

III. LIABILITY OF OPERATORS OF TRANSPORT TERMINALS

A. Report of the Working Group on International Contract Practices on the work of its ninth session (New York, 6–17 January 1987) (A/CN.9/275) [Original: English]

CONTENTS

	<i>Paragraphs</i>
INTRODUCTION	1–11
DELIBERATIONS AND DECISIONS	12–98
I. METHOD OF WORK	12–14
II. CONSIDERATION OF DRAFT ARTICLES OF UNIFORM RULES ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS	15–98
Article 1	16–30
A. Text proposed by secretariat	16–29
B. Texts proposed by informal working party and notes relating thereto	30
Article 2	31–41
A. Text proposed by secretariat	31–40
B. Texts proposed by informal working party and notes relating thereto	41
Article 3	42–45
A. Text proposed by secretariat	42–44
B. Text proposed by informal working party and notes relating thereto	45
Article 4	46–58
A. Text proposed by secretariat	46–57
B. Texts proposed by informal working party and notes relating thereto	58
Article 5	59–71
Article 6	72–78
Article 7	79–80
Article 8	81
Article 9	82–86
Article 10	87–88
Article 11	89–90
Article 12	91–93
Article 13	94–96
Article 14	97
Article 15	98
III. OTHER BUSINESS AND FUTURE WORK	99

INTRODUCTION

1. At its sixteenth session in 1983, the Commission decided to include the topic of liability of operators of transport terminals in its programme of work, to request the International Institute for the Unification of Private Law (UNIDROIT) to transmit its preliminary draft Convention on that topic to the Commission for its consideration, and to assign work on the preparation of uniform rules on the topic to a working group. The Commission deferred to its seventeenth session the decision on the composition of the working group.¹

2. In response to the request made at the sixteenth session, UNIDROIT transmitted its preliminary draft Convention to the Commission. At its seventeenth session in 1984, the Commission decided to assign to its Working Group on International Contract Practices the task of formulating uniform legal rules on the subject. It further decided that the mandate of the Working Group should be to base its work on the UNIDROIT preliminary draft Convention and the Explanatory Report thereto prepared by the secretariat of UNIDROIT, and on the study of the UNCITRAL secretariat on major issues arising from the UNIDROIT preliminary draft Convention, which was before the Commission at its seventeenth session (document A/CN.9/252), and that the Working Group should also consider issues not dealt with in the UNIDROIT preliminary draft Convention, as well as any other issues which it considered to be relevant.²

3. At its eighth session, the Working Group engaged in a comprehensive consideration of issues arising in connection with the liability of operators of transport terminals in preparation for its formulation of detailed uniform rules (document A/CN.9/260). It decided to postpone its decision on the form in which the rules should be cast until after it had established the substance and content of the rules (*ibid.*, para. 13).

4. The Working Group consists of all 36 States members of the Commission: Algeria, Australia, Austria, Brazil, Central African Republic, China, Cuba, Cyprus, Czechoslovakia, Egypt, France, German Democratic Republic, Germany, Federal Republic of, Guatemala, Hungary, India, Iraq, Italy, Japan, Kenya, Mexico, Nigeria, Peru, Philippines, Senegal, Sierra Leone, Singapore, Spain, Sweden, Trinidad and Tobago, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Yugoslavia.

5. The Working Group held its ninth session in New York from 6 to 17 January 1986. All members were

¹Report of the United Nations Commission on International Trade Law on the work of its sixteenth session, *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17 (A/38/17)*, para. 115.

²Report of the United Nations Commission on International Trade Law on the work of its seventeenth session, *Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 17 (A/39/17)*, para. 113.

represented except Central African Republic, Cyprus, Guatemala, Nigeria, Senegal, Singapore, Uganda and United Republic of Tanzania.

6. The session was attended by observers from the following States: Argentina, Canada, Fiji, Greece, Holy See, Lesotho, Netherlands, Oman, Pakistan, Republic of Korea, Switzerland and Turkey.

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

- (a) *United Nations organs*
United Nations Conference on Trade and Development (UNCTAD)
- (b) *Intergovernmental organizations*
Central Commission for the Navigation of the Rhine
Hague Conference on Private International Law
International Institute for the Unification of Private Law (UNIDROIT)
Organization of African Unity (OAU)
- (c) *International non-governmental organizations*
International Air Transport Association (IATA)
International Association of Ports and Harbors
International Chamber of Commerce (ICC)
International Forest Products Transport Association
International Maritime Committee (Comité maritime international, CMI)

8. The Working Group elected the following officers:

Chairman: Mr. Michael Joachim Bonell (Italy)

Vice-Chairman: Mr. Krister Thelin (Sweden)

Rapporteur: Mr. Kuchibhotla Venkatramiah (India).

9. The following documents were placed before the session:

- (a) Provisional agenda (A/CN.9/WG.II/WP.54);
- (b) Liability of operators of transport terminals: certain factual and legal aspects of operations performed by operators of transport terminals, note by the secretariat (A/CN.9/WG.II/WP.55);
- (c) Liability of operators of transport terminals: draft articles of uniform rules on the liability of operators of transport terminals and comments thereon, note by the secretariat (A/CN.9/WG.II/WP.56).

10. The following documents were also made available at the session:

- (a) Co-ordination of work: some recent developments in the field of international transport of goods, report of the Secretary-General (A/CN.9/236);
- (b) Liability of operators of transport terminals, report of the Secretary-General (A/CN.9/252);

- (c) Liability of operators of transport terminals: issues for discussion by the Working Group, note by the secretariat (A/CN.9/WG.II/WP.52 and Add.1);
 - (d) Liability of operators of transport terminals: additional issues for discussion by the Working Group, note by the secretariat (A/CN.9/WG.II/WP.53).
11. The Working Group adopted the following agenda:
- (a) Election of officers;
 - (b) Adoption of the agenda;
 - (c) Formulation of uniform legal rules on the liability of operators of transport terminals;
 - (d) Other business;
 - (e) Adoption of the report.

DELIBERATIONS AND DECISIONS

I. Method of work

12. The Working Group agreed that the present session would be devoted to crystallizing the significant issues emerging from the draft articles of uniform rules on the liability of operators of transport terminals, which had been prepared by the secretariat (A/CN.9/WG.II/WP.56) (hereinafter referred to as the "secretariat draft"), and attempting to agree on texts of draft articles containing, where appropriate, alternative provisions, to serve as a basis for consultations by delegations with relevant circles within their countries and for the further work of the Working Group. It was agreed that the final choice among alternative provisions of the draft articles and the precise drafting of the draft articles would be left for a future session. The Working Group recalled its decision at its previous session to decide upon the form in which the uniform rules should be adopted after it had established the substance and content of the rules.

