCTION		1 - 2	1
I.	ORGANIZATION OF THE SESSION	3 - 10	2
	A. Opening	3	2
	B. Membership and attendance	4 - 7	2
	C. Election of officers	8	3
	D. Agenda	9	3
	E. Adoption of the report	10	4
II.	DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE	11 - 225	5
	A. Introduction	11 - 17	5
	B. General discussion on the draft Convention	18 - 19	6
	C. Form of uniform rules	20 - 22	6
	D. Title of the draft Convention	23 - 25	7
	E. Discussion on individual articles of the draft Convention prepared by the Working Group on International Contract Practices (A/CN.9/298, annex I) (articles 1-17)	26 - 175	7
	F. Consideration of draft final clauses prepared by the secretariat (A/CN.9/321) (articles A-I)	176 - 192	33
	G. Consideration of articles of the draft Convention submitted by the drafting group (articles 1-25)	193 - 222	35
	H. Procedure for adopting the draft Convention as a convention	223 - 224	40
	I. Decision of the Commission and recommendation to the General Assembly	225	40

CONTENTS (continued)

Chapter		Paragraphs	Page
III.	INTERNATIONAL PAYMENTS	226 - 229	42
IV.	NEW INTERNATIONAL ECONOMIC ORDER	230 - 235	43
V.	GUARANTEES AND STAND-BY LETTERS OF CREDIT	236 - 244	44
VI.	INTERNATIONAL COUNTERTRADE	245 - 249	46
VII.	CO-ORDINATION OF WORK	250 - 261	47
VIII.	STATUS OF CONVENTIONS	262 - 271	50
	A. Convention on the Limitation Period in the International Sale of Goods	262 - 264	50
	B. Signatures, ratifications, accessions and approvals	265 - 271	50
IX.	TRAINING AND ASSISTANCE	272 - 287	52
X.	RELEVANT GENERAL ASSEMBLY RESOLUTIONS AND OTHER BUSINESS	288 - 298	55
	A. General Assembly resolutions on the work of the Commission	288	55
	B. Future programme of work	289	55
	C. Publications	290 - 293	55
	D. Liability limits and units of account in international transport conventions	294	56
	E. Date and place of the twenty-third session of the Commission	295	56
	F. Sessions of the working groups	296 - 298	56

ANNEXES

I.	Draft Convention on the Liability of Operators of Transport Terminals in International Trade	59
II.	List of documents of the session	71

INTRODUCTION

1. The present report of the United Nations Commission on International Trade Law covers the Commission's twenty-second session, held at Vienna from 16 May to 2 June 1989.

2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, this report is submitted to the Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

I. ORGANIZATION OF THE SESSION

A. Opening

3. The United Nations Commission on International Trade Law (UNCITRAL) commenced its twenty-second session on 16 May 1989. The session was opened by Mr. Carl-August Fleischhauer, Under-Secretary-General for Legal Affairs.

B. Membership and attendance

4. General Assembly resolution 2205 (XXI) established the Commission with a membership of 29 States, elected by the Assembly. By resolution 3108 (XXVIII), the General Assembly increased the membership of the Commission to 36 States. The present members of the Commission, elected on 10 December 1985 and 19 October 1988, are the following States, whose terms of office expire on the last day prior to the beginning of the annual session of the Commission in the year indicated: 1/

Argentina (1992), Bulgaria (1995), Cameroon (1995), Canada (1995), Chile (1992), China (1995), Costa Rica (1995), Cuba (1992), Cyprus (1992), Czechoslovakia (1992), Denmark (1995), Egypt (1995), France (1995), Germany, Federal Republic of (1995), Hungary (1992), India (1992), Iran (Islamic Republic of) (1995), Iraq (1992), Italy (1992), Japan (1995), Kenya (1992), Lesotho (1992), Libyan Arab Jamahiriya (1992), Mexico (1995), Morocco (1995), Netherlands (1992), Nigeria (1995), Sierra Leone (1992), Singapore (1995), Spain (1992), Togo (1995), Union of Soviet Socialist Republics (1995), United Kingdom of Great Britain and Northern Ireland (1995), United States of America (1992), Uruguay (1992) and Yugoslavia (1992).

5. With the exception of Cyprus, Kenya, Togo and Uruguay, all members of the Commission were represented at the session.

6. The session was attended by observers from the following States: Australia, Austria, Bolivia, Brazil, Byelorussian Soviet Socialist Republic, Colombia, Ecuador, Finland, Gabon, German Democratic Republic, Greece, Indonesia, Kuwait, Malta, Oman, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Saudi Arabia, Sudan, Sweden, Switzerland, Thailand, Ukrainian Soviet Socialist Republic and Venezuela.

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

(a) United Nations organs

International Trade Centre (UNCTAD/GATT)

United Nations Conference on Trade and Development

(b) Specialized agencies

International Maritime Organization

International Monetary Fund

(c) Intergovernmental organizations

Asian-African Legal Consultative Committee
Central Commission for the Navigation of the Rhine
Commission of the European Communities
Council for Mutual Economic Assistance
Hague Conference on Private International Law
Intergovernmental Organization for International Carriage by Rail
International Institute for the Unification of Private Law

(d) Other international organizations

Andean Federation of Councils of Users of International Transport
European Shippers' Council
Institute of International Container Lessors
Inter-American Commercial Arbitration Commission
International Association of Ports and Harbours
International Chamber of Commerce
International Chamber of Shipping
International Maritime Committee
International Road Transport Union
International Union of Railways
Latin American Federation of Banks

C. Election of officers 2/

8. The Commission elected the following officers:

Chairman: Mr. Jaromir Ruzicka (Czechoslovakia)

Vice-Chairmen: Mr. José M. Abascal (Mexico)
Mr. Rafael Illescas (Spain)
Mr. Michel Wembou-Djiena (Cameroon)

Rapporteur: Mr. Seiichi Ochiai (Japan)

D. Agenda

9. The agenda of the session, as adopted by the Commission at its 402nd meeting, on 16 May 1989, was as follows:

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

4. Draft Convention on the Liability of Operators of Transport Terminals in International Trade.

5. International payments.

6. New international economic order.

7. International contract practices.

8. Countertrade.

9. Co-ordination of work.

10. Status of conventions.

11. Training and assistance.

12. General Assembly resolutions on the work of the Commission.

13. Other business.

14. Date and place of future meetings.

15. Adoption of the report of the Commission.

E. Adoption of the report

10. At its 426th meeting, on 2 June 1989, the Commission adopted the present report by consensus.

II. DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

A. Introduction

11. The Commission, at its sixteenth session, in 1983, decided to include the topic of liability of operators of transport terminals in its programme of work 3/ and, at its seventeenth session, in 1984, assigned to its Working Group on International Contract Practices the task of preparing uniform legal rules on that topic. 4/

12. The Working Group performed that task at its eighth, ninth, tenth and eleventh sessions (A/CN.9/260, A/CN.9/275, A/CN.9/287 and A/CN.9/298). It completed its work by adopting at the close of its eleventh session in January 1988 the text of the draft Convention on the Liability of Operators of Transport Terminals in International Trade (A/CN.9/298, annex I).

13. The Commission, at its twenty-first session in 1988, requested the Secretary-General to transmit the draft Convention to all States and interested international organizations for comments, and requested the secretariat to prepare for the twenty-second session of the Commission a compilation of comments received. The Commission also requested the Secretary-General to prepare for the twenty-second session a draft of final clauses for the draft Convention. 5/

14. At its current session, the Commission had before it the text of the draft Convention (A/CN.9/298, annex I), a report of the Secretary-General containing a compilation of the comments by Governments and international organizations on the draft Convention (A/CN.9/319 and Add.1-5), and a report of the Secretary-General containing draft final clauses for the draft Convention (A/CN.9/321).

15. The Commission commenced its deliberations by engaging in a general discussion on the draft Convention as a whole. It then considered the question of whether the uniform rules on the liability of operators of transport terminals should be adopted in the form of a convention or a model law. Thereafter, it engaged in a review of the title and provisions of the draft Convention, taking into account the comments that had been submitted by Governments and international organizations, and considered the draft final clauses prepared by the secretariat.

16. The Commission established a drafting group and requested it to incorporate into the text of the draft Convention the decisions taken by the Commission and to review the draft articles in order to ensure linguistic consistency within each language version and correspondence among the different language versions.

17. The draft articles as modified and submitted by the drafting group were then reviewed by the Commission (see paras. 193-224 below). Upon completion of that review, the Commission adopted the decision set out in paragraph 225, by which it submitted the draft Convention to the General Assembly with a recommendation that it should convene an international conference of plenipotentiaries to conclude a Convention on the Liability of Operators of Transport Terminals in International Trade. The text of the draft Convention as submitted to the General Assembly is found in annex I to the present report.

B. General discussion on the draft Convention

18. The view was widely held that the preparation of uniform rules on the liability of operators of transport terminals was desirable in order to achieve uniformity of law in this area and to fill the gaps left by international transport conventions covering the individual modes of transport. The draft Convention was said to be generally acceptable and to constitute a solid basis for discussion at the current session, at which the text should be finalized.

19. It was stated that the rules should be formulated with a view to encouraging the broadest possible acceptance by States. Although the rules would not be linked to any particular transport convention, they should be compatible with the legal régimes under the various conventions.

C. Form of uniform rules

20. A view was expressed that the uniform rules should be adopted in the form of a model law rather than in the form of an international convention. In support of that view it was said that the operations performed at terminals were subject to rapid changes as technologies developed and that States could more easily adapt their legislation to those changes on the basis of a model law than on the basis of an international convention, which would be cumbersome to amend. Furthermore, it was stated that terminal operators of widely varying degrees of technical sophistication performed differing types of services with respect to various types of goods and that all of those operators, services and goods should not necessarily be subject to the same mandatory legal régime. Rather than adopting the rules as a Convention at that time, it was said to be desirable to adopt them first in the form of a model law to see whether they functioned satisfactorily. According to another view, a convention on that subject was not necessary because the subject was a matter of commercial contracts between the parties. The content of those contracts was said to be an important element in competition among terminals.

21. The most widely held view, however, was that the uniform rules should be adopted in the form of a convention. A convention was said to be more conducive to the achievement of uniformity of law than was a model law. It was considered that the adoption of a convention would meet the needs of those States which favoured an international commitment as to the legal rules governing the liability of terminal operators. States that did not wish to undertake such a commitment could nevertheless use the text of the convention as a model in drafting their legislation. Furthermore, since most of the liability régimes governing carriage were cast in the form of conventions, it was most appropriate to fill the gaps left by those instruments by a convention. It was also stated that establishing the rules in the form of a convention would not interfere with competition among terminal operators since the rules regulated only a minimum number of issues and there remained other issues that could form the basis of negotiations between terminal operators and their customers.

22. Accordingly, the Commission decided to proceed with its discussion of the text under the assumption that the uniform rules would be adopted as a convention. It was understood, however, that, after having established the substance of the convention, the Commission could, if it wished, reconsider the decision on the form of the uniform rules.

D. Title of the draft Convention

23. A proposal was made to delete the term "liability" in the title or to replace it by another term to avoid an implication that the draft Convention covered only issues relating to the liability of transport terminal operators. It was said that deletion of the term "liability" would result in a title that described more accurately the wider scope of issues dealt with in the draft Convention.

24. A proposal was also made to modify the title by replacing the term "international trade" by "international carriage of goods". In support of that proposal, it was stated that most articles of the draft Convention concerned international carriage of goods rather than international trade. In response, it was pointed out that the Working Group had decided to include the term "international trade" in order to reflect more accurately the wider role assumed by transport terminal operators.

25. After considering those proposals the Commission decided to retain the current title.

E. Discussion on individual articles of the draft Convention prepared by the Working Group on International Contract Practices (A/CN.9/298, annex I) (articles 1-17)

Article 1

Subparagraph (a) ("operator of a transport terminal")

26. A view was expressed that the concept of taking goods "in charge" that appeared in the definition of "operator of a transport terminal" was imprecise, and could result in uncertainties in some cases as to whether or not an entity came within the definition. The requirement that, to be an "operator", an entity must take goods in charge in order to perform or to procure the performance of transport-related services was said to be internally inconsistent, since an entity could procure transport-related services even if the goods were not in his charge. It was also said to be inconsistent with the definition of "transport-related services" in paragraph (d), since some of the services mentioned in that paragraph (e.g., storage, trimming, dunnaging, lashing) did not involve taking the goods in charge. A proposal to change the words "take in charge goods" to "take over goods" was considered but was found not to remedy those problems, and was therefore not accepted.

27. Another proposal was to eliminate the concept entirely by deleting the words "to take in charge goods involved in international carriage in order". In support of that proposal it was stated that the concept of taking the goods in charge related to the question of when the operator's responsibility for the goods began. That issue was dealt with in article 3, and should not be addressed in the definition of "operator". In opposition to the proposal, it was stated that the concept was an essential element of the definition of an "operator", since it established the relationship of the operator to the goods. Eliminating the concept was said to result in a discrepancy with article 3, since it would result in an entity's being regarded as an operator if he procured transport-related services without taking the goods in charge while, under article 3, his responsibility for

the goods would commence only when he took the goods in charge. It would also result in a discrepancy with article 5, since the basis of the operator's liability under that article depended upon his having the goods in charge. The proposal was also objected to because it eliminated the reference to "international carriage"; that reference, too, was said to be an essential element of the definition of "operator". Although the proposal received support, it was decided to defer taking a decision on it until after article 3 had been discussed.

28. After the Commission had discussed article 3, and decided to retain the concept of taking the goods "in charge" in that article, the view was expressed that it should also be retained in article 1 (a). According to another view, however, the contexts of article 1 (a) and article 3 differed, and retention of the concept in article 3 did not necessarily imply that it should also be retained in article 1 (a), where it was unnecessary. After extensive discussion the Commission decided to retain the concept in article 1 (a) and not to accept the proposal referred to in the preceding paragraph.

29. A proposal was made to delete from the second sentence of subparagraph (a) the reference to a carrier or multimodal transport operator, so that the sentence would read: "However, a person shall not be considered an operator to the extent that he is responsible for the goods under applicable rules of law governing carriage". The purpose of the proposal was to exclude stevedores from the application of the draft Convention when they were covered by clauses in bills of lading that extended to them the benefits of the defences and limits of liability available to carriers under the law relating to carriage. That solution was said to promote efficiency since it enabled the liability of the stevedore towards the owner of the goods or other third party with an interest in the goods to be covered by the carrier's liability insurance and eliminated the necessity for the stevedore to obtain his own insurance against his liability. The proposal was said to be important in relation to the acceptability of the draft Convention in at least one jurisdiction.

30. The proposal was further supported on the grounds that it would eliminate the necessity to determine whether or not the stevedore was responsible for the goods as a carrier. It would only have to be determined whether the stevedore was responsible for the goods under applicable rules of law governing carriage, or whether he was covered by other rules of law, such as those relating to cargo handling or storage.

31. In opposition to the proposal, it was noted that bill of lading clauses did not subject stevedores to the legal régime applicable to carriers; they merely extended to stevedores the benefits of the defences and limits of liability available to carriers. It was also said that it would not be desirable to enable stevedores to avoid the application of the draft Convention by obtaining the protections of a bill of lading clause. It was preferable for stevedores to be subject to the draft Convention, which, in addition to establishing rules governing the obligations and liability of operators, dealt with other important matters, such as documentation and the operator's rights of security in the goods. Although additional questions were raised as to the desirability and efficacy of the proposal, it was decided to accept it in view of the importance of the considerations that motivated it. It was stated that the proposal would not change the substance of the sentence in question, but would merely enable it to be interpreted in a particular way in certain jurisdictions.

Subparagraph (b) ("goods")

32. It was recognized that subparagraph (b) did not set forth a definition of "goods"; its purpose was merely to clarify whether and under what conditions containers, pallets and similar articles of transport or packaging were to be regarded as goods. It was agreed that, in general, the term "goods" should be interpreted broadly. Thus, items such as live animals and furniture were to be regarded as goods and it was not necessary to mention them specifically in the subparagraph. It was also generally agreed that "goods" included non-commercial goods, such as medicine and supplies transported for disaster relief.

33. It was observed that a discrepancy existed between the different language versions in respect of the words "if the goods are consolidated or packaged therein". In the English version in particular those words might be read as implying that empty containers, pallets or similar articles could under no circumstances be regarded as "goods". A proposal was made to clarify that empty containers, pallets and similar articles were to be regarded as "goods" if they had been the subject of a transaction in which they were treated as goods, for example, if they had been purchased by and were being shipped to a consignee. Another view was that empty containers, pallets and similar articles should be regarded as goods under all circumstances, since an operator should not have to determine the status of those articles. Yet another view was that empty containers, pallets and similar articles should not be regarded as goods under any circumstances. After discussion, the Commission agreed that subparagraph (b) should read along the following lines: "Where goods are consolidated in a container, pallet or similar article of transport or where they are packed, 'goods' includes such article of transport or packaging if it was not supplied by the operator". The Commission referred the subparagraph to the drafting group with instructions to ensure correspondence among all language versions.

Subparagraph (c) ("international carriage")

34. It was observed that an intent of the subparagraph was that the operator should be able to identify from objective factors, such as the transport document accompanying the goods or markings on a container, that the goods were involved in international carriage and that the draft Convention would therefore apply. The objective nature of the subparagraph in that respect was generally supported. A proposal to insert the words "by the operator" after the word "identified" was not accepted, as it was said to introduce a subjective element. Proposals to replace the word "identified" by the words "can be identified by the operator", and to change the word "identified" to "identifiable", were also not accepted. The Commission decided to retain the current text of subparagraph (c).

Subparagraph (d) ("transport-related services")

35. It was recognized that the subparagraph provided an illustrative listing of transport-related services; it did not purport to provide a general definition of those services. Proposals were made that certain types of services should be added to the listing, such as packing and unpacking goods and fumigation. Another proposal was made that a general definition should be formulated, perhaps supplemented by examples. Yet another proposal was made that the subparagraph should clarify that "transport-related services" included only services involving the physical handling of the goods and not, for example, financial services. Those proposals were referred to the drafting group.

Subparagraphs (e) and (f) ("notice" and "request")

36. A proposal was made that subparagraphs (e) and (f) should be deleted. In support of the deletion it was stated that those subparagraphs raised a number of uncertainties, such as the relationship, if any, of the requirements of the subparagraphs to rules of evidence in national legal systems and the nature of the record that had to be provided. Another uncertainty was whether or not an oral notice or request was sufficient if a record was made of it contemporaneously or thereafter. Moreover, it was said that the subparagraphs would lead to the undesirable result that, even if the recipient of an oral notice or request acknowledged that it had been given or made, the notice or request would have to be regarded as ineffective.

37. It was said to be preferable not to prescribe any particular form for notices or requests in the draft Convention; rather, the matter should be left to be dealt with by the applicable national law. Subject to that law, the person giving the notice or making the request should be able to decide for himself what form to use in accordance with good commercial practice and to protect his interests.

38. The prevailing view was that the subparagraphs should be retained, perhaps with drafting improvements. Requiring a notice to be given or a request to be made in a form that preserved some sort of record of the information contained therein would help to avoid questions as to whether or not the notice had been given or the request had been made, and would help to avoid questions as to the contents of the notice or request. It was also considered useful to establish an internationally uniform rule as to the form of notice or request, in particular, a rule that was adapted to automatic data processing and transmission techniques. Accordingly, it was decided to refer the subparagraphs to the drafting group with the request that it consider them in the light of the discussions within the Commission.

Other terms

39. A view was expressed that it would be useful to clarify the meaning of certain other terms used in the draft Convention, such as "customer" and "person entitled to take delivery" of the goods. It was decided that those terms would be considered in the context of the articles in which they appeared to ensure that their meaning was clear.

Article 2

Paragraph (1)

40. In connection with subparagraph (a), the view was expressed that the factor leading to the application of the draft Convention should be the performance of the transport-related services in a contracting State, rather than the location of the operator's place of business in a contracting State. In response, it was stated that designating the operator's place of business as the criterion would avoid problems that could arise in terminals that straddled the boundaries between two States. Such terminals were not uncommon in certain regions. If the criterion for the application of the draft Convention was the performance of the operator's services in a contracting State, and if one of the States straddled by the terminal was a party to the draft Convention but the other was not, various services performed with respect to goods would be subject to different legal régimes

depending upon the part of the terminal in which they were performed. Moreover, an operator could arrange to perform the services in the part of the terminal in the State which applied the legal régime more favourable to the operator. Designating the operator's place of business as the criterion for the application of the draft Convention would avoid those problems. It was stated that, in the majority of cases, the suggested criterion would lead to the same result as if the criterion were the place where the services were performed, since the services were usually performed at the operator's place of business.

41. It was noted that, when the services were performed in a contracting State by an operator whose place of business was in a non-contracting State, the Convention would not apply. The question was raised as to whether such a result was desirable. In response, it was said that the result had the merit of being certain.

42. With a view to broadening the application of the draft Convention, a proposal was made to add to the criteria set forth in paragraph (1) the place where the services were performed, so that the paragraph would read as follows:

> "(1) This Convention applies to transport-related services performed in relation to goods which are involved in international carriage:
>
> (a) When the transport-related services are performed by an operator whose place of business is located in a contracting State, or
>
> (b) When the transport-related services are performed in a contracting State, or
>
> (c) When, according to the rules of private international law, the transport-related services are governed by the law of a contracting State".

43. Hesitancy was expressed as regards adding the place where the services were performed as a criterion, since an operator might perform services in several States, some that were contracting States and others that were not, and legal uncertainty could result. After discussion, however, the Commission accepted the proposal.

44. A proposal was made to replace in subparagraphs (a) and (b) the expression "contracting State" with the expression "State party", in the light of terminology used in the Vienna Convention on the Law of Treaties, to which certain international conventions had already conformed. It was observed, however, that the term "contracting State" had been used in other conventions elaborated by the Commission, including the United Nations Convention on International Bills of Exchange and International Promissory Notes (1988), which was elaborated subsequent to the entry into force of the Vienna Convention on the Law of Treaties. It was said to be desirable to maintain consistency in the terminology used in conventions elaborated by the Commission. The Commission agreed that, in using the term "contracting State", its intent was to refer to States in respect of which the Convention was in force. It decided to refer the proposal to the drafting group, which was instructed to take into account the terminology used in other conventions elaborated by the Commission. For the subsequent decision, see paragraph 165 below.

Paragraph (2)

45. Questions were raised as to the desirability of the paragraph, on the grounds that the necessity to determine which place of business had the closest relationship to the operator's services introduced an element of uncertainty. In response, it was stated that the paragraph was necessary in connection with the application of paragraph (1) (a) in cases where the operator had more than one place of business.

46. A proposal was made to delete the words "as a whole" on the grounds that they were vague and difficult to apply. It was decided to retain the words. Accordingly, paragraph (2) was retained in its current form.

Paragraph (3)

47. Some support was expressed for the deletion of the paragraph on the grounds that an operator would normally have a place of business and the paragraph was therefore unnecessary. The Commission, however, decided to retain the paragraph unchanged in view of the fact that some self-employed operators did not have a place of business; in such cases the habitual residence was the most appropriate factor to determine whether the Convention applied. Moreover, the rule contained in the paragraph had been adopted in other international conventions.

Article 3

48. A proposal was made that article 3 should be changed to provide that the operator was responsible for the goods from the time when the applicable rules of law governing carriage ceased to apply until the rules applicable to the next carriage began to apply. In support of the proposal it was said that the current text of article 3 did not in all situations avoid gaps that could exist after the application of the carriage régime to the incoming carrier ended and before the application of the carriage régime to the outgoing carrier commenced. For example, in a situation in which the goods were unloaded from a ship and left on the quay, the maritime carrier's liability under the Hague Rules would end when the goods passed the ship's rail but the operator's liability might not yet have commenced since he might not be deemed to have taken the goods in charge. The proposed solution was said to avoid such gaps and provide a flexible rule that would adapt the period of operator's liability to the beginning and end of the application of the carriage régime under different modes of transport.

49. The proposal was opposed on the following grounds. It was not desirable for the operation of the draft Convention to be dependent on other conventions or national laws. The operator's period of responsibility would not necessarily be immediately preceded by or followed by carriage (e.g. where the shipper delivered goods to a terminal at the beginning of carriage, or where the operator delivered the goods to the consignee after carriage). The time of beginning and time of ending of a carrier's responsibility under conventions and national laws was not always certain, and was a subject of frequent litigation. The proposal would result in different periods of responsibility depending on which convention or law relating to carriage applied. The Commission did not accept the proposal.

50. Views were expressed in opposition to defining the commencement of the operator's period of responsibility on the basis of the concept of his taking goods

in charge. It was said that the concept was imprecise and that it might not lead to the same interpretation in all legal systems. For example, when the customer left the goods in the operator's area without immediately giving instructions to the operator, it might not be clear when the operator's responsibility commenced. It was therefore suggested that the concept should be clarified, perhaps in a definition, to be added to article 1, along the lines of article 4 of the United Nations Convention on the Carriage of Goods by Sea (1978) (hereinafter referred to as the "Hamburg Rules").

51. A proposal was made that the concept of taking goods in charge should be replaced by the concept of handing goods over to the operator. It was said that the latter concept was an appropriate factual description of the moment when the operator's responsibility for the goods under the draft Convention should commence. The proposal was not accepted on the grounds that it did not adequately reflect the various ways in which the operator received the goods contemplated by the draft Convention. Moreover, the concept of handing over was said to be no less a legal concept than the concept of taking in charge.

52. The prevailing view was that the concept of taking goods in charge, while not being an ideal solution, was the most suitable solution that could be formulated in view of the wide variety of situations covered by the draft Convention. Moreover, the concept had a precise meaning in some legal systems. It was also stated that the concept of taking the goods in charge adequately filled the gaps after the régime applicable to the incoming carrier ended and before the régime applicable to the outgoing carrier began.

53. With respect to the time at which the operator's period of responsibility under the draft Convention ended, the view was expressed that the concept of making the goods available to the person entitled to take delivery of them was not sufficiently clear. For instance, it was not clear whether the concept implied that the operator was under a duty to notify the person entitled to take delivery of the goods that they were available to be collected. A proposal, which was not accepted, was made that the operator should be required to give such a notice.

54. The Commission accepted a proposal that the concept of making the goods available to the person entitled to take delivery of them should be replaced by the concept of placing the goods at the disposal of that person. The proposal was based on the argument that a delay in collecting the goods within the agreed period of time should not lead to a complete termination of the operator's responsibilities unless he had notified the recipient and had asked him to collect the goods. Subject to the amendment called for by that proposal article 3 was retained in its current form.

Article 4

Paragraph (1)

55. The view was expressed that the chapeau should be re-drafted so as to clarify that the option of the operator's acting in accordance with either subparagraph (a) or subparagraph (b) was to be exercised by the operator, and not by his customer. According to another view, the operator should not have such an option; rather, the choice should be a matter to be agreed upon by both parties.

56. It was proposed that the word "customer" in the chapeau should be changed to "other party" or to "other party to the contract". In support of the proposals it was stated that the word "customer" connoted a continuing business relationship between the parties, while an operator might take over goods from a party in a unique transaction. In opposition to the proposals it was stated that an operator might take over goods from someone other than the other party to the contract with the operator. For example, the other party might be the shipper, while the goods might be taken over from the shipper's carrier; and it was the carrier who would need the document provided for in paragraph (1).

57. The view was expressed that the term "without unreasonable delay" in the chapeau was imprecise, and that another term, such as "promptly", should be used instead. It was stated that greater precision was needed in that terminology in view of the consequences of a failure of the operator to act in time, as set forth in paragraph (2).

58. It was proposed that subparagraph (a) should clarify that the condition and quantity of the goods were to be stated in the document produced by the customer, rather than being inserted by the operator, by replacing the words "identifying the goods and stating their condition and quantity" with "in which the condition and quantity of the goods are identified".

59. It was proposed that the words "and stating their condition and quantity" should be deleted from subparagraph (a). In support of the proposal it was said that the document produced by the customer might not always indicate the condition or quantity of the goods, and it should be sufficient if the operator signed a document without such an indication. In favour of retaining the words it was said that the document should state the condition and quantity of the goods, in the absence of which the presumption provided for in paragraph (2) should apply.

60. It was generally agreed that, in subparagraph (a), the operator should also be required to state the date when he received the goods.

61. It was proposed that the word "produced" in subparagraph (a) should be changed either to "presented" or to "produced or presented", in order to avoid the implication that the customer must have generated the document. In opposition to those proposals, it was stated that the word "produced" clearly indicated that the document must come from the customer's possession.

62. Proposals were made to incorporate into subparagraph (a) a proviso to the effect that the statement in the document as to the condition and quantity of the goods should relate to the condition and quantity only in so far as they could be ascertained by reasonable means of checking. A related proposal was that the operator should be able to insert a reservation in the document if the operator could not verify the statement by reasonable means of checking or if he had reason to question its accuracy.

63. The proposals presupposed that an operator who chose to act under subparagraph (a) should inspect the goods to a reasonable extent when he took them over to verify the statement contained in the document as to the condition and quantity of the goods. If the operator signed the document, he would be bound by the statement contained in it, unless he entered a reservation. The proviso was therefore said to be necessary in order to protect an operator who did not have reasonable means to inspect the goods sufficiently or at all to verify the

statements contained in the document. An additional reason advanced in support of the proposal was that the proviso was contained in subparagraph (b), and that subparagraphs (a) and (b) should be parallel. As another means of achieving the result intended by the proposal, a suggestion was made to provide in paragraph (2) that, if the operator elected to act in accordance with subparagraph (a), he was rebuttably presumed to have acknowledged the condition and quantity of the goods as stated in the document in so far as they could be ascertained by reasonable means of checking.

64. The following views were expressed in opposition to the proposals. The actions provided for in subparagraphs (a) and (b) were of different natures. Under subparagraph (a) the operator merely acknowledged his receipt of the goods. That was intended to be a simple and quick procedure; the operator was under no obligation to inspect the goods, and his signature of the document would not constitute acknowledgement or acceptance of the statement made by the customer in the document as to the condition and quantity of the goods. Thus, there was no need to include the proviso in subparagraph (a). The proviso was needed in subparagraph (b) because under that subparagraph the operator was to make his own statement as to the condition and quantity of the goods. To include the proviso in subparagraph (a) as well might carry the erroneous implication that the operator had a duty to inspect the goods and verify the statements made by the customer in the document.

65. As an additional reason in opposition to the proposals it was said that, if the operator could insert a reservation in a transport document such as a bill of lading contradicting the statements as to the condition and quantity of the goods made in the bill of lading by the customer, the reservation could alter the legal consequences of the document. It was also pointed out that the document contemplated by subparagraph (a) would not be negotiated to a third party and did not bear other legal attributes of a bill of lading; thus, while a proviso relating to reasonable means of checking the goods was included in article 16 of the Hamburg Rules in relation to bills of lading, it was not needed in subparagraph (a).

66. Among those opposed to including the proviso in subparagraph (a) support was expressed for retaining the current structure and text of paragraph (1), subject perhaps to certain drafting improvements, as the paragraph was said to be logical and easy to apply.

67. With respect to the words "reasonable means of checking", it was generally agreed that the operator was required to specify the condition of the goods only on the basis of their external appearance, and that he was not required to open sealed containers.

68. A proposal was made to add in subparagraph (b) a requirement that the document issued by the operator must identify the goods, in order to achieve parallelism with subparagraph (a).

Paragraph (2)

69. A proposal was made to delete the word "apparently" for the reason that, if the operator did not act in accordance with either subparagraph (a) or (b) of paragraph (1), he should be rebuttably presumed to have received the goods in good condition. The prevailing view was that the word "apparently" should be retained.

It was said that the operator's legal position in relation to the condition of the goods by virtue of the presumption provided for in paragraph (2) should be consistent with what his position would have been if he had acted in accordance with paragraph (1) (a) or (b). Since, under paragraph (1) (b) (and under paragraph (1) (a) if the proposals referred to in paragraph 62 above were accepted), the operator was bound by the condition of the goods only in so far as it could be ascertained by reasonable means of checking, an operator who failed to state the condition of the goods should be presumed to have received them in good condition only in so far as the condition of the goods could have been ascertained by reasonable means of checking. Thus, the word "apparently" in paragraph (2) referred to the concept of "reasonable means of checking" in paragraph (1). The view was expressed that the relationship between those two expressions needed to be clarified.

70. A suggestion was made to clarify that the presumption provided for in paragraph (2) arose not only when the operator failed to act in accordance with paragraph (1) (a) or (b) when such action was requested by the customer, but whenever the operator did not sign or issue a document that stated the condition of the goods when he received them.

71. A proposal was made to add at the end of paragraph (2) the words "save to the extent that he has not taken the goods in charge for safekeeping". In support of the proposal it was stated that the presumption provided in paragraph (2) should not apply where the goods were merely transferred from one means of transport to another without storing or safekeeping them. The proposal was accepted and referred to the drafting group.

72. At the close of the discussion on paragraphs (1) and (2), the Commission decided to refer the paragraphs to the drafting group for further work on the basis of the present texts.

Paragraph (3)

73. The Commission decided to retain the substance of the paragraph unchanged.

Paragraph (4)

74. According to one view, the freedom of the parties to use the forms of signature mentioned in the paragraph should be subject to applicable law. The approach used in article 14 (3) of the Hamburg Rules was referred to as an example. Another view, which received considerable support, was that the paragraph should permit the signature to be in any form, including by electronic means. A suggestion was made to express that view with words along the lines of article 5 (k) of the United Nations Convention on International Bills of Exchange and International Promissory Notes (1988). The drafting group was requested to prepare alternative wordings for the paragraph reflecting the views expressed.