13. The Working Group engaged in an initial discussion of the secretariat draft. It then convened an informal working party and assigned to it the task of synthesizing the views expressed during that discussion into draft articles containing, where appropriate, alternative provisions. The informal working party prepared texts for draft articles 1, 2, 3 and 4, which were then reviewed by the Working Group.

14. The texts of draft articles 1, 2, 3 and 4 proposed by the informal working party are reproduced in chapter II of this report after the report of the substantive discussion by the Working Group with respect to draft articles 1, 2, 3 and 4, respectively, of the secretariat draft. The Working Group considered the texts proposed by the informal working party to be a good basis for further consultations and for the future work of the Working Group. For guidance in consideration of the texts, the Working Group agreed that at the end of each text notes should be

added incorporating comments made at the meetings of the informal working party, as amended by the Working Group. The notes are reproduced in chapter II of this report after the texts of the draft articles to which they relate.

II. Consideration of draft articles of uniform rules on the liability of operators of transport terminals

15. The following paragraphs reflect the substance of the discussion with respect to each of the draft articles.

Article 1

A. Text proposed by Secretariat

16. It was generally agreed that the terminology used to refer to the various concepts incorporated in the article should be clear and consistent, and that attention should be paid to possible difficulties in translating terms into various languages. A view was expressed that the definition of "operator" in paragraph (1) should be simple, since a definition which was too detailed could inadvertently exclude entities which should be covered.

Paragraph (1)(a)

17. A view was expressed that the categories of operators to be governed by the uniform rules should not depend upon the existence of a contractual relationship between the operator and his customer. In that connection it was observed that in some legal systems a person could assume obligations with respect to goods by taking them in his charge, and a contract was not necessary in order for those obligations to come into existence. It was accordingly suggested that the word "engaged" in paragraph (1)(a) should be avoided, and that the paragraph should refer to an "undertaking" to perform operations with respect to goods by agreement or by taking them in charge. According to another suggestion, it was not necessary to state the way in which the undertaking could be given (i.e. by agreement or by taking the goods in charge).

18. The Working Group considered the words "against remuneration" appearing in paragraph (1)(a). According to one view the words should be deleted. In that connection it was observed that operators who unloaded goods for a customer often stored the goods for a period of time without further charge to the customer (this practice is sometimes referred to as "free time"). There was a danger that a court might regard storage during "free time" as not being "against remuneration", thus excluding that storage from the scope of the uniform rules. According to another view, the words "against remuneration" should be retained. A third view was that instead of "against remuneration" the definition of "operator" should contain the notion that the operator was one who performed terminal operations as a "commercial" activity. The prevailing view was that a formulation should be used in the definition of "operator" which

expressed the idea that the rules would apply to entities who were engaged in the business or activity of providing transport-related services, without dealing with the question of whether particular operations were remunerated.

19. A view was expressed that the definition of "operator" should not contain a reference to services performed "during" carriage, in order to avoid the implication that the rules were intended to apply to a carrier while he was responsible for the goods as a carrier under an international transport convention or national law. The prevailing view, however, was that the word "during" should be retained if the words "before" and "after" carriage were included. In that regard it was noted that the unloading and taking in charge of goods by an operator between two stages of carriage might be regarded as occurring "during" carriage, and retention of the word "during" would ensure that the rules applied to the operator in such a case. It was suggested that an implication that the uniform rules were intended to apply to a carrier while he was responsible for the goods in his capacity as a carrier could be avoided by other means, e.g. by including the phrase "acting in a capacity other than that of a carrier" or a provision such as paragraph (1)(b) of article 1 of the secretariat draft (see paragraph 25, below), or by a provision such as article 15 of the secretariat draft.

20. It was questioned whether the words "with a view to handing the goods over to any person entitled to take delivery of them", which appeared in article 1(1)(a) of the secretariat draft, were necessary. A view was expressed that those words would exclude the situation where the operator was the final destination of the goods, and would emphasize the nature of the operators contemplated by the uniform rules. It was generally agreed, however, that the words were unnecessary, since an operator would always take the goods in charge with a view to handing them over to someone else.

21. The Working Group considered the questions of the types of operations and the types of operators which should be covered by the uniform rules and how those operations should be referred to in the definition of an operator. A view was expressed that the application of the uniform rules should not be limited to purely storage operations, since such a limitation would not accord with modern transport practices, particularly in the case of container terminals, in which the operator's function was to act as an interface in the transfer of goods between two means of transport or between the consignor or consignee and the means of transport. Storage might be involved in that function, but it was not always the primary function of the operator; other handling operations were often equally or more important.

22. It was generally agreed that the uniform rules should not apply in the case of stevedores, airport cargo handlers or similar entities who were engaged by terminal operators only to unload the goods, carry them into or through the terminal and load them on to a means of transport, where those entities did not exercise care,

custody and control over the goods. On the other hand, a view was expressed that the uniform rules should apply to those entities if they did exercise care, custody and control over the goods. It was also generally agreed that the uniform rules should not apply to an entity, such as a public port authority, who leased facilities within the terminal area to other entities, but who did not take the goods in charge, or assume responsibility for the goods other than providing security for the area. An additional view was expressed that the uniform rules should cover the storage of goods in a bonded customs warehouse. A further view was that they should not cover the long-term storage of goods, as in the case of a distribution centre, and that they should not cover salvors.

23. A view was expressed that an appropriate delimitation of the scope of application of the uniform rules could be achieved by having the rules apply only when "safekeeping" was included as an essential element among the operations undertaken by the operator. It was generally agreed that the application of the uniform rules should not depend upon whether "safekeeping" was a primary operation or performed ancillary to other operations. According to another view, however, it was questioned whether the uniform rules should use the word "safekeeping". It was not clear what was meant by that word, and, if it was used, it might have to be defined, as had been done in the secretariat draft (see, also, paragraph 26, below). In that connection a suggestion was made that rather than the term "safekeeping", another formulation might be used to indicate the essential element which was required for the rules to apply. A suggestion was made that the phrase "care, custody and control over the goods" might be used. However, in that connection it was suggested that the word "care" should not be used, because in some legal systems using the word could be interpreted as enabling an operator to avoid the application of the uniform rules by contractually excluding his duty of care with respect to the goods. On the other hand, a view was expressed that from the economic point of view it might be attractive for the customer to have the opportunity to choose between a liability system based on presumed fault, as provided for in the secretariat draft, and a less costly liability system under which the operator would be able to restrict his liability exclusively to liability for loss or damage caused by gross negligence on his part or on the part of his servants or agents. Such a liability system might be appropriate, in particular in cases where the goods were stored in open air storage yards to which third parties, such as carriers, freight forwarders or consignees, had a right of access in order to inspect the goods, to sort them or to treat them in any other manner. A view was expressed that the phrase "care, custody and control" was broader than "safekeeping", and that the use of that phrase, rather than "safekeeping", would result in the application of the uniform rules to entities who did not exercise safekeeping. According to another view, however, the phrase was synonymous with "safekeeping".