75. The view was expressed that the method of signature should be subject to the customer's agreement, and that the operator should be required to confirm his signature when the customer so requested. The Commission did not consider it necessary to deal with such issues in the draft Convention.

Proposal for new paragraph

76. A proposal was made to provide in article 4 that the absence from the document of one or more particulars referred to in paragraph (1) would not affect the existence or the validity of the contract for transport-related services. It was noted that a comparable provision appeared in the Convention for the Unification of Certain Rules relating to International Carriage by Air (Warsaw, 1929) (hereinafter referred to as the "Warsaw Convention"). In opposition to the proposal, however, it was noted that under the Warsaw Convention the existence of the transport document was a condition for the validity of the contract of carriage, whereas the validity of the contract for transport-related services did not depend on the existence or content of the document issued under article 4 (1) of the draft Convention. It was therefore decided that it was not necessary to include the proposed provision in the draft Convention.

Article 5

77. An observation was made that article 5 did not contain a special rule for loss of or damage to the goods or for delay caused by fire, as did article 5 (4) of the Hamburg Rules. It was understood by the Commission that the liability rules contained in article 5 covered all causes of loss, damage or delay, including fire.

Paragraph (1)

78. It was understood that the word "loss" as it first appeared in the paragraph would include such damages as lost profits in legal systems where such damages were recoverable. A proposal to change that word to "damages" was not accepted. The drafting group was requested to ensure that the intended meaning of the word "loss" was adequately reflected in all language versions.

Paragraph (2)

79. It was decided to retain the substance of the paragraph unchanged. It was noted that the paragraph, although generally modelled on article 5 (7) of the Hamburg Rules, deviated from that model by referring to a "failure" on the part of the operator, his servants, agents or other persons of whose services he made use, instead of "fault or neglect" on the part of those persons. Support was expressed for the approach in the paragraph because it reflected a more modern treatment of the question. It was noted that a similar approach was used in article 80 of the United Nations Convention on Contracts for the International Sale of Goods (1980).

Paragraph (3)

80. The Commission decided to replace the expression "make them available to" by the expression "place them at the disposal of", in view of a similar decision taken with respect to article 3 (see para. 54 above).

Paragraph (4)

81. Proposals were made that the time period in paragraph (4) should be changed from 30 days to 60 days or to 90 days, in order to give the operator an ample opportunity to locate the goods. It was noted that the Hamburg Rules provided for a 60-day period while the United Nations Convention on International Multimodal

Transport of Goods (1980) (hereinafter referred to as the "Multimodal Convention") provided for a 90-day period.

82. The decision of the Commission was to retain the 30-day period. It was stated that the longer periods in the Hamburg Rules and the Multimodal Convention were necessary in view of the distances that goods under those Conventions were carried and the breadth of the territory that would have to be searched to locate the goods. An operator under the draft Convention would have to search only within the terminal. In addition, some goods might be needed promptly by the person entitled to receive them (e.g. construction materials), and he should not have to wait too long before he was able to treat the goods as lost and to make other arrangements.

83. A proposal was made that the liability of the operator should be excluded in cases of force majeure. The proposal was not adopted in view of the understanding of the Commission that force majeure was implicitly a defence under paragraph (1).

84. A proposal was made to clarify which person had the right to treat the goods as lost. After discussion, it was decided to specify that a person entitled to make a claim for the loss of the goods was the person who could treat the goods as lost. It was observed that that approach would conform to article 12 (2) of the draft Convention and to article 5 (3) of the Hamburg Rules.

85. A question was raised as to whether, if the goods were declared lost in accordance with paragraph (4) but were later found, a court could declare that the goods were not lost. While differing views on that question were expressed, the Commission decided that the issue was beyond the scope of the draft Convention.

86. The Commission decided to replace the expression "make them available to" by "place them at the disposal of", in view of a similar decision with respect to article 3 and to paragraph (3) of article 5 (see paras. 54 and 80 above).

Article 6

Paragraph (1)

87. The text submitted to the Commission provided two limits of liability for loss of or damage to the goods: a lower limit that would apply if the goods were involved in carriage by sea or by inland waterways and a higher limit if the goods were not involved in such carriage. The view was expressed that it would be preferable to provide for a single limit of liability, regardless of the mode of transport involved, since the dual-limit approach in the current text was difficult to apply in practice. The prevailing view was that the dual-limit approach should be retained. It was observed that the approach took into account the different relative values of goods carried by sea and inland waterways, on the one hand, and by other modes of transport, on the other hand. It also took into account differences in the relative levels of limits of liability in conventions dealing with those various modes of transport.

88. The view was expressed that the paragraph should be amended to clarify where in the transport chain the carriage by sea or by inland waterways must occur in order for the lower limit to apply, e.g. whether the goods must be carried to or from the operator by sea or by inland waterways, or whether the lower limit would apply if the carriage occurred anywhere in the transport chain. It was generally

agreed that for the lower limit to apply the carriage should not be remote from the operator in the transport chain since, if it were, the operator might not know that the carriage by sea or by inland waterways was involved. It was noted that, under the Multimodal Convention, the lower limit would apply if carriage by sea or by inland waterways was involved at any stage of the transport. It was observed, however, that, under that Convention, the multimodal transport operator was a party to the contract for the entire transport and would therefore know of the involvement of such carriage. The Commission agreed that the lower limit should apply to the operator if it appeared from objective indications available to the operator that the goods were carried to or were to be carried from the operator by sea or by inland waterways.

89. The Commission decided to defer consideration of the amounts of the limits, which in the current text were set forth within square brackets, until it decided the form that the uniform rules would take. Subsequently, the Commission decided to retain the amounts within square brackets, thus leaving the final decision as to the amounts of the limits of liability to be taken by the conference of plenipotentiaries that would adopt the Convention.

90. A proposal was made to add, as an alternative to the limit of liability per kilogram of gross weight, a limit of liability per package or unit. In support of the proposal, it was stated that the per kilogram approach was appropriate for heavy shipments of low value goods, but not for high-value goods of relatively low weight (e.g. computer equipment). A limit per package or unit was more appropriate for the latter type of goods. Another reason given in support of a per package alternative was that it would align the limits applicable to operators of maritime terminals with those applicable to maritime carriers, which were subject to alternative limits based on weight or based on the number of packages or units. In response, it was pointed out that the per package approach had been considered extensively within the Working Group but was not included in the current text, in particular because of difficulties in defining a package or unit and because of the fact that incorporation of that alternative would require additional provisions in the draft Convention, for example, relating to documentation, which would unnecessarily complicate the text. Accordingly, it was decided to retain the single limit of liability per kilogram of gross weight.

Paragraphs (2) and (3)

91. The Commission decided to retain the substance of the paragraphs unchanged.

Paragraph (4)

92. The view was expressed that the substance of paragraph (4) appeared to be contained in article 13 (2), and it was suggested that either paragraph (4) should be deleted or it should contain a reference to article 13 (2). The prevailing view was that paragraph (4) should be retained in its present form. In support of that view it was stated that article 13 (2), which covered all responsibilities and obligations of the operator, was broader than paragraph (4); paragraph (4) provided a useful clarification that the operator could agree to limits exceeding those provided for in paragraphs (1), (2) and (3).

93. It was observed that paragraph (4) did not specify the form that the agreement by the operator should take. The Commission agreed that the paragraph as currently drafted should be understood to provide that no matter in what form an operator

expressed his agreement to higher limits, he was bound by that agreement and could not later retract it.

Article 7

94. Various points were raised in connection with the heading of article 7, which, in the English version, was the same as the heading of article 7 of the Hamburg Rules. It was observed that certain language versions other than English used terminology that differed from the word "claims" used in the English version. A question was raised as to the discrepancy between the use in the heading of the word "claims" and the use in paragraph (1) of the word "action", which implied legal action before a court or arbitral tribunal. In response to the latter point it was stated that the use of the word "claims" in the heading was satisfactory since the article would apply in respect of any claim made against an operator, whether or not in the context of legal proceedings.

95. A view was expressed that the use of the term "non-contractual claims" should be changed to refer, for example, to "liability claims", in order to reflect accurately the substance of the article, which dealt with contractual as well as non-contractual claims. In response, it was stated that the heading was satisfactory in its current form since the main purpose of the article was to clarify that the limits of liability would apply even in respect of non-contractual claims.

96. The decision of the Commission was to retain the present heading in the English version and to request the drafting group to ensure correspondence in the other language versions.

Paragraph (1)

97. The view was expressed that the word "otherwise" was too vague, and that it should be changed to "of some other nature". It was noted that the word was intended to cover actions that in some legal systems were not categorized as either contract or tort, such as bailment. The decision of the Commission was to retain the word "otherwise", which was also used in article 7 (1) of the Hamburg Rules, and to request the drafting group to ensure that the terminology used in the language versions other than English accurately conveyed the meaning of the word as used in the English version.

Paragraph (2)

98. The view was expressed that paragraph (2) established a right of action against a servant or agent of the operator and against other persons of whose services the operator made use for the performance of transport-related services. It was pointed out, however, that the existence of such a right of action depended on applicable national law and that paragraph (2) was limited to providing defences and limits of liability in actions that might be brought in accordance with the applicable law against persons other than the operator.

Paragraph (3)

99. The understanding of the Commission was that the aggregate amount that could be recovered in separate actions arising out of the same incident against the

operator and against his servants, agents or other persons of whose services he made use should not exceed the maximum amount that could be recovered from the operator. The Commission requested the drafting group to review the text in all of its language versions so as to ensure that the understanding was properly expressed.

100. A view was expressed that, in a case where the operator agreed pursuant to article 6 (4) to a limit of liability exceeding that provided in the draft Convention, by virtue of paragraph (3) the increased limit applied not only to the operator, but also to his servants, agents and other persons of whose services he made use. According to another view, the increased limit did not also apply to those servants, agents and other persons. The Commission decided to leave the issue to be resolved by interpretation in concrete cases.

Article 8

Heading

101. A proposal was made that the heading of the article should be changed to read "Non-application of limits of liability" on the grounds that the current heading, in referring to the loss of the "right" to limit liability, introduced an element of subjectivity, namely, that the operator could decide whether or not to limit his own liability. The Commission referred the proposal to the drafting group.

Paragraph (1)

102. A proposal was made that the term "limitation of liability" should be used, rather than "limit of liability", in order to conform to the terminology used in article 8 (1) of the Hamburg Rules. The proposal was referred to the drafting group.

103. A proposal was made that the words "or his servants or agents" should be deleted, for the following reasons. Allowing the limits of liability available to the operator to be broken owing to the acts of his servants or agents would make the liability of the operator uninsurable or insurable only at a high price, and the resulting increase in costs would ultimately be borne by the shipper. If the operator himself was free of fault, it was unfair to deprive him of the limits of liability owing to the wrongful acts of his servants or agents. The provision should conform to article 8 (1) of the Hamburg Rules, under which the limit of liability available to the carrier could be broken only in the event of the intentional or reckless conduct of the carrier himself, and not of his servants or agents.

104. The proposal was not accepted. It was opposed on the following grounds: the current text, under which the limits of liability available to the operator could be broken in the event of intentional or reckless conduct of the servants or agents of the operator, but not of other persons of whose services the operator made use for the performance of the transport-related services, was a compromise reached within the Working Group between the view that the limits should be breakable only in the event of intentional or reckless conduct of the operator himself, and the view that they should be breakable in the event of such conduct not only by his servants and agents but also by other persons of whose services he made use. Operators were often organized as legal entities, and such entities could act only through their servants and agents; thus, to refer to intentional or reckless

conduct of the operator himself lacked practical meaning. Under the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (1924) (hereinafter referred to as the "Hague Rules") as amended by a Protocol in 1968 (the Hague Rules as amended by the 1968 Protocol are hereinafter referred to as the "Hague-Visby Rules"), the limits of liability available to the carrier could be broken in the event of intentional or reckless conduct of his servants or agents; similar provisions were contained in the Convention on the Contract for the International Carriage of Goods by Road (CMR) (1956) and in the Warsaw Convention. Article 8 (1) of the Hamburg Rules did not provide a model for the draft Convention since the more restricted approach in the Hamburg Rules was part of a package of compromises in which, among other things, the nautical fault defence available to the carrier under the Hague Rules was eliminated.

105. A proposal was made that wording should be added to the paragraph according to which the limits of liability available to the operator could be broken in the event of intentional or reckless conduct of his servants or agents only if they acted within the scope of their employment. In support of the proposal, it was stated that it would be unfair for an operator to be deprived of the limits of liability if his servants or agents acted outside the scope of their employment. The purpose of breakable limits was to induce operators to control the conduct of their servants or agents; however, operators could not control conduct outside their servants' or agents' scope of employment. It was also stated that adding the proposed wording would promote certainty and stability with respect to the limits of liability. The concept of acting within the scope of employment was said to be familiar and to have an established meaning in many legal systems.

106. The proposal was opposed on the following grounds. Whether or not servants or agents had acted within the scope of their employment was difficult to determine, and adding the proposed wording would encourage litigation. The wording was devoid of significance, since intentional and reckless conduct were by their nature outside the scope of employment. As between the operator and the claimant, the operator should bear the risk of intentional and reckless conduct on the part of his servants and agents.

107. The view was also expressed that it was implicit that an entity was liable for the acts of his servants or agents only if they acted within the scope of their employment. In response to that view, however, it was pointed out that, in the context of article 5 (1), the Working Group had intended the operator to be liable for the acts of his servants, agents and other persons of whose services he made use even if they acted outside the scope of their employment.

108. There was no preponderant view for or against the proposal. Therefore, the decision of the Commission was to retain the present text of paragraph (1) without adding the proposed wording.

109. A proposal to place paragraph (1) within square brackets for consideration by the forum that would adopt the Convention in final form was not accepted.

110. The Commission was in agreement that, under paragraph (1), the operator did not lose the benefit of the limits of liability in the event of intentional or reckless conduct by persons, other than his servants or agents, of whose services he made use in performing the transport-related services.

Paragraph (2)

111. The Commission agreed to retain the substance of the paragraph unchanged.

Article 9

In general

112. The view was expressed that the overall approach of the article should be reconsidered. In connection with that view it was noted that the article required an unspecified person to conform to applicable laws and regulations with respect to the marking, labelling, packaging and documentation of dangerous goods, in default of which the operator could take precautionary measures against the goods without paying compensation for their loss or destruction. It was stated that those features could have wide-ranging and possibly unforeseen implications and that it was preferable to leave such matters to international and national instruments on the subject of dangerous goods that dealt with those matters directly and comprehensively. It was also stated that the article failed to deal adequately with the essential question of liability for loss and damage caused by dangerous goods. It was noted that the effect of the article was that the liability of the operator for such loss and damage was governed by the principle of presumed fault or neglect under article 5 (1), which was said to be inappropriate in the case of dangerous goods taken over by the operator. The decision of the Commission, however, was that the present text served as an adequate basis for article 9, subject to possible refinements and clarifications.

113. It was observed that there was a link between articles 9 and 5 in that article 9 constituted an exception to the liability rules contained in article 5. It was suggested that the link should be expressed more clearly by moving article 9 closer to article 5. According to other views, however, the placement of article 9 should be retained. The Commission regarded the question as one of drafting and referred it to the drafting group.

114. A proposal was made to add to article 9 wording to the effect that the article did not apply in cases covered by article 4. The proposal was based on an understanding that an operator would normally know of the dangerous character of goods taken over by him because the condition would be indicated on the transport document accompanying the goods, and that the word "condition" in article 4 (2) included the dangerous character of the goods. The understanding of the Commission, however, was that the word "condition" related to whether or not the goods were damaged, and not to whether or not they were dangerous; accordingly, the proposal was not accepted.

Chapeau

115. A view was expressed that the chapeau should indicate who was obliged to mark, label, package and document the goods. It was suggested that the customer of the operator should be obliged to do so. The prevailing view, however, was that the article should not address that question, since it was dealt with in international and national texts dealing with dangerous goods and to do so in the draft Convention would pose a risk of conflicting with those texts. For similar reasons, the Commission did not accept a suggestion that the article should expressly establish an obligation to inform the operator of the dangerous nature of the goods.

116. A proposal that reference should be made in the chapeau only to the goods being marked or labelled as dangerous, in order to conform to article 13 (1) of the Hamburg Rules, was not accepted.

117. Various proposals were made with respect to the words "in accordance with any applicable law or regulation relating to dangerous goods" that appeared in the chapeau. One proposal was to delete those words, on the grounds that they were unnecessary and that article 13 (1) of the Hamburg Rules did not contain such a reference. The proposal was not accepted. Another proposal was to retain the reference in its current form, without designating which country's laws and regulations were to be complied with. In support of that proposal, it was stated that various countries' laws and regulations relating to dangerous goods could be applicable in connection with goods taken over by the operator, and the present article should not preclude the necessity to comply with any of those regulations. The prevailing view, however, was that a specific reference to the laws and regulations of a particular country was desirable. Proposals were made to designate the country where the terminal was located or the country where the transport-related services were performed. After discussion, the Commission decided to refer to any law or regulation relating to dangerous goods applicable in the country where the goods were handed over to the operator. It was the understanding of the Commission that the words "any law or regulation" referred to international as well as national laws and regulations.

118. It was observed that, under the current text, the provisions of subparagraphs (a) and (b) applied if the dangerous goods were not appropriately marked, labelled, packaged or documented and if the operator "does not otherwise know" of their dangerous character. A proposal was made to introduce an element of objectivity into the latter requirement by adding words to the effect that the provisions would not apply if the operator should have known of the dangerous character of the goods. The prevailing view was that it should not be presumed that the operator knew of the dangerous character of the goods. Accordingly, the proposal was not adopted.

119. The view was expressed that the word "entitled" at the end of the chapeau should be reconsidered, on the grounds that the precautions referred to in subparagraph (a) were obligations, not rights, of the operator. However, the prevailing view was that the word "entitled" appropriately expressed the purport of subparagraph (a).

Subparagraph (a)

120. The view was expressed that the operator should be required to give notice of his intention to destroy the goods in view of the extreme character of such a measure and the need to protect the interests of the owner of the goods. In opposition, it was observed that, under the article, the goods could be destroyed only when they posed an imminent danger; there thus would be no time to give such a notice. In the light of that observation it was proposed that the operator should be required to give notice contemporaneously with his destruction of the goods. The prevailing view was that it was sufficient protection of the interests of the owner of the goods that the paragraph restricted the right to destroy the goods without paying compensation to cases of imminent danger, and the Commission decided not to impose a notice requirement.

121. The Commission accepted a proposal to specify in subparagraph (a) that the precautions provided for in the subparagraph must be taken by lawful means.

Subparagraph (b)

122. A proposal was made to provide in subparagraph (b) that the person obligated to reimburse the operator was "the person who failed to meet his obligations to inform him of the dangerous nature of the goods under any international convention or national legislation". The proposal was supported on the grounds that it helped to clarify who was obligated to reimburse the operator, and clarified that the obligation to reimburse the operator was based upon fault. The proposal was adopted in principle, but was amended to read along the following lines: "the person who failed to meet any obligation under such applicable law or regulation to inform him of the dangerous character of the goods". That formulation reflected the Commission's decision that the person obligated to give notice of the dangerous character of the goods should be determined by relevant international or national rules.

123. The view was expressed that the operator should be reimbursed for his costs of taking the precautions referred to in subparagraph (a) even if he knew of the dangerous character of the goods when he took them over. The Commission decided to make no change to the text along those lines.

124. The Commission expressed its understanding that subparagraph (b) did not affect any rights that the operator might have under national law to reimbursement or compensation for losses other than for the costs specified in the subparagraph. The Commission also expressed its understanding that the obligation of the persons referred to in subparagraph (b), as amended by the Commission, to reimburse the operator did not preclude any liability of those persons to the owners of other goods at the terminal that were damaged by the dangerous goods.

Article 10

Paragraph (1)

125. It was proposed that the article should specify that the operator had a right of retention over the goods only in respect of costs and claims that were due. The Commission accepted the proposal and referred it to the drafting group.

126. A proposal was made that the operator's right of retention over the goods should be extended to cover not only costs and claims that were incurred during his period of responsibility for the goods, but also those which were incurred after his period of responsibility had expired, such as storage fees that continued to accrue after the time the goods should have been collected by the person entitled to receive them. The proposal was accepted and referred to the drafting group.

127. The view was expressed that paragraph (1) should specify that the law applicable to contractual agreements extending the operator's security in the goods should be the law of the place where the goods were located. In opposition it was said that that conflict of laws rule had become out of date; in accordance with more modern concepts, the parties should be able to agree upon the law that would apply. It was pointed out, however, that the law in some States did not permit such a choice. Other proposals were made that the words "under any applicable law"

should be deleted as superfluous or that reference should be made to the law of the place where the goods were retained.

128. The decision of the Commission was to refer to "the" applicable law instead of "any" applicable law, in order to avoid an implication that the parties had complete freedom to select the relevant law. The drafting group was requested to ensure conformity as to that usage among all language versions.

Paragraph (2)

129. The Commission decided to retain the substance of the paragraph unchanged.

Paragraph (3)

130. The Commission discussed the question of whether the operator should have the right to sell the retained goods only to the extent permitted by the applicable law, or whether article 10 should provide for a right of sale independently of the applicable law. In support of the latter approach, it was said that to establish a uniform rule providing for a right of sale would avoid uncertainties arising from the disparate treatment of that issue in national legal systems. It was also stated that the paragraph would not be needed if it merely made the right of sale dependent upon the applicable law, since the existence of that right would depend upon the applicable national law even without such a provision.

131. The view prevailed, however, that the right of sale should exist only to the extent permitted by applicable law. It was considered that national laws dealing with the right of sale involved important issues of public policy, as well as differing approaches on which it was difficult to reach international agreement.

132. The view was expressed that the paragraph should refer only to the applicable law, without specifying which country's law would apply. It was noted that most national laws provided for and regulated the right of sale. The prevailing view, however, was that the paragraph should specify a particular national law. According to one view, that law should be the law of the State where the operator had his place of business, as was presently set forth in the paragraph. It was noted that some transport terminals straddled the boundary between two States; in such cases, if the applicable law was the law of the State where the goods were located, it might be uncertain which law applied since goods might be subject to transport-related services on both sides of the border. Moreover, the operator might be encouraged to locate the goods in a section of the terminal that was subject to the régime more favourable to him. Another view was that the applicable law should be the law of the place where the goods were to be handed over by the operator.

133. The Commission decided that the applicable law should be the law of the State where the goods were located. It was pointed out that, if the law of some other State were to apply, such as the law of the operator's place of business, a State where the right of sale did not exist under its national law might have to tolerate the sale of goods located within its territory if the goods could be sold under the law of the other State. That could render the draft Convention unacceptable in States where the right of sale did not exist. It was also stated that the law of the place where the goods were located represented the usual conflict of laws rule.

134. The view was expressed that the operator should be able to sell retained goods only to the extent that their value was proportional to the amount of his claim. It was pointed out, however, that in some cases it would not be possible to separate the goods in order to achieve that proportionality. It was also stated that it was not necessary to incorporate the concept of proportionality in the text, since it was already implicit in the right of sale. Moreover, paragraph (4), and in particular the obligation of the operator to account for the proceeds of the sale, was said to provide sufficient protection to the owner of the goods. In response to that point, however, it was noted that goods subject to forced sales were sometimes sold at prices below their actual value; the obligation of the operator to account for the proceeds of sale would not sufficiently protect the owner of the goods in such cases. The Commission decided to incorporate the concept of proportionality in the paragraph by providing that the operator was entitled to sell "all or part" of the goods.

135. The Commission did not adopt a proposal that the operator should be entitled to sell only goods belonging to his customer, and not goods belonging to third parties.

136. The Commission decided that the rules provided in the second sentence of paragraph (3) should apply not only to containers but also to pallets and similar articles of transport and packaging. It referred to the drafting group a proposal that the final words of the paragraph should be clarified by changing them to read "unless the operator has made repairs or improvements" to the containers.

Paragraph (4)

137. It was proposed that the operator should be required to wait for a reasonable period of time following the giving of notice of his intent to sell the goods before selling them. Such a waiting period would take into account the possibility of delays in the transmittal of the notice and would allow the owner of the goods sufficient time to take necessary actions to protect his interest. The following views were expressed in opposition to the proposal. The concept of a reasonable period of time was not sufficiently precise. The paragraph required the operator to make reasonable efforts to give notice and it was unclear when the waiting period would commence if the efforts were unsuccessful. To introduce a waiting period would upset the balance achieved by the paragraph. The requirement that the owner of the goods be given a reasonable period of time to protect his interests was already implicit in the notice requirement; in any case it would normally be provided for in the national law that, pursuant to paragraph (4), would govern the procedures for the sale. Accordingly, the proposal was not accepted.

138. A proposal to change the words "in other respects" to "in all other respects" was referred to the drafting group.

Article 11

Paragraph (1)

139. The drafting group was requested to align paragraph (1) with article 4 (1) (a).

140. It was proposed that notice of loss or damage should be required to be in writing, which should include notice by telegram and by telex, as an exception to

the general rule regarding the form of notice set forth in article 1 (e). The Commission did not accept the proposal.

141. The view was expressed that one working day within which notice of apparent loss of or damage to the goods must be given was not sufficient to enable the recipient to inspect the goods and give the notice. The Commission decided to change the time period for giving that notice to three working days.

142. A suggestion was made to insert after the expression "person entitled to take delivery of them" the words "from the operator" in order to avoid uncertainty in cases of combined transport operators or containerized cargo. The suggestion, considered to be of a drafting nature, was referred to the drafting group.

Paragraph (2)

143. The Commission decided that the 7-day time period in paragraph (2) should be changed to 15 days. With respect to the day on which the 15-day period commenced, the Commission noted that some language versions made reference to the day when the goods reached their final destination, while other language versions referred to the day when the goods reached the consignee or the final recipient. The Commission considered that the time period should commence when the goods reached the final recipient of the goods, who would be in a position to inspect them. The Commission expressed its preference for the term "final recipient" rather than the term "consignee", which might erroneously be interpreted to refer to a consignee in a segment of the carriage of the goods prior to the segment when the goods were carried to their final destination.

144. A view was expressed that the 45-day notice period was not sufficient, since the goods might be carried onward for a considerable period of time after they were handed over by the operator. Accordingly, a proposal was made either to delete the entire proviso that read "but in no case later than 45 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them", or to extend the period to 90 days. The prevailing view was that the proviso was useful and should be retained. The Commission decided to change the length of the time period to 60 days, which was the time period in article 19 of the Hamburg Rules.

145. A suggestion was made to include in paragraph (2), after the expression "if notice is not given", the words "to the operator", since those words appeared in the analogous place in paragraph (1).

Paragraphs (3), (4) and (5)

146. The Commission decided to retain the substance of the paragraphs unchanged.

Article 12

Paragraph (1)

147. It was stated that the two-year limitation period was contrary to the existing law in some legal systems. It was accordingly proposed that, instead of establishing a limitation period, the paragraph should refer to the limitation period in the State where the goods were located. The proposal was not accepted.

Paragraph (2)

148. It was proposed that the reference to article 5 at the end of the paragraph should refer to article 5 (4). The proposal was referred to the drafting group.

149. In connection with the first part of the paragraph, which provided that the limitation period commenced on the day on which the operator handed over the goods to the person entitled to take delivery of them, a proposal was made to delete the reference to the person entitled to take delivery of the goods. In support of that proposal it was stated that the limitation period should commence even if the operator handed the goods over to the wrong person. In opposition, it was stated that the period should not commence in such a case. The proposal was not accepted.

150. It was decided to amend the reference to the operator's handing over the goods to the person entitled to take delivery of them, so as to refer to the operator's handing over the goods to, or placing them at the disposal of, that person.

151. It was proposed that the person to be notified of the loss of the goods should be changed from the person entitled to make a claim that the goods were lost to the person entitled to take delivery of the goods. In support of that proposal it was stated that the latter person was normally the person who would be notified by the operator that the goods were lost. Furthermore, it was stated that the operator should not have to investigate who was entitled to claim for the loss of the goods in order to determine whom to notify. The prevailing view was that the present reference to the person entitled to make a claim for the goods should be retained in view of the amendment to paragraph 5 (4), previously adopted by the Commission, to the effect that the person entitled to make a claim for the goods may treat them as lost.

152. With respect to the reference to notice of loss of the goods, a proposal was made that it should be specified whether the limitation period was to commence from the time of dispatch or of receipt of the notice. The proposal was not accepted.

153. A proposal was made to add to the end of the paragraph the words "whichever is earlier". It was explained that the purpose of the proposal was to provide that, in the case of total loss of the goods, the limitation period would commence on the day when the operator gave notice that the goods were lost, but if the notice was given later than the 30-day period after which the goods could be treated as lost under article 5 (4), the limitation period would commence upon the expiry of the 30-day period. The proposal was accepted in principle and referred to the drafting group.

Paragraphs (3) and (4)

154. The Commission decided to retain the substance of the paragraphs unchanged.

Paragraph (5)

155. The view was expressed that paragraph (5) in its current form created uncertainty for the operator, since he would remain exposed to recourse actions after the recourse claimant had been held liable in the action against himself, which could be several years after the operator handed over the goods. In response, it was stated that the operator was protected by the requirement that the

recourse claimant notify the operator of the claim against the recourse claimant. The Commission decided to retain the present purport of the paragraph.

156. It was observed that, under the current text, the recourse claimant must give notice of the claim against himself within a "reasonable time"; it was stated that those words were not sufficiently precise. Proposals were made that a definite period of time should be specified or that the notice should be required to be given "immediately" or "without undue delay". The Commission decided to retain the present reference to a "reasonable period of time".

157. A proposal was made to align paragraph (5) with article 20 (5) of the Hamburg Rules by providing that the recourse action might be instituted within the time allowed by the law of the State where the proceedings were instituted, but that the time allowed should not be less than the 90-day period currently referred to in the paragraph. The proposal was not accepted.

158. It was proposed that the paragraph should be amended to provide that a recourse action may be instituted against the operator not only within 90 days after the recourse claimant had been held liable in the action against himself or had settled the claim upon which such action had been based, but also within 90 days after the recourse claimant had settled a claim against himself even if no action had been instituted. The proposal was not accepted.

159. The Commission expressed its understanding that the "recourse action" referred to in the paragraph referred not only to judicial proceedings but also to arbitration proceedings.

Articles 13 and 14

160. The Commission decided to retain the substance of the articles unchanged.

Article 15

161. A proposal that the text of article 15 should be relocated to the final clauses was submitted to the drafting group.

162. A proposal was made to delete the words "which is binding on a State which is a party to this Convention or under any law of such State giving effect to or derived from a convention relating to the international carriage of goods". In support of the proposal, it was stated that the Convention should not be subordinate to national law. In favour of retaining the words, it was stated that their purpose was to preserve rights and duties under national legislation that incorporated into national law the provisions of conventions relating to the international carriage of goods. In particular, the words "giving effect" referred to legislation in some countries by which international transport conventions to which those countries were a party were implemented. The words "derived from" referred to laws in other countries derived from and corresponding with the provisions of international transport conventions to which the country had not become a party. The proposal was not accepted. The understanding of the Commission was that the language in question did not subordinate the draft Convention to national laws that were not derived from or did not give effect to a convention relating to the international carriage of goods.

Article 16

163. It was noted that the article was closely modelled on the sample provision for a universal unit of account, adopted by the Commission at its fifteenth session in 1982. 6/ The Commission decided to retain the substance of the paragraph unchanged.

Article 17

General remark

164. The Commission noted that the article was based on the sample amendment procedure for the revision of limits of liability adopted by the Commission at its fifteenth session in 1982 7/ and on article 15 of the Protocol of 1984 to Amend the International Convention on Civil Liability for Oil Pollution Damage (1969).

Paragraph (1)

165. In connection with the term "Contracting State[s]" in the chapeau and in subparagraph (a) of paragraph (1), the Commission returned to a consideration of the terminology that should be used in the draft Convention, i.e. whether the term "Contracting State" or "State Party" should be used (see para. 44 above). One view preferred using the term "State Party" throughout the draft Convention. The decision of the Commission, however, was to replace all references in articles 1 through 16 of the current text to "Contracting State" with references to "State Party" and, in article 17, to retain the reference to "Contracting State" in the chapeau but to change the words "Contracting States" in subparagraph (a) to "States Parties". In reaching that decision, the Commission expressed its intention to conform to the terminology set forth in article 2 of the Vienna Convention on the Law of Treaties. Namely, the term "State Party" was used in order to refer to a State in respect of which the Convention was in force; the term "Contracting State" was used in order to refer to a State that had consented to be bound by the Convention by depositing an instrument of ratification, acceptance, approval or accession, whether or not the Convention had entered into force in respect of that State. The Commission requested the drafting group to implement that intention where relevant in subsequent provisions of article 17 and in the draft final clauses.

166. The following concerns were expressed with respect to subparagraph (b): to base the amendment of the limits of liability in the draft Convention on the amendment of the limits in conventions specified in an exhaustive list was not desirable because some of those conventions could fall into disuse and new conventions could be concluded; since the mechanism provided for in subparagraph (b) was automatic, it could result in an excessive number of convocations of Committees to consider amending the limits in the draft Convention; under the subparagraph, proceedings to amend the limits in the draft Convention would have to be initiated even if no State Party had requested them. Proposals intended to address those concerns included a suggestion that the list of Conventions in subparagraph (b) should be made merely illustrative and not final or exhaustive, that the frequency of convocations of the revision Committee should be restricted and that the mechanism in subparagraph (b) should not apply unless at least one State had also requested the convening of the Committee.