24. With respect to how the definition of "operator" should refer to the operations other than safekeeping, a

view was expressed that the definition should specify the types of other operations to be covered. In that connection a suggestion was made that the operations enumerated in article 3(2) of the secretariat draft should be incorporated in the definition. A further suggestion was that the operations of trimming, dunnaging and lashing should be added to that enumeration. The view was expressed that the enumerated operations should be merely examples of the additional operations to be covered, rather than an exhaustive list. According to another view, the definition of "operator" should not specify the operations other than "safekeeping", or "care, custody and control", and should merely refer to the performance of safekeeping or the exercise of care, custody and control in combination with or for the purpose of performing other transport-related operations. A further suggestion was to refer to operations which facilitated the delivery of the goods to the person entitled to receive them. A view was expressed that the operations covered by the uniform rules should only be those which the operator had undertaken to perform.

Paragraph (1)(b)

25. It was generally agreed that the uniform rules should not apply to a carrier during the period of his responsibility for the goods as a carrier under an international transport convention or national law, but that they should apply to a carrier when he had the goods in his charge outside that period. A view was expressed, however, that paragraph (1)(b) should be deleted, and the formulation used in article 1(1) of the UNIDROIT preliminary draft Convention, i.e. "acting in a capacity other than that of a carrier", should be used, since that formulation was simpler. According to another view, the UNIDROIT formulation had the danger of being interpreted so as to exclude the application of the rules to carriers in all cases. Accordingly, it was suggested that paragraph (1)(b) should provide that a carrier was not to be considered to be an operator when he was responsible for the goods under an international transport convention or national law. Another suggestion was to refer to applicable rules of law governing carriage, rather than to an international transport convention or national law.

Paragraph (2)

26. Differing views were expressed as to whether "safekeeping" should be defined. According to one view, if the word was used in the uniform rules, it should be defined. Various suggestions were made with respect to how "safekeeping" should be defined. One suggestion endorsed the definition set forth in paragraph (2) of article 1 of the secretariat draft. In connection with that definition, however, it was observed that the phrase "in an area in respect of which he has a right of access and use in common with others" could give rise to problems in some legal systems. Another suggestion was that "safekeeping" should be defined as the exercise of care, custody and control over the goods. A third suggestion was that "safekeeping" contemplated traditional operations of warehousing and storage, although according to another view the word could be interpreted more

broadly. A fourth suggestion was that the direct transfer of goods from one means of transport to another without their becoming stationary should be excluded from safekeeping. In that connection, however, the view was expressed that whether or not safekeeping existed, and therefore whether or not the entity would be regarded as an operator subject to the rules, should not depend upon whether or not the goods became stationary. A fifth suggestion was that "safekeeping" should be defined as an obligation to maintain the goods in the same condition in which they were received by the operator.

Paragraph (3)

27. The definition of "goods" in paragraph (3) was found to be acceptable.

Paragraphs (4) and (5)

28. A view was expressed that, since each international transport convention defined the type of carrier that was subject to the convention, the uniform rules should not introduce a new definition of "carrier", which could conflict with the definitions in the conventions. In accordance with that view it was suggested that the uniform rules should only refer to the definitions of carriers in the international transport conventions. It was observed, however, that that approach could present a problem in the case of a carrier defined in a convention to which a State adopting the uniform rules was not a party. According to another view, the uniform rules did not need to define "carrier" other than to state that the word included multimodal transport operators.

29. It was generally agreed that the word "carrier" would need to be defined only if the term "international carrier" was defined. If the approach proposed by the informal working party with respect to article 2 were adopted, neither "carrier" nor "international carrier" would need to be defined, but "international carriage" would require definition.

B. Texts proposed by informal working party and notes relating thereto

30. The informal working party proposed the following texts for article 1 of the uniform rules. After the texts are the notes which the Working Group agreed should be added for guidance in consideration of the texts.

Article 1

For the purposes of this [Convention] [Law]:

[Alternative 1]

- (1) (a) "Operator" means a person who undertakes the care, custody and control of goods for the purpose of providing or procuring transport-related services with respect to the goods, by agreement or by taking the goods in charge.

(b) "Transport-related services" includes such services as storage, warehousing, loading, unloading, stowage, trimming, dunnaging or lashing.

(c) A person shall not be considered to be an operator to the extent that he is responsible for the goods as a carrier or multimodal transport operator under applicable rules of law governing carriage.

[Alternative 2]

(1) "Operator" means any person acting in a capacity other than that of a carrier, who undertakes the safekeeping of goods before, during or after carriage, whether or not in combination with other transport-related operations, either by agreement or by taking in charge such goods from a shipper, carrier, forwarder or any other person, with a view to their being handed over to any person entitled to take delivery of them.

[(2) "Safekeeping" means the exercise by a person of care, custody and control over goods [in an area under his control] [in an area under his exclusive control or in an area in respect of which he has a right of access and use in common with others].]

[Alternative 3]

(1) "Operator" means any person who performs or procures the performance of cargo handling operations such as loading, unloading, stowage, trimming, dunnaging, or lashing with respect to goods involved in international carriage [before, during or after carriage], to the extent that safekeeping constitutes part of the operations.

(2) "Safekeeping" means the exercise by a person of care, custody and control over goods [in an area under his control] [in an area under his exclusive control or in an area in respect of which he has a right of access and use in common with others][, except that the direct transfer of goods from one means of transport to another without their becoming stationary shall not be regarded as safekeeping].

* * *

(3) "Goods" includes any container, trailer, chassis, barge, pallet or similar article of transport or packaging, if not supplied by the operator.

(4) "International carriage" means any carriage in which the place of departure and the place of destination are located in two different States[; however, if and to the extent that the carriage of the goods is to be performed in separate stages which are the subject of individual transport contracts, "international carriage" shall cover only those parts of the carriage in respect of which the place of departure and the place of destination are situated in different States].