167. Yet another proposal was that subparagraph (b) should be deleted in its entirety. In support of that proposal it was stated that, if there was a need to amend the limits of liability in the draft Convention, a sufficient number of States would request the convocation of a revision Committee under subparagraph (a). The Commission accepted that proposal.

168. The Commission accepted a proposal to insert a provision along the following lines:

> "If the present Convention enters into force more than five years after it was opened for signature, the depositary shall convene a meeting of the Committee within the first year after it entered into force".

169. A suggestion that the substance of the proposal referred to in paragraph 167 above be combined with the current paragraph (5) was referred for consideration to the drafting group.

Paragraph (2)

170. The Commission decided to retain the substance of the paragraph unchanged.

Paragraph (3)

171. It was proposed that paragraph (3) should be deleted as unnecessary as it merely provided that all relevant considerations should be taken into account in deciding upon an amendment of the limits of liability. The prevailing view was that the paragraph usefully pointed out particularly relevant considerations. The Commission accordingly decided to retain the paragraph, subject to suggestions for improving the drafting of the chapeau and for amending subparagraph (a), which were referred to the drafting group for its consideration.

Paragraph (4)

172. A proposal was made, but not accepted, to add to paragraph (4) a sentence along the following lines:

> "Amendments shall be adopted by the Committee by a two-thirds majority of its members present and voting, on the condition that at least one half of the members shall be present at the time of voting".

Paragraph (5)

173. A proposal that paragraph (5) should be moved closer to paragraph (1) was referred to the drafting group for its consideration.

Paragraph (6)

174. It was pointed out that the effect of paragraph (6) was that an amendment would not enter into force until 36 months after its adoption had been notified to Contracting States by the depositary, which was said to be too long. Accordingly, a proposal was made to change each of the two 18-month periods referred to in the paragraph to 12 months, so that it would take only 24 months for an amendment to enter into force. In opposition, it was said that the 18-month periods also appeared in the Protocol of 1984 to Amend the International Convention on Civil

Liability for Oil Pollution Damage (1969), and the period of 18 months in that text represented a compromise. With respect to the first 18-month period in paragraph (6), it was stated that a period of that length was necessary in some countries where an amendment to the limits of liability required parliamentary consideration and action. The decision of the Commission was to retain 18 months as the length of both periods.

Paragraphs (7), (8) and (9)

175. The Commission decided to retain the substance of the paragraphs unchanged.

F. Consideration of draft final clauses prepared by the secretariat (A/CN.9/321) (articles A-I)

176. The Commission discussed final clauses on the basis of draft articles A-I prepared by the secretariat and presented to the Commission in document A/CN.9/321.

Article A

177. The Commission decided to retain the substance of the article unchanged.

Article B

Paragraph (1)

178. It was noted that the paragraph set forth two alternatives for the adoption of the Convention. According to the first alternative, the General Assembly, acting on a recommendation of the Sixth Committee, would finalize and adopt the Convention and open it for signature by States. According to the second alternative, the General Assembly would convene a diplomatic conference that would finalize and adopt the Convention and open it for signature. Because of the decision of the Commission to recommend to the General Assembly that it refer the draft Convention to a diplomatic conference, it adopted the second of the two alternatives (see para. 225 below).

Paragraphs (2), (3) and (4)

179. The Commission decided to retain the substance of the paragraphs unchanged.

Article C

180. The Commission decided to retain the substance of the article unchanged.

Article D

181. A proposal was made that States should be permitted to make a reservation excluding the application of article 12, which dealt with the period of time within which judicial or arbitral proceedings could be instituted. It was stated that, in the legal system of at least one State, judicial proceedings involving the

subject-matter covered by the draft Convention could not be time-barred and that, if no reservation was permitted, such a State might not be able to adhere to the Convention.

182. Another proposal was that States should be permitted to make a reservation restricting the application of the Convention to certain types of terminal operators. It was said that transport-related services were performed by a wide variety of terminals serving different modes of transport, handling different types of goods and using technologies of different degrees of sophistication, and that States might regard it as undesirable to submit all such operations to a single legal régime. In further support of the proposals it was said that the possibility of making reservations would make it possible for a larger number of States to become parties to the Convention.

183. In opposition, it was said that to permit reservations would defeat the objective of uniformity of law that was sought by the draft Convention. Furthermore, the proposal to permit States to restrict the application of the Convention to certain types of terminal operators was said to be contrary to the objective of filling gaps left by international conventions regulating various modes of transport. Although the view was expressed that the decision as to whether to permit reservations should be left to the diplomatic conference, the prevailing view was that the draft Convention should expressly provide that no reservations could be made to the Convention.

Article E

184. The Commission decided to retain the substance of the article unchanged.

Article F

Paragraph (1)

185. Various views were expressed with respect to the number of ratifications or similar actions that should be required in order for the Convention to enter into force. According to one view, five ratifications or similar actions, as set forth within square brackets in the present text of article F, were too few, since only a substantially higher number would be consistent with the objective of the draft Convention to achieve unification of the law relating to the liability of terminal operators. Numbers such as 15, 20 (as required by the Hamburg Rules) or 30 (as required by the Multimodal Convention) were proposed.

186. According to another view, the number of ratifications or similar actions necessary to bring the Convention into force should be low. It was stated that a low number was more apt to achieve uniformity. Requiring a higher number would delay the entry of the Convention into force for a considerable period of time. A low number would enable the Convention to enter into force at an earlier date, and experience with other Conventions showed that the entry into force of a convention had the effect of attracting additional parties. It was also stated that States not wishing to apply the Convention could simply refrain from becoming a party to it, but they should not, by requiring a high number of ratifications or similar actions, prevent the Convention from entering into force as soon as possible for

those States which wanted it. After extensive discussion, the Commission decided to fix the number at five.

Paragraphs (2) and (3)

187. The Commission decided to retain the substance of the paragraphs unchanged.

Article G

Paragraph (1)

188. With respect to the references to "Contracting States", the Commission decided to conform to its decision with respect to article 17 (1) (see para. 165 above) and to change paragraph (1) of article G to read along the following lines:

> "At the request of not less than one third of the States Parties to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it".

Paragraph (2)

189. The Commission decided to retain the substance of the paragraph unchanged.

Article H

190. A proposal to incorporate into the final clauses the provisions of article 17 in the current text was referred to the drafting group.

Article I

191. The Commission decided to retain the substance of the article unchanged.

Concluding clause

192. The Commission decided to retain the substance of the concluding clause unchanged.

G. Consideration of articles of the draft Convention submitted by the drafting group (articles 1-25)

193. The text of the draft Convention submitted by the drafting group incorporated into the text as approved by the Working Group on International Contract Practices at its eleventh session (A/CN.9/298, annex I) the decisions taken by the Commission at its current session. The text also reflected drafting changes designed to increase understanding, ensure consistency within each language version and correspondence among the various language versions.

194. The following paragraphs reflect modifications made by the Commission to certain of the draft articles submitted by the drafting group. Other minor

modifications, and especially those not affecting all language versions, are not specifically mentioned. Subject to those modifications, the text of the draft articles submitted by the drafting group is as set forth in annex I to the present report. The following paragraphs also reflect the discussion within the Commission on certain of the draft articles submitted by the drafting group.

Title of the draft Convention

195. In reference to the words "in International Trade" that appeared at the end of the title, the view was expressed that "in International Transportation" would more appropriately express the scope of the draft Convention. It was noted that some types of goods that would be covered by the draft Convention, for example, equipment and displays for exhibitions and disaster relief supplies, would be involved in international transportation but not in international trade. The Commission approved the title as submitted by the drafting group.

Article 1

196. The Commission agreed that examples of transport-related services set forth in subparagraph (d) clearly indicated that those services included only physical activities and not, for example, financial services. The Commission approved the article as submitted by the drafting group.

Article 2

197. The question was raised as to whether it was necessary to define "State Party". It was agreed that the understanding of the Commission as to the meaning of that term as reflected in the present report (see para. 165 above) was sufficient. The Commission approved the article as submitted by the drafting group.

Article 3

198. The Commission approved the article as submitted by the drafting group.

Article 4

Paragraph (1)

199. Certain reservations were expressed with respect to the text of the paragraph. Opposition was expressed to the decision to delete from paragraph (1) (a) the reference to the condition and quantity of the goods. The Commission approved the paragraph as submitted by the drafting group.

Paragraphs (2) and (3)

200. The Commission approved the paragraphs as submitted by the drafting group.

Paragraph (4)

201. Reservations were expressed with respect to the paragraph as submitted by the drafting group, which was based on article 14 (3) of the Hamburg Rules. Those reservations concerned the proviso making the form of signature depend upon national law, and to the fact that the paragraph restricted permitted forms of signature to those effected by mechanical or electronic means. Preference was expressed for a provision along the following lines: "'Signature' means a handwritten signature, its facsimile or an equivalent authentication effected by any other means". That definition was derived from article 5 (k) of the United Nations Convention on International Bills of Exchange and International Promissory Notes (1988). The Commission approved the paragraph as submitted by the drafting group.

Article 5

202. The Commission approved the article as submitted by the drafting group.

Article 6

203. In connection with paragraph (1) (b), the view was expressed that the paragraph did not reflect the decision of the Commission to the effect that the lower limit of liability should apply only if it appeared from objective indications available to the operator that the goods were carried to or were to be carried from the operator by sea or by inland waterways. The Commission approved the article as submitted by the drafting group.

Article 7

204. A reservation was expressed with respect to the heading of the article as decided by the Commission and reflected in the heading submitted by the drafting group; it was stated that the heading did not accurately reflect the substance of the article, which dealt with contractual as well as non-contractual claims. The Commission brought the heading as it appeared in some language versions other than English into conformity with the heading in the English version, and approved the article as submitted by the drafting group.

Article 8

205. A reservation was expressed with respect to the heading of the article as decided by the Commission and reflected in the article submitted by the drafting group, on the grounds that the use of the word "right" implied that the operator could decide whether or not to limit his own liability. The Commission approved the article as submitted by the drafting group.

Article 9

206. Dissatisfaction was expressed with the placement of the word "lawful" in paragraph (a), which was said to lead to the interpretation that only "other means"

taken by the operator to dispose of the dangerous goods must be lawful, and that the operator could destroy the goods or render them innocuous by unlawful means. According to another view, the word "lawful" should not be used at all since it would imply that the destruction of goods in general was lawful. Instead, the paragraph should require that the goods be destroyed or disposed of in a manner that did not cause environmental damage. The Commission approved the article as submitted by the drafting group.

Article 10

207. A reservation was expressed with respect to paragraph (1) on the ground that it did not reflect the decision of the Commission that the operator's right of retention should cover not only costs and claims that were incurred during his period of his responsibility for the goods, but also those which were incurred after his period of responsiblity had expired. The Commission approved the article as submitted by the drafting group.

Article 11

208. In connection with paragraph (2), preference was expressed for using the words "final destination" rather than the words "final recipient" as decided by the Commission. The Commission approved the article as submitted by the drafting group.

Article 12

209. A reservation was expressed with respect to the decision of the Commission to retain article 12. The Commission approved the article as submitted by the drafting group.

Articles 13, 14, 15, 16, 17 and 18

210. The Commission approved the articles as submitted by the drafting group.

Article 19

211. It was decided to delete the word "Contracting" from paragraphs (1) and (4). A view was expressed that paragraph (3) should be amended to take account of the provision contained in article 2 (1) (b), which had been added by the Commission. Subject to the deletion of the word "Contracting", the Commission approved the article as submitted by the drafting group.

Article 20

212. The view was expressed that States should be permitted to make reservations to the Convention. Accordingly, opposition was expressed to the article as submitted by the drafting group. The Commission decided to approve the article.

Articles 21, 22 and 23

213. The Commission approved the articles as submitted by the drafting group.

Article 24

Paragraph (1)

214. Regret was expressed that the Commission had decided to delete subparagraph (b). The Commission approved the paragraph as submitted by the drafting group.

Paragraphs (2) and (3)

215. The Commission approved the paragraphs as submitted by the drafting group.

Paragraph (4)

216. The view was expressed that the transport-related conventions referred to in paragraph (4) (a) were those listed in A/CN.9/298, annex II. The Commission approved the paragraph as submitted by the drafting group.

Paragraphs (5), (6) and (7)

217. The Commission approved the paragraphs as submitted by the drafting group.

Paragraph (8)

218. Views were expressed that the words "State Party" should be changed to "Contracting State" or to "State", on the grounds that the paragraph as submitted by the drafting group did not provide for the situation where a State that had ratified or acceded to the Convention, but in respect of which the Convention had not yet entered into force, wished to denounce it. In opposition, it was stated that the paragraph related to and was consistent with paragraph (7), which dealt with acceptance and entry into force of amendments in relation to States Parties. The Commission approved the paragraph as submitted by the drafting group.

Paragraphs (9) and (10)

219. The Commission approved the paragraphs as submitted by the drafting group.

Article 25

220. The Commission approved the article as submitted by the drafting group.

Concluding clause

221. The Commission approved the concluding clause as submitted by the drafting group.

222. The Commission expressed its appreciation to the Working Group on International Contract Practices for having prepared a draft Convention of such high quality. The Commission also expressed its appreciation to the Chairman of the Working Group during its preparation of the draft Convention, Mr. Michael Joachim Bonell, Italy, and to the Chairman of the present session, Mr. Jaromir Ruzicka, Czechoslovakia, who presided over the consideration and adoption of the draft Convention by the Commission.

H. Procedure for adopting the draft Convention as a convention

223. The Commission considered the procedures that might be followed for the adoption of the draft Convention as a convention. A statement of the financial implications of holding a diplomatic conference was made by the secretariat. The Commission expressed its strong preference for recommending that the General Assembly convene a diplomatic conference to adopt the Convention. The Commission was of the view that it had established a draft Convention that provided comprehensive and soundly based legal rules regulating an important element of international trade. It recognized, however, that certain issues in particular articles had not been finally settled and that certain aspects of the draft Convention could be improved even further. It was confident that a final round of negotiations would lead to agreement on those issues and improvements.

224. In order to achieve those results, the Commission regarded it as particularly important that the further negotiations involve the participation of all States, especially those which were not members of the Commission and had not participated in the preparation of the draft Convention, as well as specialists in international transport law. In view of the fundamentally practical aspects of the draft Convention, it was important that representatives of the various relevant commercial and economic interests (e.g., terminal operators, carriers, shippers and insurers) should also participate. Broad-based participation by those States, specialists and interests was regarded as essential for the remaining issues to be settled in a satisfactory manner and for the Convention to meet with world-wide acceptance. The Commission regarded a diplomatic conference as the most desirable forum for the conduct of such negotiations.

I. Decision of the Commission and recommendation to the General Assembly

225. At its 426th meeting, on 2 June 1989, the Commission adopted by consensus the following decision:

The United Nations Commission on International Trade Law,

Recalling that, at its sixteenth session, in 1983, it decided to include the topic of liability of operators of transport terminals in its programme of work and, at its seventeenth session, in 1984, assigned to its Working Group on International Contract Practices the task of preparing uniform legal rules on that topic,

Noting that the Working Group on International Contract Practices devoted four sessions to the preparation of the draft Convention on the Liability of Operators of Transport Terminals in International Trade,

Noting further that the Commission has considered the text of the draft Convention at its twenty-second session, in 1989,

Being convinced that, in order to achieve world-wide acceptability of the Convention, the final negotiations leading to the adoption of the Convention should involve the participation of all States, specialists in international transport law and representatives of the relevant commercial and economic interests,

1. Submits to the General Assembly the draft Convention on the Liability of Operators of Transport Terminals in International Trade, as set forth in annex I to the present report;

2. Recommends that the General Assembly should convene an international conference of plenipotentiaries for a duration of three weeks in 1991 to conclude, on the basis of the draft Convention approved by the Commission, a Convention on the Liability of Operators of Transport Terminals in International Trade.

III. INTERNATIONAL PAYMENTS

226. The Commission decided, at its nineteenth session, in 1986, to begin the preparation of model rules on electronic fund transfers and to entrust that task to the Working Group on International Payments. 8/ The Working Group commenced its work at its sixteenth session, in November 1987, by considering a list of legal issues that might be considered for inclusion in the model rules contained in a report prepared by the secretariat. At the end of its session the Working Group requested the secretariat to prepare draft provisions based on the discussions in the Working Group for its consideration at its next session (A/CN.9/297, para. 98).

227. The Commission had before it at its current session the reports of the seventeenth and eighteenth sessions of the Working Group (A/CN.9/317 and 318). At its seventeenth session the Working Group considered the draft provisions prepared by the secretariat and requested that they be redrafted on the basis of the discussion at that session. At its eighteenth session the Working Group considered the provisions that had been redrafted by the secretariat.