Notes

a. Under alternative 1, the essential undertaking of an operator must be the "care, custody and control" of the goods for the purpose of providing or procuring transport-related services with respect to the goods. Under alternative 2, the essential undertaking must be the "safekeeping" of the goods. Alternative 2 presents the possibility of limiting the definition of an operator to a person who undertakes traditional operations of storage and warehousing, perhaps together with certain additional transport-related operations (which could be mentioned in article 3). This limitation could be achieved by omitting the definition of "safekeeping" in paragraph (2) of alternative 2, and interpreting "safekeeping" to refer only to storage and warehousing. Such an approach could be narrower than the approach in alternative 1 if the phrase "care, custody and control" in alternative 1 is interpreted to refer to a broader range of situations than storage and warehousing.

b. Alternative 2 might also be narrower than alternative 1 if the definition of "safekeeping" in paragraph (2) of alternative 2 is limited to "the exercise by a person of care, custody and control over goods in an area under his control". On the other hand, alternative 2 could be broader than alternative 1 if the definition of "safekeeping" in paragraph (2) of alternative 2 is not included, and the word "safekeeping" is interpreted more broadly than "care, custody and control".

c. Alternative 1 could include stevedores and airport cargo handlers if they exercise care, custody and control over the goods. A view was expressed, however, that those entities should not be regarded as operators covered by the uniform rules. Another view was expressed that alternatives 2 and 3 could also cover such entities, depending upon what was done with the words within square brackets in the definition of safekeeping.

d. As in the case of alternative 2, under alternative 3 "safekeeping" is an essential element of the definition of "operator". However, alternative 3 presents the possibility of specifying that the direct transfer of goods from one means of transport to another without their becoming stationary is not to be regarded as safekeeping. This language could also be included in the definition of safekeeping in alternative 2.

e. Alternatives 1 and 3 present ways in which operations in addition to "care, custody and control" or "safekeeping" could be incorporated into the definition of operator.

f. Under alternatives 1 and 3, the essential element (i.e. either "care, custody and control" or "safekeeping") is linked with other operations, while under alternative 2 an entity would be considered an operator whether or not safekeeping was linked with other operations. A view was expressed that as the services and operations mentioned in alternatives 1 and 3 were

only examples, those alternatives were not narrower than alternative 2 and could in practice cover all safekeeping situations.

g. Alternatives 1 and 2 present different ways in which to exclude from the definition of "operator" a carrier while he is responsible for the goods under legal rules governing carriage. In alternative 1 this might be achieved by sub-paragraph (b); in alternative 2 it might be achieved by the words "acting in a capacity other than that of a carrier".

h. Paragraph (4) presents two alternative approaches to defining "international carriage". One approach would be to exclude the language contained within square brackets, the other would be to include that language. Possible consequences of each approach are discussed in the notes to the text of draft article 2 proposed by the informal working party.

Article 2

A. Text proposed by Secretariat

31. With respect to sub-paragraph (a) in alternative 1 and paragraph (1)(a) in alternatives 2 and 3 in the secretariat draft, one view supported the approach in those paragraphs, i.e. referring to goods located in the territory of the State. The prevailing view, however, was that the paragraphs should refer to operations performed in the territory of the State. In support of that view it was suggested that there was a danger that a reference to goods located in the territory of the State might be interpreted as requiring the goods to be located there when the claim was brought, rather than when the loss or damage occurred, and the goods might have been moved out of the State by the time a claim was brought.

32. A view was expressed that those paragraphs would not be needed if the uniform rules were adopted as a model law. In support of that view it was suggested that a State which had implemented the model law would normally apply it in respect of loss or damage arising from operations performed in the State; and whether it would apply the law in respect of loss or damage arising from operations performed in another State could be left to its rules of private international law. According to another view, however, the paragraphs should be included even if the uniform rules were adopted as a model law.

33. With respect to the remainder of alternatives 1, 2, and 3, it was generally agreed that the uniform rules should apply only to operations performed in respect of goods involved in international carriage. A question was raised, however, concerning the scope of the concept of involvement in international carriage. It was generally agreed that goods should be regarded as being involved in international carriage while they were covered by a combined or multimodal transport contract in which the place of departure and the place of destination were

located in two different States. Accordingly, terminal operations performed with respect to such goods should be covered by the uniform rules, even where, as part of the combined or multimodal transport, the operator received the goods from a domestic carrier and handed the goods over to a domestic carrier. A question was raised, however, as to whether the uniform rules should apply in the case where the operator received the goods from a domestic carrier and handed them over to a domestic carrier as part of segmented, rather than combined or multimodal, transport of goods between two States (e.g. where both domestic carriers were covered by one separate transport contract, or where each domestic carrier was covered by a separate transport contract). A view was expressed that the uniform rules should not apply in those cases. However, an example was given of the case where the operator received the goods from a domestic carrier and handed them over to a domestic carrier for carriage to an airport or a seaport, which could be located nearby, to be loaded on to a ship or airplane for international carriage. A view was expressed that the uniform rules should apply to the operations of the operator in such a case. It was generally agreed that the uniform rules should apply to operations performed by an operator in relation to goods involved in a stage of segmented transport which was covered by a separate contract in which the place of departure and the place of destination were located in two different States.

34. According to another view, the uniform rules were not needed for operations performed while the goods were covered by a unimodal or multimodal transport contract, since the carrier would be subject to a satisfactory liability regime in such cases; moreover, any question of recourse by a carrier against an operator could be resolved between them without the uniform rules.

35. Alternative 1 of article 2 in the secretariat draft received some support. A view was expressed that that alternative was the easiest to apply of the three alternatives of article 2. According to another view, however, alternative 1 was too vague. In that connection a view was expressed that it was important for the operator to be able to determine when the uniform rules applied. A view was also expressed that the alternative was too broad, since it could apply in situations where the operator received the goods from a domestic carrier and handed them over to a domestic carrier.

36. Alternative 3 of article 2 was regarded as too detailed and complex, and did not receive significant support.

37. The greatest degree of support was expressed for the general approach in alternative 2 of article 2. A view was expressed that the approach was sufficiently flexible and adequately limited the application of the uniform rules to operations performed in the context of international carriage. However, a view was expressed that paragraph (2) of alternative 2 should be replaced by a definition of "international carriage". According to that view, "international carriage" should be defined as car-

riage in which the place of departure and the place of destination were located in two different States; in the case of segmented transport, "international carriage" should cover only those segments in which the place of departure and the place of destination were situated in two different States. A suggestion was made that the definition should be placed in article 1, rather than in article 2.

38. A view was expressed that in order to deal with the case where goods became involved in international carriage while they were in the hands of an operator, or ceased to be involved in international carriage while they were in the hands of an operator, the presumption provided for in paragraph (6) of alternative 3 should be incorporated into article 2.

39. A view was expressed that article 2 should contain a provision to the effect that the uniform rules would not apply if the operator proved that he did not know and could not have known from the information and documentation presented to him that the goods were involved in international carriage.

40. A view was expressed that the uniform rules should apply only when maritime transport was involved. In support of that view it was suggested that since in most cases maritime transport was international, it would not be necessary to attempt to limit further the application of the uniform rules to operations in relation to goods involved in international carriage.

B. Texts proposed by informal working party and notes relating thereto

41. The informal working party proposed the following texts for article 2 of the uniform rules. After the texts are the notes which the Working Group agreed should be added for guidance in consideration of the texts.