228. The Working Group at its eighteenth session decided that for the time being the provisions should be prepared in the form of a model law and that the scope of application should be limited to those credit transfers which were international in nature. It decided, however, that the model law should apply to all international credit transfers without regard to whether they were in electronic or paper-based form. Therefore, it decided that the title of the draft provisions should be the draft Model Law on International Credit Transfers.

229. The Commission took note with appreciation of the reports of the Working Group and recommended that it continue its efforts with a view to presenting a text to the Commission for its consideration at its twenty-fourth session, in 1991.

IV. NEW INTERNATIONAL ECONOMIC ORDER

230. The Commission, at its nineteenth session, in 1986, decided to undertake work in the area of procurement as a matter of priority and entrusted that work to the Working Group on the New International Economic Order. 9/ At its current session, the Commission had before it the report of the Working Group on the work of its tenth session (A/CN.9/315).

231. The report indicated that the Working Group had engaged in an examination of the major issues arising in connection with procurement and had discussed ways in which those issues might be treated. It had decided to embark on the preparation of a model procurement law in order to assist countries, developed and developing, in restructuring or improving their procurement laws and procedures or in establishing sound procurement laws where none presently existed.

232. The Commission expressed appreciation for the work performed by the Working Group thus far. The discussions at the tenth session of the Working Group were said to constitute a sound basis for the further work of the Working Group.

233. It was observed that work was in progress within the General Agreement on Tariffs and Trade (GATT) directed towards the enlargement of the scope of the GATT Agreement on Government Procurement, and the view was expressed that the Working Group should take developments within GATT into account in the preparation of the model procurement law. It was noted that participants in the work within GATT, as well as an observer from the GATT secretariat, had participated in the tenth session of the Working Group, permitting mutual exchanges of views and information that would be useful in the further work of GATT and of the Commission in their respective projects. It was also noted that the work of the Commission would not duplicate that of GATT because the scope and objectives of the two projects differed in a number of respects.

234. The view was expressed that the model procurement law under preparation within the Working Group should take account of the particular needs of foreign participants in procurement proceedings, as well as existing regional arrangements in relation to procurement.

235. The Commission endorsed the view of the Working Group concerning the desirability of greater participation by developing countries in the work of the Working Group. The Commission requested the Working Group to proceed with its work expeditiously.

V. GUARANTEES AND STAND-BY LETTERS OF CREDIT

236. The Commission, at its twenty-first session, in 1988, considered the report of the Secretary-General on stand-by letters of credit and guarantees (A/CN.9/301). Agreeing with the conclusion of the report that a greater degree of certainty and uniformity was desirable, the Commission noted with approval the suggestion in the report that future work could be carried out at two levels, the first relating to contractual rules or model terms and the second pertaining to statutory law. 10/

237. With respect to the first level, the Commission welcomed the work undertaken by the International Chamber of Commerce (ICC) in preparing draft Uniform Rules for Guarantees and agreed that comments and possible recommendations by the States members of the Commission, with its balanced representation of all regions and the various legal and economic systems, could help to enhance the world-wide acceptability of such rules. Accordingly, the Commission decided to devote one session of the Working Group on International Contract Practices to a review of the ICC draft Uniform Rules for Guarantees in order to assess the world-wide acceptability of the draft Rules and to formulate comments and possible suggestions that ICC could take into account before finalizing the draft Rules. 11/

238. The Commission also asked the Working Group to examine the desirability and feasibility of any future work relating to the second level as envisaged in the conclusions of the report, namely, the idea of striving for greater uniformity at the statutory level, through work towards a uniform law. 12/

239. At its current session, the Commission had before it the report of the Working Group on International Contract Practices on the work of its twelfth session (A/CN.9/316). The Commission noted that the Working Group had engaged in a review of the ICC draft Uniform Rules for Guarantees, as well as a discussion of the desirability and feasibility of achieving greater uniformity at the statutory level. The Commission also noted the recommendation of the Working Group that work be initiated on the preparation of a uniform law, whether in the form of a model law or in the form of a convention.

240. The observer from ICC stated that the report of the Working Group, which contained the observations and recommendations made with respect to the ICC draft Rules, had been discussed within ICC and that a modified version of the draft Rules was being circulated among that organization's national bodies. It was hoped that a final draft text could be adopted by the end of 1989 with a view to the entry into effect of the Rules on 1 January 1990.

241. The view was expressed that the Commission's review of the draft Rules should not set a precedent for review by the Commission of texts developed by other organizations when those texts were still in a preparatory rather than a final form. In response, it was stated that a distinction had to be made between the case of another organization preparing a text that would be finalized and sponsored by the Commission and the case of a text being prepared and sponsored by another organization. In the latter case, it might be desirable that the views of the Commission be elicited at a preliminary stage.

242. There was wide support for the recommendation of the Working Group that the Commission initiate work on a uniform law. It was felt that the elaboration of a

uniform law by the Commission would respond to an urgent need for uniform legislation in the field of guarantees and stand-by letters of credit.

243. The view was expressed that a decision on such work should be held in abeyance until the entry into effect and operation for some time of the ICC Uniform Rules for Guarantees. It was stated in reply that the elaboration of a uniform law at the statutory level could proceed without duplicating the work of ICC on uniform rules because of the different nature of the two projects. The ICC Rules were of a contractual nature and, as indicated in the report of the Working Group, left important gaps that could only be closed at the statutory level.

244. After deliberation, the Commission decided that work on a uniform law should be undertaken. It entrusted this task to the Working Group on International Contract Practices and requested the secretariat to prepare the necessary documentation.

VI. INTERNATIONAL COUNTERTRADE

245. The Commission, at its nineteenth session, in 1986, in the context of its discussion of a note by the secretariat entitled "Future work in the area of the new international economic order" (A/CN.9/277), considered its future work on the topic of countertrade. There was considerable support in the Commission for undertaking work on the topic, and the secretariat was requested to prepare a preliminary study on the subject. 13/

246. At its twenty-first session, in 1988, the Commission had before it a report entitled "Preliminary study of legal issues in international countertrade" (A/CN.9/302), which contained a description of contractual approaches to countertrade and an enumeration of some of the more important legal issues involved in that type of trade. At that session, the Commission decided that it would be desirable to prepare a legal guide on drawing up countertrade contracts. It was considered, however, that such a legal guide should not duplicate the work of other organizations. The Commission requested the secretariat to prepare a draft outline of a legal guide in order for it to decide what future action might be taken. 14/ At the current session, the Commission had before it a report entitled "Draft outline of the possible content and structure of a legal guide on drawing up international countertrade contracts" (A/CN.9/322).

247. Various views were expressed as to whether the Commission should continue work in the area. On the one hand, it was said that international countertrade was detrimental to both developed and developing States in that it introduced elements of bilateralism and price-setting in place of multilateralism and price competition. The elaboration of a legal guide on countertrade by the Commission might be understood as an approval of that type of trade and might encourage parties to engage in it. On the other hand, it was said that an appreciable share of international trade was conducted by the use of countertrade arrangements and that such arrangements gave rise to legal difficulties to which parties often did not find optimal solutions. Such difficulties were particularly troublesome in developing countries, which were often compelled to resort to countertrade because of a shortage of foreign exchange.

248. One suggestion was that the Commission should discontinue work in the area. Another suggestion was that the Commission should postpone its work until the Economic Commission for Europe, which was preparing a guide on legal aspects of commercial compensation contracts and industrial compensation contracts, had completed its work. At that time the Commission would be in a better position to decide on the work to be undertaken by it.

249. The prevailing view was that a legal guide on drawing up international countertrade contracts should be prepared by the Commission. The fact that the Commission was a specialized legal body that included States at different levels of economic development meant that its work would not duplicate work undertaken by other bodies. The Commission requested the secretariat to prepare for the next session of the Commission draft chapters of the legal guide. The Commission considered that the draft outline of the possible content and structure of such a legal guide already prepared by the secretariat provided a good basis for the commencement of its future preparatory work.

VII. CO-ORDINATION OF WORK

250. The Commission had before it a report of the Secretary-General on current activities of international organizations related to the harmonization and unification of international trade law (A/CN.9/324). That report updated the information contained in an earlier report on the same subject submitted to the Commission at its nineteenth session (A/CN.9/281). The current report dealt with the activities under the following headings: international commercial contracts in general; commodities; industrialization; transnational corporations; transfer of technology; industrial and intellectual property law; international payments; international transport; international commercial arbitration; private international law; trade facilitation; and other topics of international trade law, congresses and publications.

251. The Secretary of the Commission noted that, while it had been the practice to submit a report on the current activities of international organizations every three years, the secretariat intended in the future to submit such reports on a more frequent basis.

252. The observer for ICC reported that an ICC working party was currently updating the 1980 edition of Incoterms, the ICC standardized trade terms for international sales contracts. The purpose of the revision was to replace certain terms in the 1980 edition with terms that were relevant to modern trade practices, such as the use of containers and roll-on roll-off techniques. The new edition would also take into account the substitution of paper-based transport documents by electronic documentation. In addition to introducing new terms, the new edition would present Incoterms in a rearranged order to allow uninitiated users to be able to identify terms on the basis of their departure and arrival character. The observer for ICC stated that, as had been the practice with respect to the Uniform Customs and Practice for Documentary Letters of Credit, the updated Incoterms would be submitted to the Commission for its endorsement.

253. The observer for the Council for Mutual Economic Assistance (CMEA) stated that work was continuing on the improvement of the legal foundations for co-operation among States members of CMEA and their organizations. At its forty-third session, in October 1987, CMEA recognized the advisability of improving the contract law rules and general conditions for economic and scientific and technical co-operation among economic organizations of the States members of CMEA, and also of the convergence or harmonization by the concerned countries of the related national legal rules. In 1988 a revised text of the General Conditions Governing Delivery of Goods among Organizations of CMEA member States was completed, with a view to its application as from 1 July 1989. The preparation of the legal guide for the formulation of contracts on production co-operation between economic organizations of the States members of CMEA has been completed. The countries concerned have adopted a model article on international ad hoc arbitration and the rules for such arbitration. A comparative study of the provisions of the general conditions of CMEA deliveries and the United Nations Convention on Contracts for the International Sale of Goods would be prepared within the CMEA Standing Commission on Legal Matters. Other CMEA activities included the preparation of information and reference materials on the legislation of the States members of CMEA governing the establishment and operations of joint ventures, combines and institutions, and also the establishment of direct production and scientific-technical links between economic organizations of States members of CMEA.

254. The observer for the International Maritime Committee (CMI) referred to the ongoing preparation by that organization of draft uniform rules for incorporation into sea waybills. CMI was also studying the possibility of developing electronic means for the transfer of rights to goods in transit. With respect to the CMI Committee on the Unification of the Law of the Carriage of Goods by Sea in the 1990s, it was expected that guidelines would be prepared for submission to the 1990 Congress of CMI to be held in Paris concerning problems not adequately covered by the current legal régimes.

255. The observer for the International Institute for the Unification of Private Law (UNIDROIT) reported that the Governing Council of UNIDROIT had expressed its satisfaction at the progress of work in the Commission on the draft Convention on the Liability of Operators of Transport Terminals in International Trade, work that had been begun by a special study group of UNIDROIT and subsequently taken over by the Commission. The observer for UNIDROIT also referred to the expected adoption in October 1989 by the Inland Transport Committee of the Economic Commission for Europe of a Convention on Liability for Damage Caused during the Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels. Work on that text had also been initiated within UNIDROIT. With respect to the Convention on International Financial Leasing and the Convention on International Factoring, developed within UNIDROIT and adopted in May 1988 at Ottawa, the observer for UNIDROIT reported that a number of States had signed the two instruments and that their early entry into force was expected.

256. As to the current work of UNIDROIT, the observer for UNIDROIT stated that the study group on progressive codification of international trade law was nearing the completion of its work on general principles applicable to international commercial contracts. Work was also proceeding within UNIDROIT relating to the international protection of cultural property. Other topics on the current work programme relating to international trade law included franchising, security interests in mobile equipment and commercial agency.

257. The observer for the Asian-African Legal Consultative Committee (AALCC) spoke of the fruitful co-operation between the Commission and AALCC. He noted that AALCC at its annual sessions regularly considered the work of the Commission from the Asian-African perspective and that observations made with respect to that work were of mutual benefit. He also noted the contribution of the Commission and its secretariat to the seminars on international trade law organized by AALCC and pointed out the importance of such seminars for the promotion of the results of work of the Commission in the Asian-African region. With respect to the work of AALCC, the observer informed the Commission that AALCC was preparing a legal guide on industrial joint ventures, and that it was considering legal norms and principles for restructuring Third World indebtedness. He said that in 1989 AALCC established a regional centre for arbitration at Lagos.

258. The observer for the Cairo Arbitration Centre, which was established under the auspices of AALCC, reported that the Centre had held its first training programme for African and Asian arbitrators in November 1988. The International Development Law Institute, the American Arbitration Association, ICC and the International Centre for the Settlement of Investment Disputes had participated in the programme and arbitrators from seven African and Asian countries had attended. Additional training programmes were scheduled to be held at Jeddah in November 1989 and, provisionally, at Cairo in January 1990. The Cairo Centre was also planning to

establish an international institute for investment and arbitration to provide training for lawyers, businessmen and government officials from Africa and Asia.

259. The observer for the Inter-American Commercial Arbitration Commission (IACAC) informed the Commission of the last meeting of the Council of IACAC, which was held on 9 May 1989 at Cartagena, Colombia. He pointed out the continuing efforts of IACAC in promoting the acceptance of the Inter-American Convention on International Commercial Arbitration (Panama, 1975) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). He informed the Commission that IACAC was to hold in the last days of September 1989 the tenth inter-American commercial arbitration conference.

260. The observer for the Hague Conference on Private International Law informed the Commission of topics on the programme of work of the Conference that were relevant to the work of the Commission. Those topics included the preparation of a convention on the law applicable to negotiable instruments. The Permanent Bureau of the Conference was drawing up a report dealing on the one hand with the revision of the Geneva Conventions of 1930 and 1931 on certain conflicts of laws concerning bills of exchange and promissory notes and concerning cheques, and on the other hand with the specific problems of conflict of laws that might be raised by the United Nations Convention on International Bills of Exchange and International Promissory Notes. Furthermore, the Conference was considering private international law issues of automatic data processing, multimodal transport of goods, and of contractual obligations in general.

261. The observer for the Latin American Federation of Banks informed the Commission that one of the resolutions of the General Assembly of Governors held in April 1989 was that banks in Latin America should encourage the adherence by their countries to the United Nations Convention on International Bills of Exchange and International Promissory Notes.

VIII. STATUS OF CONVENTIONS

A. Convention on the Limitation Period in the International Sale of Goods

262. The Commission noted that upon the coming into force on 1 August 1988 of the Convention on the Limitation Period in the International Sale of Goods and of the 1980 Protocol that amended the Convention, the Secretary-General, as the depositary of the Convention, was called on by article XIV (2) of the Protocol to prepare a text of the Convention as amended by the Protocol. The Commission further noted that by depositary notification dated 17 April 1989 the Secretary-General had circulated a text of the Convention as it was proposed to be amended. The depositary notification indicated that, if the Secretary-General received no objections to the proposed text of the Convention as amended, it would be published as the definite text.

263. The Secretary informed the Commission that the proposed text of the amended Convention had been established in the five languages in which the diplomatic conference had been held in 1974. Since Arabic had not been one of the languages of the diplomatic conference, the Convention did not exist in that language. However, the 1980 Protocol amending the Convention did exist in Arabic.

264. The Commission decided that it should request that an Arabic language version of the Convention as amended should be established. To this end, it requested the Secretary-General to prepare a translation of the Convention as amended into Arabic. The translation would be reviewed at the twenty-third session of the Commission in 1990 at which time the Commission would propose a text to the Secretary-General that might be circulated by depositary notification, giving all States the opportunity to comment on the proposed text before it was published as the definitive Arabic language version of the Convention as amended.

B. Signatures, ratifications, accessions and approvals

265. The Commission considered the state of signatures, ratifications, accessions and approvals of conventions that were the outcome of its work, that is, the Convention on the Limitation Period in the International Sale of Goods, the Protocol amending the Limitation Convention, the United Nations Convention on the Carriage of Goods by Sea (1978, the Hamburg Rules), and the United Nations Convention on Contracts for the International Sale of Goods. The Commission also considered the status of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), which, although it had not emanated from the work of the Commission, was of particular interest to it with regard to its work in the field of international commercial arbitration. In addition, the Commission took note of the jurisdictions that had enacted legislation based on the UNCITRAL Model Law on International Commercial Arbitration. The Commission had before it a note by the secretariat on the status of those Conventions and of the Model Law as at 16 May 1989 (A/CN.9/325).