Article 2

(1) [*Alternative 1*] This [Convention] [Law] applies whenever:

- (a) the goods are located within the territory of [a contracting] [this] State, and
- (b) the goods are involved in international carriage.

[*Alternative 2*] This [Convention] [Law] applies whenever the ["operations"] are performed:

- (a) in the territory of [a contracting] [this] State, and
- (b) in relation to goods which are involved in international carriage.

(2) When goods in the charge of the operator which were not involved in international carriage upon being

taken over by the operator later become involved in international carriage, or goods in the charge of the operator which were involved in international carriage upon being taken over by the operator later cease to be involved in international carriage, any loss or damage suffered by the goods is rebuttably presumed to have occurred while they were involved in international carriage.

(3) However, this convention shall not apply where the operator proves that he did not know and could not have known from the information and documentation presented to him that the goods were involved in international carriage.

Notes

a. A question has been raised as to whether subparagraph (a) of paragraph 1 would be required or might produce inappropriate results if the uniform rules were adopted as a model law.

b. "International carriage" would be defined in paragraph (4) of article 1 as proposed by the informal working party. A definition of that term as "any carriage in which the place of departure and the place of destination are located in two different States" could be interpreted broadly. When read in connection with article 2, for example, it could have the result that in the case of segmented transport of goods from one State to another the uniform rules would apply to terminal operations performed in relation to goods during a wholly domestic segment of the transport. A narrower approach might be achieved by including in the definition of "international carrier" the language contained within square brackets in paragraph (4) of the text of draft article 1 proposed by the informal working party. Under that language a segment would be regarded as "international carriage" only if, for that segment, the place of departure and the place of destination were situated in two different States.

c. In alternative 2 of paragraph (1), the word "operations" would be replaced by whatever formulation was used in article 1 to describe the covered operations.

Article 3

A. Text proposed by Secretariat

42. It was observed that paragraph (1) might be understood to mean that the operator was responsible for the goods whenever he performed any operation in relation to them within the basic period of responsibility set forth in paragraph (1), including the operations mentioned in paragraph (2), and that in such a case the extended period of responsibility under paragraph (2) would overlap with the period of responsibility under paragraph (1). It was pointed out, however, that the times when goods were taken over or delivered could not always be precisely

identified and an operator might in some cases perform operations with respect to the goods before having taken them over or after having delivered them. Paragraph (2) would extend the basic period of liability in paragraph (1) to cover those situations. A suggestion was made that paragraph (1) should refer to the taking over of the goods by the operator for the purpose of safekeeping.

43. A view was expressed that the limit of the period of the operator's responsibility should be the time when the operator handed the goods over or made them available to a person entitled to take delivery of them, so as to exclude the application of the uniform rules if the customer failed to take delivery of the goods.

44. A view was expressed that the words "such operations as" within square brackets in paragraph (2) should be retained so as to make clear that the enumeration was not exhaustive. That would ensure that loss or damage occurring during an operation closely related to loading or unloading, but not specifically mentioned in paragraph (2), would be covered by the rules. It was suggested that the operations of trimming, dunnaging and lashing should be added to the operations mentioned in paragraph (2). According to another view, however, it was not necessary to add those operations. It was generally agreed that the ways in which the operations were referred to in articles 1 and 3 should be consistent.

B. Text proposed by informal working party and notes relating thereto

45. The informal working party proposed the following texts for article 3 of the uniform rules. After the text are the notes which the Working Group agreed should be added for guidance in consideration of the text.

Article 3

(1) The operator shall be responsible for the goods [referred to in article 1] from the time he has taken them in charge [for safekeeping] until the time he has handed them over [or made them available] to the person entitled to take delivery of them.

(2) If the operator has undertaken to perform or to procure performance of such transport-related services as discharging, loading, stowage, trimming, dunnaging or lashing of the goods, even before their being taken in charge or after their being handed over, the period of responsibility shall be extended so as to cover such additional operations also.

Notes

a. In order to be subject to the uniform rules an entity would have to undertake to perform the operations mentioned in article 1. The purpose of the present

article is to provide that once the entity qualifies as an operator by undertaking to perform those operations he is responsible for the goods under the uniform rules from the time he takes them in charge until the time he hands them over, or, if the final bracketed language in paragraph (1) is included, until he makes them available to the person entitled to take delivery of them. The final form of the present article will depend upon the formulation adopted for article 1.

b. It may be desirable to clarify the concepts of "taking in charge" and "handing over".

c. If alternative 2 of article 1 is chosen, and the words "for safekeeping" are included in paragraph (1) of article 3, the initial period of responsibility could be regarded as the period of safekeeping, and if so, paragraph (2) of article 3 would be required in order to extend the period of responsibility to cover operations performed before or after safekeeping. If "for safekeeping" is not included in paragraph (1), and if the period between taking the goods in charge and handing them over adequately describes the period of time during which the operator could perform operations with respect to the goods intended to be covered by the uniform rules, then paragraph (2) might not be needed.

d. A question was raised whether article 3 would be needed if alternative 3 of article 1 were chosen.

Article 4

A. Text proposed by Secretariat

46. Reference was made to the large number of documents that were used in connection with the international transport of goods. It was generally agreed that the documentation requirements of the uniform rules should be minimal, so as not unduly to add to the burden of documentation in international transport.

Paragraphs (1) and (2)

47. Considerable support was expressed for the view that an operator should be obligated to issue a document only if requested to do so by the customer. According to another view, however, issuance of a document should be compulsory. It was generally agreed that in the document the operator should acknowledge receipt of the goods. A view was expressed that the operator should also state in the document such particulars concerning the condition and quantity of the goods as was requested by the customer of the operator, as far as those particulars could be ascertained by reasonable means of checking. In that connection, it was observed that in some cases, e.g. with sealed containers, it might be excessively burdensome to require the operator to open and perhaps strip the containers in order to check the condition of the goods, and the operator might be prevented from opening sealed containers by customs laws or other laws. A suggestion

was accordingly made that the rules should specify that "reasonable means of checking" did not require the opening of sealed containers.

48. A question was raised as to whether the word "customer" should be used in paragraph (1) and elsewhere, or whether reference should be made to the person with whom the operator was in a contractual relationship. It was generally agreed that reference in the rules to the contract between the parties should be avoided, and that the word "customer" should be retained.

49. It was generally agreed that, in paragraph (1), the operator should be obligated to issue the document within a reasonable, rather than a specified, period of time.

50. A proposal was made that the title of article 4 should be changed to "Acknowledgement of the receipt", and that the article should obligate the operator, at the time he takes the goods in charge, to acknowledge his receipt of the goods by signing a dated document presented by the customer. The document should indicate the date on which the goods were taken in charge, the person entitled to receive the goods, and the description of the goods necessary for their identification, and the operator should note on the document any inaccuracy or inadequacy of the particulars concerning the description of the goods as far as he could ascertain them by reasonable means of checking. If the operator failed to acknowledge receipt of the goods he should be presumed to have received them on the date and in the condition as declared by the customer. In support of that proposal it was noted that in the case of the transfer of goods by the operator from one person or entity to another within a short period of time, it was unrealistic to require the customer to make a formal request for a document or for particulars concerning the goods, and that the rules should only require the operator to sign a document tendered by the customer. In connection with the proposal, however, it was observed that the customer might not present a document to the operator.

Paragraph (3)

51. It was generally agreed that the substance of paragraph (3) was acceptable. A view was expressed that, if the issuance of a document was compulsory, the language included within square brackets should be deleted.

Paragraph (4)

52. Considerable support was expressed for the substance of paragraph (4). According to a contrary view, however, it was preferable to leave the matters referred to in that paragraph to be dealt with by national law. It was also noted that certain terms appearing in paragraph (4), such as "apparently good condition" or "presumption", might not be familiar in some legal systems.

53. With respect to the words "it is proven that" within square brackets, one view favoured retaining the words,

while another view favoured deleting them. In favour of retaining the words it was suggested that it would not be appropriate for the operator to be presumed to have received the goods in apparently good condition unless it was proved that the customer had requested the operator to issue a document or to state on the document information concerning the condition of the goods. It was noted that in some cases disputes could exist as to whether those requests had been made. In favour of deleting the words, it was noted that the question of whether such requests had been made could relatively easily be placed in issue in legal proceedings, and that the words were therefore unnecessary.

54. It was noted that the operator might not know whether he had received the goods, or might deny that he had received them. The view was accordingly expressed that the presumption referred to in paragraph (4) should not arise if the operator did not have an opportunity to check the goods.

55. According to one view, the word "rebuttable" should be deleted from paragraph (4). According to another view, it should be retained, since in some legal systems there existed the concept of an irrebuttable presumption.

56. It was noted that under its present wording paragraph (4) would give rise to a presumption that the operator received the goods in apparently good condition if he refused to state on the document the condition of the goods, even though in the case of sealed containers he would not be obligated to open the container to ascertain the condition of the goods. In that connection a suggestion was made that the presumption should be limited to the condition of the goods that could have been ascertained with reasonable means of checking.

Paragraphs (5) and (6)

57. It was generally agreed that the paragraphs were in substance acceptable. A view was expressed that a stamp or notation on an existing document should be sufficient. A suggestion was made that paragraph (6) should also provide for the operator to sign the document himself. It was noted, however, that the operator would not usually be a natural person.

B. Texts proposed by informal working party and notes relating thereto

58. The informal working party proposed the following texts for article 4 of the uniform rules. After the texts are the notes which the Working Group agreed should be added for guidance in consideration of the texts.

Article 4

(1) *[Alternative 1]* The operator shall [in all cases], without unreasonable delay, either:

[Alternative 2] Unless and to the extent that such requirement is waived by the customer, the operator shall, without unreasonable delay, either:

[Alternative 3] At the request of the customer the operator shall, without unreasonable delay, either:

[Alternative 4] The operator may, at his option, either:

[Alternative 5] The operator may, and at the customer's request shall, without unreasonable delay, either:

(a) acknowledge his receipt of the goods by signing a document produced by the customer identifying the goods and stating their condition and quantity, or

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

(2) If the operator fails to act in accordance with either sub-paragraph (a) or (b) of paragraph (1), he is rebuttably presumed to have received the goods in apparently good condition.

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

(4) A document under this article shall be signed by the operator or on his behalf by a person having authority from him. The signature may be made in handwriting, printed, in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means.

[(5) The absence from the document of one or more of the particulars referred to in paragraph (1) of this article shall not affect the legal character of the document as a document of the operator.]

Notes

a. The various alternatives to paragraph (1) reflect various approaches to the question of whether and the extent to which the operator should be obligated to issue a document. The final wording of this provision could contain elements of one or more of the alternatives.

b. A view was expressed that if the operator was obligated to issue a document only at the request of his customer, the value of the presumption provided for by paragraph (2) would be limited.

c. A view was expressed that the phrase "without unreasonable delay" in paragraph (1) was misleading, and that a definite period of time should be specified.

d. Sub-paragraph (a) of paragraph (1) is intended to take account of the practice in some terminals.

e. The phrase "reasonable means of checking" in sub-paragraph (b) of paragraph (1) is not intended to require an operator to open sealed containers.

f. With respect to paragraph (4), a view was expressed that if another person was authorized to sign a document on behalf of the operator, his ability to do so by mechanical and similar means should be restricted.

g. A view was expressed that paragraph (5) was needed in order to preserve the legal character of the document. According to an opposing view, however, such a provision was important in transport conventions where the transport document was negotiable, constituted a document of title to the goods or served as the contract of carriage; however, that was not the case with the document of the operator, and paragraph (5) was therefore unnecessary.

h. In accordance with a decision of the Working Group at its eighth session, this draft article does not deal with negotiable documents.

Article 5

59. The Working Group considered whether the uniform rules should deal with delay by the operator in handing over the goods. The prevailing view was that the uniform rules should deal with delay. In support of that view it was noted that delay could occur for a number of reasons and was a problem which existed in practice. If the uniform rules did not deal with delay, the liability of the operator for delay would be governed by disparate rules in national legal systems. Some legal systems permitted the operator to restrict or exclude liability for delay by contract. Providing a uniform legal regime for delay would benefit cargo interests, and also carriers who were subject to liability for delay under international transport conventions and who would seek recourse against operators for delay. In other legal systems, delay could expose the operator to severe liability under national law. Dealing with delay in the uniform rules would enable the operator to benefit from the uniform defences and limits of liability in cases of delay.

60. According to an opposing view, however, the uniform rules should not deal with delay. Delay was not a significant problem in practice. It was noted that if the goods could not be found they could be treated as lost, with liability imposed on the operator accordingly. Due to the different types of operators, operations and goods to be covered by the uniform rules, it would be difficult to define what constituted delay.

Paragraph (1)

61. It was noted that under paragraph (1) it was incumbent upon the claimant to prove that the occurrence which caused the loss or damage took place during

the period of the operator's responsibility for the goods, and that once he did so the burden would be on the operator to prove that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences. It was observed that in the performance of his functions the operator might make use of the services of a person who was not a servant or agent. It was generally agreed that reference to such a person should be added to paragraph (1).