266. The Commission noted with great satisfaction that since the report submitted to the Commission at its twenty-first session, in 1988, an additional four States had ratified or acceded to the United Nations Sales Convention: Australia, Denmark, German Democratic Republic and Norway. This brought the number of States

that had ratified or acceded to the Convention to 19. Representatives and observers of a number of other States reported that official action was being taken that was expected to lead to the ratification of or accession to the Convention in the near future.

267. The Commission expressed its great pleasure at the fact that an additional seven States had ratified or acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards: Algeria, Antigua and Barbuda, Argentina, Bahrain, Dominica, Kenya and Peru. Not only was this the largest number of States that had ratified or acceded to the Convention in any comparable period in its 30-year history, but the geographical distribution demonstrated the widespread appreciation of the benefits to be gained by being party to the Convention. The hope was expressed that those States which had not as yet acceded to the Convention would do so in the near future.

268. In addition, the Commission was informed that since the last report in 1988 legislation based on the UNCITRAL Model Law on International Commercial Arbitration had been enacted in Australia, Bulgaria and Nigeria, in the Canadian Provinces of Ontario and Saskatchewan and in the State of California in the United States of America.

269. In respect of the Hamburg Rules, the Commission was informed that Nigeria and Sierra Leone had ratified or acceded to the Convention, bringing the total to 14. In view of the number of States that were expected to complete the process leading to ratification of or accession to the Convention in 1989, the Secretary of the Commission re-affirmed the expectation of the secretariat stated at the twenty-first session of the Commission, in 1988, that by the end of 1989 at least the 20 States necessary for the Convention to come into force would have ratified or acceded to it.

270. A number of representatives and observers indicated that their Governments were following developments in respect of the Hamburg Rules with interest and that they would review their position once the Convention came into force with a view to ratifying or acceding to it.

271. The Secretary informed the Commission that the United Nations Convention on International Bills of Exchange and International Promissory Notes had been prepared in its definitive form and was available for signature, ratification, acceptance, approval and accession. True copies had been distributed to the treaty sections of the ministries of foreign affairs, and copies of the Convention had been distributed at the session of the Commission. Several representatives and observers stated that the consultation process had been undertaken to determine whether their Governments would sign the Convention. The Secretary stated that the report on the status of conventions to be submitted to the twenty-third session of the Commission would contain information on actions taken in respect of the Convention.

IX. TRAINING AND ASSISTANCE

272. The Commission had before it a note by the secretariat that set out the activities that had been carried out in respect of training and assistance during the prior year as well as possible future activities in that field (A/CN.9/323). The note indicated that since the Commission had stated at its twentieth session in 1987 "that training and assistance was an important activity of the Commission and should be given a higher priority than it had in the past", 15/ the secretariat had endeavoured to plan a more extensive programme of activities than had previously been carried out. In doing so the secretariat had kept in mind the decision of the Commission at its fourteenth session, in 1981, that a major purpose of the training and assistance activities should be the promotion of the texts that had been prepared by the Commission. 16/

273. The Commission had been informed at its twenty-first session, in 1988, that the secretariat was planning to organize a seminar at Maseru in 1988 in co-operation with the Government of Lesotho and the Preferential Trade Area of Eastern and Southern African States (PTA). The Seminar was held from 25 to 30 July 1988.

274. A total of 34 individuals, amongst whom were senior government officials, representatives from chambers of industry and commerce and from the universities, from 14 countries (Burundi, Djibouti, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Mozambique, Rwanda, Swaziland, Uganda, United Republic of Tanzania, Zambia and Zimbabwe), along with an additional 36 persons from Lesotho, participated in the seminar. The seminar considered the conventions and other legal texts prepared by the Commission.

275. The Commission noted that the results of the seminar had been discussed at the meeting of the PTA Committee of Legal Experts held at Lusaka from 6 to 8 October 1988, where the Committee had concluded that, "considering the relevance of these texts to the success of the PTA economic arrangement, the PTA member States should be urged to consider and possibly adopt these texts" (report of the first meeting of the Committee of Legal Experts, PTA/TC/LEG/I/9, para. 66). The report of the seminar was noted by the PTA Council of Ministers at its thirteenth meeting, held at Arusha, United Republic of Tanzania, from 26 to 29 November 1988. As the Council noted:

> "The most important aspect of the Seminar was that the participants appreciated that the adoption by member States of the UNCITRAL legal texts would contribute to the objectives of the PTA because they were intended to minimize discrepancies in existing national legislations. Council was informed that the participants would recommend to their Governments that they adopt the different UNCITRAL texts."

(Report of the thirteenth meeting of the Council of Ministers, PTA/CM/XIII/5, paras. 347-348.)

276. The Commission expressed its satisfaction with the results of the seminar. It requested the secretariat to remain in contact with the secretariat of PTA and with the participants in the seminar with a view to maintaining their interest in the work of the Commission and of the consideration and possible adoption by the States concerned of the texts prepared by the Commission.

277. The Commission, at its twenty-first session, in 1988, had expressed its agreement with the plan of the secretariat to hold a symposium on the work of the Commission in connection with the twenty-second session of the Commission. 17/ The symposium was held during the second week of the Commission's session, from 22 to 26 May 1989.

278. Approximately 250 applications for the seminar were received from 90 countries. Funds had been available to award 32 scholarships to cover the travel expenses of participants from developing countries. An additional 48 individuals participated without financial support.

279. Lectures on the conventions and other legal texts prepared by the Commission were given by representatives and observers who had participated in the preparation of the texts and by members of the secretariat.

280. The secretariat reported that the participants had expressed their appreciation of the opportunity to learn more about the work of the Commission. Participants from developing countries, in particular, had emphasized that activities such as those at the Commission were an important vehicle through which to spread knowledge and expertise in international trade law and to promote the adoption and use of the texts prepared by the Commission.

281. Representatives and observers at the session who had given lectures to the symposium expressed their satisfaction with the interest shown by the participants and with the high quality of the questions posed and of the discussion at the symposium.

282. The Commission expressed its appreciation to all those who had participated in the organization of and who had given lectures at the seminar in Lesotho and at the symposium. In particular, the Commission expressed its appreciation to Denmark, Finland, the Netherlands, Norway, Sweden and the United States of America, which had contributed to the financing of the seminar in Lesotho, and to Austria, Canada, Denmark, Finland and Sweden, which had contributed to the financing of the symposium. The Commission took note with appreciation that Finland had pledged the sum of 100,000 markkaa (approx. 23,000 United States dollars) per year for a period of four years for the support of the Commission's programme of training and assistance. The Commission also noted with appreciation that Switzerland had pledged the sum of 50,000 francs per year for a period of four years for the support of the general programme of the Commission, and that it had been possible to use some of those funds for the symposium.

283. The Commission was informed that the secretariat expected to intensify even further its efforts to organize or co-sponsor seminars and symposia on international trade law, especially for developing countries. In view of the interest in the symposium held during the current session and of the advantages of holding symposia in connection with the sessions of the Commission when they were held at the location of the Commission's secretariat at Vienna, it was intended to organize a symposium on the occasion of the twenty-fourth session of the Commission, in 1991.

284. A seminar for the purpose of promoting the texts prepared by the Commission among the Asian member States of the Asian-African Legal Consultative Committee would be held at New Delhi in October 1989 jointly with AALCC. The secretariat had been invited to participate in two seminars to be organized during 1989 by the

Caribbean Community on the carriage of goods by sea at which the Hamburg Rules would be one of the major subjects of consideration.

285. A seminar on the work of the Commission was planned to be held in Moscow in March 1990 for participants from developing countries. The seminar would be financed from a trust fund established by the Soviet Union with the United Nations Development Programme for training of individuals from developing countries.

286. The secretariat reported that it was holding discussions for further seminars to be held in developing countries in different parts of the world. It was hoped that financing would be available both for larger seminars and symposia based on the model of the seminar in Lesotho and the symposium held at the current session and for smaller events that might involve fewer participants and a more restricted list of subjects. It was said that both types of events were useful in a programme of seminars and symposia for the promotion of the work of the Commission.

287. The Commission expressed its approval of the efforts of the secretariat to conduct an increased programme of seminars and symposia. It recalled the invitation of the General Assembly in paragraph 5 (c) of resolution 43/166 of 9 December 1988 to Governments, the relevant United Nations organs, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Symposia Trust Fund for the financing of such activities. The Commission also recalled its own invitation made at its twenty-second session that such voluntary contributions be made, where possible, on an annual basis. 18/

X. RELEVANT GENERAL ASSEMBLY RESOLUTIONS AND OTHER BUSINESS

A. General Assembly resolutions on the work of the Commission

288. The Commission took note with appreciation of General Assembly resolution 43/166 of 9 December 1988 on the report of the United Nations Commission on International Trade Law on the work of its twenty-first session and resolution 43/165 of 9 December 1988 on the United Nations Convention on International Bills of Exchange and International Promissory Notes.

B. Future programme of work

289. It was noted that at the twenty-first session of the Commission, in 1988, wide support had been expressed for the proposal to examine the need to provide for the legal principles that would apply to the formation of international commercial contracts by electronic means, and particularly through the medium of visual display screens. 19/ The Secretary of the Commission stated that preliminary inquiry into the subject had been made, but that the secretariat still lacked sufficient information to prepare a study. Some delegations expressed the readiness of their Governments to provide relevant information to the secretariat. The Commission requested the secretariat to prepare a preliminary study on the topic for the next session of the Commission.

C. Publications

290. The Secretary of the Commission reported on the status of the publication of the Yearbook of the United Nations Commission on International Trade Law in the four languages in which it appeared. The intention was to publish the Yearbook for a given year by the end of the following year. On that basis the 1987 edition of the Yearbook would have been published by the end of 1988. The Secretary reported that the English and Russian versions of the 1986 edition, covering the work of the nineteenth session of the Commission, had been published. In Spanish, the 1985 Yearbook had been issued, while in French publication had only reached 1983. The current expectation was that by the end of 1989 the Yearbook would be available in English through 1987 and in French, Russian and Spanish through 1986.

291. The Commission expressed its concern about the long delay in the publication of the Yearbook, and especially of the French language version. It noted that the Yearbook was the only effective means by which the drafting history of the legal texts prepared by the Commission could be made generally available. It was considered to be of great importance to the promotion of the work of the Commission that legal scholars and officials in States that were not members of the Commission, and who might therefore not have adequate files of the documents of the Commission available to them in their original form, should have those documents available to them by means of the Yearbook as promptly as possible. The Commission therefore requested the Secretariat to take the necessary actions so that by the end of 1991 the Yearbook for 1990 would be published in all four language versions and that in the following years the Yearbook for a given year would be published by the end of the following year. The Commission requested that the secretariat report to it at its twenty-third session in 1990 on the progress made towards that goal.

292. The Secretary of the Commission stated that the secretariat planned to issue in 1991 an updated edition of UNCITRAL: The United Nations Commission on International Trade Law, a publication issued in 1986 to acquaint readers with the work of UNCITRAL for the harmonization and unification of international trade law. Designed to be of use to scholars, practitioners and researchers, as well as those with more general interests, the book gave a history and description of UNCITRAL, discussed the Commission's work programme and contained the legal texts and other material emanating from that work. The Secretary anticipated that an updated edition would include several additional legal texts that had been developed since the last edition or were expected to be in existence by 1991. Those included the United Nations Convention on International Bills of Exchange and International Promissory Notes, the Convention on the Limitation Period in the International Sales of Goods, as amended by the 1980 Protocol, the Convention on the Liability of Operators of Transport Terminals in International Trade, the draft of which had been adopted by the Commission at the current session, and the Model Law on International Credit Transfers currently being prepared.

293. The Commission noted with appreciation a bibliography of recent writings related to the work of the Commission contained in document A/CN.9/326.

D. Liability limits and units of account in international transport conventions

294. The Commission took note with appreciation of an analytical compilation of liability limits and units of account in international transport conventions contained in document A/CN.9/320.

E. Date and place of the twenty-third session of the Commission

295. It was decided that the Commission would hold its twenty-third session for a period of up to three weeks from 18 June to 6 July 1990 in New York with the major agenda item being consideration of the preparatory work by the secretariat on the proposed legal guide on drawing up international countertrade contracts. The Commission recognized that it would place a heavy burden on the secretariat to prepare the necessary documentation. Therefore, the Commission decided that if sufficient preparatory work could not be submitted to the Commission in time for the twenty-third session, the secretariat was authorized to shorten the session by one week.

F. Sessions of the working groups

296. It was decided that the Working Group on International Payments would hold its nineteenth session from 10 to 21 July 1989 in New York, its twentieth session from 27 November to 8 December 1989 at Vienna and its twenty-first session from 9 to 20 July 1990 in New York. It was decided that the Working Group might hold its twenty-second session from 26 November to 7 December 1990 if, in the judgement of the Working Group, an additional session was required to complete its work on the Model Law on International Credit Transfers.

297. The Commission decided that the thirteenth session of the Working Group on International Contract Practices would be held from 8 to 19 January 1990 in New York and that the fourteenth session would be held from 3 to 14 September 1990 at Vienna.

298. It was decided that the Working Group on the New International Economic Order would hold its eleventh session from 5 to 16 February 1990 in New York and its twelfth session from 8 to 19 October 1990 at Vienna.

Notes

1/ Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. Of the current membership, 19 were elected by the Assembly at its fortieth session, on 10 December 1985 (decision 40/313), and 17 were elected by the Assembly at its forty-third session, on 19 October 1988 (decision 43/307). Pursuant to resolution 31/99 of 15 December 1976, the term of those members elected by the Assembly at its fortieth session will expire on the last day prior to the opening of the twenty-fifth regular annual session of the Commission, in 1992, while the term of those members elected at its forty-third session will expire on the last day prior to the opening of the twenty-eighth regular annual session of the Commission, in 1995.

2/ The elections took place at the 402nd and 411th meetings, on 16 May and 22 May 1989. In accordance with a decision taken by the Commission at its first session, the Commission has three Vice-Chairmen, so that, together with the Chairman and the Rapporteur, each of the five groups of States listed in General Assembly resolution 2205 (XXI), sect. II, para. 1, will be represented on the bureau of the Commission (see the report of the United Nations Commission on International Trade Law on the work of its first session, Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216), para. 14 (Yearbook of the United Nations Commission on International Trade Law, vol. I: 1968-1970 (United Nations publication, Sales No. E.71.V.1), part two, I, A, para. 14).

3/ Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17 (A/38/17), para. 115.

4/ Ibid., Thirty-ninth Session, Supplement No. 17 (A/39/17), para. 113.

5/ Ibid., Forty-third Session, Supplement No. 17 (A/43/17), para. 29.

6/ Ibid., Thirty-seventh Session, Supplement No. 17 (A/37/14 and Corr.1-2), para. 63, annex I.

7/ Ibid., para. 63, annex III.

8/ Ibid., Forty-first Session, Supplement No. 17 (A/41/17), para. 230.

9/ Ibid., para. 243.

10/ Ibid., Forty-third Session, Supplement No. 17 (A/43/17), para. 19.

11/ Ibid., paras. 20-22.

12/ Ibid., paras. 22-24.

13/ Ibid., Forty-first Session, Supplement No. 17 (A/41/17), paras. 241 and 243.

14/ Ibid., Forty-third Session, Supplement No. 17 (A/43/17), para. 35.

15/ Ibid., Forty-second Session, Supplement No. 17 (A/42/17), para. 335.

16/ Ibid., Thirty-sixth Session, Supplement No. 17 (A/36/17), para. 109.

17/ Ibid., Forty-third Session, Supplement No. 17 (A/43/17), para. 92.

18/ Ibid., para. 97.

19/ Ibid., paras. 46 and 47.

ANNEX I

Draft Convention on the Liability of Operators of Transport Terminals in International Trade a/

Article 1

Definitions

In this Convention:

(a) "Operator of a transport terminal" (hereinafter referred to as "operator") means a person who, in the course of his business, undertakes to take in charge goods involved in international carriage in order to perform or to procure the performance of transport-related services with respect to the goods in an area under his control or in respect of which he has a right of access or use. However, a person shall not be considered an operator whenever he is responsible for the goods under applicable rules of law governing carriage;

(b) Where goods are consolidated in a container, pallet or similar article of transport or where they are packed, "goods" includes such article of transport or packaging if it was not supplied by the operator;

(c) "International carriage" means any carriage in which the place of departure and the place of destination are identified as being located in two different States when the goods are taken in charge by the operator;

(d) "Transport-related services" includes such services as storage, warehousing, loading, unloading, stowage, trimming, dunnaging and lashing;

(e) "Notice" means a notice given in a form which provides a record of the information contained therein;

(f) "Request" means a request made in a form which provides a record of the information contained therein.

Article 2

Scope of application

(1) This Convention applies to transport-related services performed in relation to goods which are involved in international carriage:

(a) When the transport-related services are performed by an operator whose place of business is located in a State Party, or

---

a/ Text of the draft Convention as adopted by the United Nations Commission on International Trade Law at its twenty-second session, on 2 June 1989.