62. It was generally agreed that the operator should have the burden of proof referred to in paragraph (1) in respect of loss of or damage to the goods occurring while he was responsible for them, since the goods would be in his possession and he would have the knowledge and evidence of the circumstances concerning the loss or damage. It was noted, however, that contracts for terminal operations often imposed the burden of proof upon the customer to prove that damage caused during the stuffing and stripping of containers was due to the fault of the operator, and it was suggested that that practice should be taken into account in paragraph (1).

63. A view was expressed that the uniform rules should deal with the liability of an operator for damage caused by him to a means of transport which delivered goods to him or took goods away from him. In that connection it was noted that the financial consequences of the damage could be great. The prevailing view, however, was that the rules should deal only with the liability of the operator for loss of or damage to goods or property taken over by him for safekeeping (which might include containers, chassis, trailers, or similar items) but that liability for damage to property not taken over for safekeeping was beyond the scope of the rules to be elaborated.

64. A view was expressed that the operator should be required to prove only that he took all measures that could reasonably be required "of him", since some operators might not be equipped to take measures which might be regarded as reasonably required. The prevailing view, however, was that the liability of the operator should be subject to an objective standard, rather than a subjective one, and that the words "of him" should not be added.

65. With respect to the sentence within square brackets at the end of paragraph (1), a view was expressed that the sentence should be retained. The prevailing view, however, was that the sentence should be deleted, since the operator, who was often engaged in a commercial activity, should be responsible for the acts of his servants or agents, whether or not they acted within the scope of their employment.

Paragraph (2)

66. Differing views were expressed with regard to paragraph (2). In support of deleting that paragraph it was suggested that the paragraph would interfere with and limit the standard of liability set forth in paragraph (1). It was also suggested that the paragraph was

unnecessary, since a court would in any case consider the factors mentioned in it. A further view was expressed that the precise scope and meaning of the words "*inter alia*" were not clear. In support of retaining the paragraph, it was suggested that pointing out certain factors to be taken into consideration by courts in determining what measures were reasonably required would promote uniformity in court decisions and would be of help in those legal systems in which the concept of reasonableness was not familiar. It was also suggested that by virtue of the words "*inter alia*" in paragraph (2), that paragraph would not limit the liability imposed in paragraph (1); a court would be free to consider other relevant circumstances. A suggestion was made that the concerns of those who favoured deleting the paragraph might be met by providing that "due regard shall be had to all of the circumstances of the case, including, *inter alia*, the nature of the goods and the nature of the operations to be performed by the operator".

Paragraph (3)

67. Paragraph (3) was found to be acceptable.

Paragraph (4)

68. Paragraph (4) was found to be acceptable. A suggestion was made, however, that the drafting of the language towards the end of the paragraph should be improved by referring to "a reasonable time after receiving a request for the goods by the person".

Paragraph (5)

69. It was observed that it might not be appropriate to enable the claimant to treat the goods as lost if they were not in fact lost, but were not handed over within 60 days for reasons known to both parties (e.g. an industrial dispute). It was also observed, however, that in such cases the operator might avoid liability for loss by proving, in accordance with paragraph (1), that the delay in handing over occurred despite his having taken measures that could reasonably have been required to avoid the delay.

70. It was noted that under paragraph (5) the 60-day period would commence on the date when the customer requested the goods. It was generally agreed that the paragraph should provide for the period to commence on the date agreed to by the parties for handing over of the goods, or, in the absence of such an agreement, on the date when the customer requested the goods. In that connection it was observed that the operator might be obligated to hand over the goods at a time agreed upon by the parties, without a request.

71. A view was expressed that in the case of goods which were stationary within a terminal, 60 days was an excessive amount of time before the customer could treat the goods as lost. It was suggested that 10 or 14 days would be more appropriate.

Article 6*Paragraph (1)*

72. It was generally agreed that even if the uniform rules were cast in the form of a model law, the limits of liability should be expressed by reference to the Special Drawing Right as defined by the International Monetary Fund. If the rules were cast in the form of a convention, the unit of account provision adopted by the Commission at its fifteenth session³ should be used.

73. A view was expressed that a mechanism should be provided for revision of the limits of liability. It was observed that in the case of a convention one of the two provisions adopted by the Commission at its fifteenth session for revising limits of liability⁴ could be used, but that in the case of a model law problems could exist in choosing a forum to effectuate the revision. In that connection it was suggested that if the uniform rules were adopted as a model law, the adoption of the rules could be accompanied by an expression that it would be desirable for the limits to be revised periodically so as to take account of inflation. According to another suggestion a revision of the limits should take account of limits existing in international transport conventions which were in force.

74. Various views were expressed as to whether the uniform rules should establish a single limit of liability, or whether the limit should depend upon the mode or modes of transport served by the operator. According to one view the rules should establish a single limit. In support of that view it was observed that the operator might not always know by what mode of transport the goods were delivered to him or were taken away from him, and he would in those cases not know which limit applied. Furthermore, a multiplicity of possible limits would cause undue confusion and uncertainty. It was also observed that with respect to certain modes of transport the limits of liability were not settled.

75. According to another view, if the goods were delivered to or taken away from the operator by maritime transport, the limits applicable to maritime transport should apply; if maritime transport was not involved, a higher limit should apply. According to a third view, the limit should be the limit applicable either to the mode of transport by which the goods were delivered to the operator or the mode by which they were taken away from him, whichever limit was higher.

Paragraphs (2) and (3)

76. The paragraphs were found to be acceptable.

³Report of the United Nations Commission on International Trade Law on the work of its fifteenth session, *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 17 (A/37/17 and Corr. 1 and 2 (English only))*, para. 63, annex I.

⁴*Ibid.*, para. 63, annexes II and III.

Paragraph (4)

77. A question was raised as to what would be the result if the enumeration of packages or shipping units in the document issued by the operator differed from that in the transport document. Subject to clarification of that point, the paragraph was found to be acceptable.

Paragraph (5)

78. Paragraph (5) was found to be acceptable.

Article 7

79. In connection with paragraph (2), it was generally agreed that not only servants and agents of the operator, but also other persons of whose services the operator made use, should be entitled to avail themselves of the defences and limits of liability available to the operator under the uniform rules.

80. A view was expressed that if, in paragraph (1) of article 5, the operator was to be liable for loss, damage or delay resulting from acts of his servants, agents or other persons, those persons should be able to avail themselves of the defences and limits of liability available to the operator even if they acted outside their scope of employment. A suggestion was made that the reference to scope of employment in paragraph (2) of article 7 should therefore be deleted.

Article 8

81. With respect to paragraph (1), the prevailing view was that the operator should not lose the benefit of the limit of liability as a result of the acts of his agents or other persons of whose services he made use. It was observed in that regard that the operator could receive more favourable insurance rates if the possibility of his losing the benefit of the limit of liability was restricted.

Article 9

82. Various views were expressed with respect to the approach taken in article 9. It was observed that the article imposed certain obligations on the consignor of the goods, who would often not be in a contractual relationship with the operator. A view was accordingly expressed that the obligation imposed upon the consignor in the article should instead be imposed on the customer of the operator. It was also observed that the consignor of the goods could be far removed from the operator in the chain of transport, and it was suggested that the obligations imposed on the consignor in article 9 should instead be imposed on the "depositor" or "user" of the terminal. A further view was expressed that since the purpose of the uniform rules was to regulate the liability of the operator for loss of or damage to goods taken in charge by him, the rules should not deal with obligations owed to the operator by another person.

83. The prevailing view, however, was that the problems arising in connection with dangerous goods were so important that they should be dealt with in the uniform rules, and the approach taken in article 9 was appropriate. In that connection a suggestion was made that the uniform rules should clarify that the "consignor" was the person who initially shipped the goods.

84. A view was expressed that paragraphs (2) and (3) should deal with the case where the operator did have knowledge of the dangerous character of the goods and the goods damaged or threatened to cause damage to property of the operator, in addition to the case where he did not have knowledge. In particular, it was suggested that paragraph 2(b) should permit the operator to destroy the goods or render them innocuous even if he knew of their dangerous character. According to another view, the operator should be able to invoke the rights under paragraphs (2) and (3) unless he had actual, rather than implied, knowledge of the dangerous character of the goods.

85. It was generally agreed with respect to paragraph (2)(a) that the loss for which the consignor would be liable to the operator should include not only any damage to the property of the operator but also the costs to the operator of destroying the goods or rendering them innocuous and any liability imposed on him as a result of loss or damage caused by the dangerous goods. A view was expressed, however, that it might be appropriate to provide limits to the liability of the consignor towards the operator. With respect to paragraph (2)(b) it was generally agreed that the operator should be able not only to destroy the goods or render them innocuous, but also to dispose of them by other means.

86. A suggestion was made that the operator's customer should be required to disclose to the operator any special storage requirements for the goods deposited or their perishable nature, in view of the objective liability imposed on the operator in article 5.

Article 10

87. It was observed that a container in respect of which the operator had rights of security would often be owned by a person other than the owner of the goods (e.g. by a container leasing company) and with whom the operator was in no contractual relationship. The view was accordingly expressed that the operator should be obligated to make reasonable efforts to notify the owner of a container leased by the customer before exercising a right to sell the container. According to additional views, the operator should be obligated to make reasonable efforts to notify owners of all goods subject to a right of sale by the operator, and the rules should require the operator to account to the customer for the balance of the proceeds of the sale in excess of the sums due to the operator. According to another view, however, issues concerning the exercise of the right of sale, including notice and

disposition of the proceeds of the sale, should be left to be dealt with by the applicable rules of national law.

88. A view was expressed that paragraph (3) served no purpose, as it permitted the operator to sell the goods only to the extent permitted by and in accordance with applicable law, which would be the case even without such a provision. According to another view, if paragraph (3) specified which law should apply in dealing with those issues, the paragraph could be useful to avoid conflict of laws problems if the uniform rules were adopted in the form of a convention; in that case the law referred to should be the law of the place where the operations were performed by the operator.

Article 11

89. It was generally agreed that the approach in article 11 was acceptable, except that the article should not treat loss and partial loss differently. In that connection, paragraph (2) should be deleted, and paragraph (1) should refer only to loss, rather than to partial loss.

90. A further view was expressed that the article should not distinguish between apparent and non-apparent loss and damage; rather, there should be a single notice period which was long enough to take into account the problem that in some cases loss or damage might not be discoverable until the goods reached their final destination. It was generally agreed, however, that the notice periods should be different for apparent and non-apparent loss and damage.

Article 12

91. It was generally agreed that there should not be a separate limitation period for loss or damage caused by intentional or reckless acts or omissions and for loss or damage caused by other conduct; accordingly, the bracketed language after the first sentence in paragraph (1) should be deleted.

92. It was noted that in some legal systems the running of the limitation period could be interrupted by means other than by instituting arbitral or judicial proceedings, and it was suggested that account should be taken of those means in the article.

93. It was generally agreed that in the case of total loss of the goods, the limitation period should commence on the day the operator notified the person entitled to make a claim that the goods were lost, or, if no such notice was given, on the day that person could treat the goods as lost in accordance with article 5.

Article 13

94. It was generally agreed that paragraph (1) was acceptable.

95. Differing views were expressed with respect to paragraph (2). According to one view, the paragraph was useful to ensure that the parties could agree to a different liability regime for processing operations, and it should be retained. The prevailing view, however, was that the uniform rules were not intended to cover processing operations, and therefore the paragraph was unnecessary and should be deleted.

96. It was observed that paragraph (1) referred only to a contract for the "safekeeping of goods", and it was suggested that the provision should be made to correspond with the scope of the operations intended to be covered by the uniform rules, which could include operations in addition to safekeeping.

Article 14

97. It was generally agreed that article 14 should be deleted if the uniform rules were adopted in the form of a model law. It was suggested that in such a case the model law should provide that the reports of the Working Group and the Commission dealing with the elaboration of the model law should be used as a guide to its interpretation.

Article 15

98. Article 15 was found to be acceptable, including the language within square brackets. It was noted that that language was necessary in order to take account of the fact that some States adopted international transport conventions by means of legislation.

III. Other business and future work

99. The Working Group, taking account of already scheduled meetings of other organs dealing with topics in the field of international transport which would be attended by some representatives of member States and observers of the Working Group, decided to recommend to the Commission that the tenth session of the Working Group should be held at Vienna from 1 to 12 December 1986. It also decided to recommend that, unless it completed its work at the tenth session, the eleventh session of the Working Group should be held for two weeks in New York during the first half of 1987, prior to the twentieth session of the Commission.

B. Working papers submitted to the Working Group on International Contract Practices at its ninth session

1. Liability of operators of transport terminals: certain factual and legal aspects of operations performed by operators of transport terminals: note by the secretariat (A/CN.9/WG.II/WP.55)

[Original: English/French]

CONTENTS

	<i>Paragraphs</i>
INTRODUCTION	1-3
I. OVERVIEW OF OPERATORS DEALING WITH GOODS INVOLVED IN CARRIAGE	4-10
II. TYPES OF GOODS INVOLVED IN CARRIAGE	11-12
III. OPERATIONS PERFORMED WITH RESPECT TO GOODS INVOLVED IN CARRIAGE	13-24
A. Loading and unloading of goods	14-16
B. Storage of goods	17-18
C. Packing and packaging of goods; stuffing and stripping of containers	19-21
D. Carriage of goods by operator	22
E. Preparation or processing of goods	23
F. Operations with respect to empty containers	24