(b) When the transport-related services are performed in a State Party, or

(c) When, according to the rules of private international law, the transport-related services are governed by the law of a State Party.

(2) If the operator has more than one place of business, the place of business is that which has the closest relationship to the transport-related services as a whole.

(3) If the operator does not have a place of business, reference is to be made to the operator's habitual residence.

Article 3

Period of responsibility

The operator shall be responsible for the goods from the time he has taken them in charge until the time he has handed them over to or has placed them at the disposal of the person entitled to take delivery of them.

Article 4

Issuance of document

(1) The operator may, and at the customer's request shall, within a reasonable period of time, at the option of the operator, either:

(a) Acknowledge his receipt of the goods by signing and dating a document presented by the customer that identifies the goods, or

(b) Issue a signed document identifying the goods, acknowledging his receipt of the goods and the date thereof, and stating their condition and quantity in so far as they can be ascertained by reasonable means of checking.

(2) If the operator does not act in accordance with either subparagraph (a) or (b) of paragraph (1), he is rebuttably presumed to have received the goods in apparent good condition. No such presumption applies when the services performed by the operator are limited to the immediate transfer of the goods between means of transport.

(3) The document referred to in subparagraph (b) of paragraph (1) may be issued in any form which preserves a record of the information contained therein.

(4) The signature on the document referred to in paragraph (1) 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 document is signed.

Article 5

Basis of liability

(1) The operator is liable for loss resulting from loss of or damage to the goods, as well as for delay in handing over the goods, if the occurrence which caused the loss, damage or delay took place during the period of the operator's responsibility for the goods as defined in article 3, unless he proves that he, his servants, agents or other persons of whose services the operator makes use for the performance of the transport-related services took all measures that could reasonably be required to avoid the occurrence and its consequences.

(2) Where a failure on the part of the operator, his servants, agents or other persons of whose services the operator makes use for the performance of the transport-related services to take the measures referred to in paragraph (1) combines with another cause to produce loss, damage or delay, the operator is liable only to the extent that the loss resulting from such loss, damage or delay is attributable to that failure, provided that the operator proves the amount of the loss not attributable thereto.

(3) Delay in handing over the goods occurs when the operator fails to hand them over to or place them at the disposal of a person entitled to take delivery of them within the time expressly agreed upon or, in the absence of such agreement, within a reasonable time after receiving a request for the goods by such person.

(4) If the operator fails to hand over the goods to or place them at the disposal of a person entitled to take delivery of them within a period of 30 consecutive days after the date expressly agreed upon or, in the absence of such agreement, within a period of 30 consecutive days after receiving a request for the goods by such person, a person entitled to make a claim for the loss of the goods may treat them as lost.

Article 6

Limits of liability

(1) (a) The liability of the operator for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount not exceeding [8.33] units of account per kilogram of gross weight of the goods lost or damaged.

(b) However, if the goods are handed over to the operator immediately after carriage by sea or by inland waterways, or if the goods are handed over, or are to be handed over, by him for such carriage, the liability of the operator for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount not exceeding [2.75] units of account per kilogram of gross weight of the goods lost or damaged. For the purposes of this paragraph, carriage by sea or by inland waterways includes pick-up and delivery within a port.

(2) The liability of the operator for delay in handing over the goods according to the provisions of article 5 is limited to an amount equivalent to two and a half times the charges payable to the operator for his services in respect of the goods

delayed, but not exceeding the total of such charges in respect of the consignment of which the goods were a part.

(3) In no case shall the aggregate liability of the operator under both paragraphs (1) and (2) exceed the limitation which would be established under paragraph (1) for total loss of the goods in respect of which such liability was incurred.

(4) The operator may agree to limits of liability exceeding those provided for in paragraphs (1), (2) and (3).

Article 7

Application to non-contractual claims

(1) The defences and limits of liability provided for in this Convention apply in any action against the operator in respect of loss of or damage to the goods, as well as delay in handing over the goods, whether the action is founded in contract, in tort or otherwise.

(2) If such an action is brought against a servant or agent of the operator, or against another person of whose services the operator makes use for the performance of the transport-related services, such servant, agent or person, if he proves that he acted within the scope of his employment or engagement by the operator, is entitled to avail himself of the defences and limits of liability which the operator is entitled to invoke under this Convention.

(3) Except as provided in article 8, the aggregate of the amounts recoverable from the operator and from any servant, agent or person referred to in the preceding paragraph shall not exceed the limits of liability provided for in this Convention.

Article 8

Loss of right to limit liability

(1) The operator is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay resulted from an act or omission of the operator himself or his servants or agents done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

(2) Notwithstanding the provision of paragraph (2) of article 7, a servant or agent of the operator or another person of whose services the operator makes use for the performance of the transport-related services is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay resulted from an act or omission of such servant, agent or person done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

Article 9

Special rules on dangerous goods

If dangerous goods are handed over to an operator without being marked, labelled, packaged or documented in accordance with any law or regulation relating to dangerous goods applicable in the country where the goods are handed over and if, at the time the goods are handed over to him, the operator does not otherwise know of their dangerous character, he is entitled:

(a) To take all precautions the circumstances may require, including, when the goods pose an imminent danger to any person or property, destroying the goods, rendering them innocuous, or disposing of them by any other lawful means, without payment of compensation for damage to or destruction of the goods resulting from such precautions, and

(b) To receive reimbursement for all costs incurred by him in taking the measures referred to in subparagraph (a) from the person who failed to meet any obligation under such applicable law or regulation to inform him of the dangerous character of the goods.

Article 10

Rights of security in goods

(1) The operator has a right of retention over the goods for costs and claims which are due in connection with the transport-related services performed by him in respect of the goods during the period of his responsibility for them. However, nothing in this Convention shall affect the validity under the applicable law of any contractual arrangements extending the operator's security in the goods.

(2) The operator is not entitled to retain the goods if a sufficient guarantee for the sum claimed is provided or if an equivalent sum is deposited with a mutually accepted third party or with an official institution in the State where the operator has his place of business.

(3) In order to obtain the amount necessary to satisfy his claim, the operator is entitled, to the extent permitted by the law of the State where the goods are located, to sell all or part of the goods over which he has exercised the right of retention provided for in this article. The preceding sentence does not apply to containers, pallets or similar articles of transport or packaging which are owned by a party other than the carrier or the shipper and which are clearly marked as regards ownership except in respect of claims by the operator for the cost of repairs of or improvements to the containers, pallets or similar articles of transport or packaging.

(4) Before exercising any right to sell the goods, the operator shall make reasonable efforts to give notice of the intended sale to the owner of the goods, the person from whom the operator received them and the person entitled to take delivery of them from the operator. The operator shall account appropriately for the balance of the proceeds of the sale in excess of the sums due to the operator plus the reasonable costs of the sale. The right of sale shall in all other

respects be exercised in accordance with the law of the State where the goods are located.

Article 11

Notice of loss, damage or delay

(1) Unless notice of loss or damage, specifying the general nature of the loss or damage, is given to the operator not later than the third working day after the day when the goods were handed over by the operator to the person entitled to take delivery of them, the handing over is prima facie evidence of the handing over by the operator of the goods as described in the document issued by the operator pursuant to paragraph (1) (b) of article 4 or, if no such document was issued, in good condition.

(2) Where the loss or damage is not apparent, the provisions of paragraph (1) apply correspondingly if notice is not given to the operator within 15 consecutive days after the day when the goods reached the final recipient, but in no case later than 60 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.

(3) If the operator participated in a survey or inspection of the goods at the time when they were handed over to the person entitled to take delivery of them, notice need not be given to the operator of loss or damage ascertained during that survey or inspection.

(4) In the case of any actual or apprehended loss of or damage to the goods, the operator and the person entitled to take delivery of the goods shall give all reasonable facilities to each other for inspecting and tallying the goods.

(5) No compensation shall be payable for loss resulting from delay in handing over the goods unless notice has been given to the operator within 21 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.

Article 12

Limitation of actions

(1) Any action under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.

(2) The limitation period commences:

(a) On the day the operator hands over the goods or part thereof to, or places them at the disposal of, a person entitled to take delivery of them, or

(b) In cases of total loss of the goods, on the day the operator notifies the person entitled to make a claim that the goods are lost, or on the day that person may treat the goods as lost in accordance with paragraph (4) of article 5, whichever is earlier.

(3) The day on which the limitation period commences is not included in the period.

(4) The operator may at any time during the running of the limitation period extend the period by a declaration in writing to the claimant. The period may be further extended by another declaration or declarations.

(5) A recourse action by a carrier or another person against the operator may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if it is instituted within 90 days after the carrier or other person has been held liable in an action against himself or has settled the claim upon which such action was based and if, within a reasonable period of time after the filing of a claim against a carrier or other person that may result in a recourse action against the operator, notice of the filing of such a claim has been given to the operator.

Article 13

Contractual stipulations

(1) Unless otherwise provided in this Convention, any stipulation in a contract concluded by an operator or in any document signed or issued by the operator pursuant to article 4 is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part.

(2) Notwithstanding the provisions of the preceding paragraph, the operator may agree to increase his responsibilities and obligations under this Convention.

Article 14

Interpretation of the Convention

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application.

Article 15

International transport conventions

This Convention does not modify any rights or duties which may arise under an international convention relating to the international carriage of goods which is binding on a State which is a party to this Convention or under any law of such State giving effect to or derived from a convention relating to the international carriage of goods.

Article 16

Unit of account

(1) The unit of account referred to in article 6 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article 6 are to be expressed in the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The equivalence between the national currency of a State Party which is a member of the International Monetary Fund and the Special Drawing Right is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The equivalence between the national currency of a State Party which is not a member of the International Monetary Fund and the Special Drawing Right is to be calculated in a manner determined by that State.

(2) The calculation mentioned in the last sentence of the preceding paragraph is to be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for amounts in article 6 as is expressed there in units of account. States Parties must communicate to the depositary the manner of calculation at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession and whenever there is a change in the manner of such calculation.

FINAL CLAUSES

Article 17

Depositary

The Secretary-General of the United Nations is the depositary of this Convention.

Article 18

Signature, ratification, acceptance, approval, accession

(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on ... and will remain open for signature by all States at the Headquarters of the United Nations, New York, until ... .

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open to accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 19

Application to territorial units

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may at any time substitute another declaration for its earlier declaration.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a State Party, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a State Party, unless it is in a territorial unit to which the Convention extends.

(4) If a State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

Article 20

Reservations

No reservations may be made to this Convention.

Article 21

Effect of declaration

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article 22

Entry into force

(1) This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession.

(2) For each State which becomes a Contracting State to this Convention after the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the date of the deposit of the appropriate instrument on behalf of that State.

(3) Each State Party shall apply the provisions of this Convention to transport-related services with respect to goods taken in charge by the operator on or after the date of the entry into force of this Convention in respect of that State.

Article 23

Revision and amendment

(1) At the request of not less than one third of the States Parties to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

(2) Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 24

Revision of limitation amounts

(1) At the request of at least one quarter of the States Parties, the depositary shall convene a meeting of a Committee composed of a representative from each Contracting State to consider increasing or decreasing the amounts in article 6.

(2) If this Convention enters into force more than five years after it was opened for signature, the depositary shall convene a meeting of the Committee within the first year after it enters into force.

(3) The meeting of the Committee shall take place on the occasion and at the location of the next session of the United Nations Commission on International Trade Law.

(4) In determining whether the limits should be amended, and if so, by what amount, the following criteria, determined on an international basis, and any other criteria considered to be relevant, shall be taken into consideration:

(a) The amount by which the limits of liability in any transport-related convention have been amended;

(b) The value of goods handled by operators;

(c) The cost of transport-related services;

(d) Insurance rates, including for cargo insurance, liability insurance for operators and insurance covering job-related injuries to workmen;

(e) The average level of damages awarded against operators for loss of or damage to goods or delay in handing over goods; and

(f) The costs of electricity, fuel and other utilities.

(5) Amendments shall be adopted by the Committee by a two-thirds majority of its members present and voting.

(6) No amendment of the limits of liability under this article may be considered less than five years from the date on which this Convention was opened for signature.

(7) Any amendment adopted in accordance with paragraph (5) shall be notified by the depositary to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of 18 months after it has been notified, unless within that period not less than one third of the States that were States Parties at the time of the adoption of the amendment by the Committee have communicated to the depositary that they do not accept the amendment. An amendment deemed to have been accepted in accordance with this paragraph shall enter into force for all States Parties 18 months after its acceptance.

(8) A State Party which has not accepted an amendment shall nevertheless be bound by it, unless such State denounces the present Convention at least one month before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

(9) When an amendment has been adopted in accordance with paragraph (5) but the 18-month period for its acceptance has not yet expired, a State which becomes a State Party to this Convention during that period shall be bound by the amendment if it enters into force. A State which becomes a State Party after that period shall be bound by any amendment which has been accepted in accordance with paragraph (7).

(10) The applicable limit of liability shall be that which, in accordance with the preceding paragraphs, is in effect on the date of the occurrence which caused the loss, damage or delay.

Article 25

Denunciation

(1) A State Party may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at ..., this ... day of ... one thousand nine hundred and ..., in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

ANNEX II

List of documents of the session

A. General series

A/CN.9/314	Provisional agenda
A/CN.9/315	Report of the Working Group on the New International Economic Order on the work of its tenth session
A/CN.9/316	Report of the Working Group on International Contract Practices on the work of its twelfth session
A/CN.9/317	Report of the Working Group on International Payments on the work of its seventeenth session
A/CN.9/318	Report of the Working Group on International Payments on the work of its eighteenth session
A/CN.9/319 and Add.1-5	Compilation of comments by Governments and international organizations on the draft Convention on the Liability of Operators of Transport Terminals in International Trade
A/CN.9/320	Limits of liability and units of account in international transport conventions
A/CN.9/321	Draft final clauses for the draft Convention on the Liability of Operators of Transport Terminals in International Trade
A/CN.9/322	Draft outline of the possible content and structure of a legal guide on drawing up international countertrade contracts
A/CN.9/323	Training and assistance
A/CN.9/324	Current activities of international organizations related to the harmonization and unification of international trade law
A/CN.9/325	Status of Conventions
A/CN.9/326	Bibliography of recent writings related to the work of UNCITRAL

B. Restricted series

A/CN.9/XXII/CRP.1 and Add.1-22	Draft report of the United Nations Commission on International Trade Law on the work of its twenty-second session
A/CN.9/XXII/CRP.2/ Rev.1	Proposal of the United States of America

A/CN.9/XXII/CRP.3 Comments and suggestions of the Chinese Government on the draft Convention on Liability of Operators of Transport Terminals

A/CN.9/XXII/CRP.4 Proposal by the United Kingdom of Great Britain and Northern Ireland

A/CN.9/XXII/CRP.5 Proposal by the Federal Republic of Germany

A/CN.9/XXII/CRP.6 Proposals by the Federal Republic of Germany

A/CN.9/XXII/CRP.7 and Add.1 Report of the drafting group

C. Information series

A/CN.9/XXII/INF.1/Rev.1 List of participants

كيفية الحصول على منشورات الأمم المتحدة

يمكن الحصول على منشورات الأمم المتحدة من المكتبات ودور التوزيع في جميع أنحاء العالم . استعلم عنها من المكتبة التي تتعامل معها أو اكتب إلى : الأمم المتحدة ، قسم البيع في نيويورك أو في جنيف .

如何购取联合国出版物

联合国出版物在全世界各地的书店和经售处均有发售。请向书店询问或写信到纽约或日内瓦的联合国销售组。

HOW TO OBTAIN UNITED NATIONS PUBLICATIONS

United Nations publications may be obtained from bookstores and distributors throughout the world. Consult your bookstore or write to: United Nations, Sales Section, New York or Geneva.

COMMENT SE PROCURER LES PUBLICATIONS DES NATIONS UNIES

Les publications des Nations Unies sont en vente dans les librairies et les agences dépositaires du monde entier. Informez-vous auprès de votre libraire ou adressez-vous à : Nations Unies, Section des ventes, New York ou Genève.

КАК ПОЛУЧИТЬ ИЗДАНИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ

Издания Организации Объединенных Наций можно купить в книжных магазинах и агентствах во всех районах мира. Наводите справки об изданиях в вашем книжном магазине или пишите по адресу: Организация Объединенных Наций, Секция по продаже изданий, Нью-Йорк или Женева.

COMO CONSEGUIR PUBLICACIONES DE LAS NACIONES UNIDAS

Las publicaciones de las Naciones Unidas están en venta en librerías y casas distribuidoras en todas partes del mundo. Consulte a su librero o diríjase a: Naciones Unidas, Sección de Ventas, Nueva York o Ginebra.

Litho in United Nations, New York

01000
ISSN 0251-9127

18054—August 1989—4,025