II. LIABILITY OF OPERATORS OF TRANSPORT TERMINALS

A. Report of the Working Group on International Contract Practices on the work of its eleventh session (New York, 18-29 January 1988) (A/CN.9/298) [Original: English]

CONTENTS

INTRODUCTION

1. At its sixteenth session, in 1983, the Commission decided to include the topic of the 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 that topic to a working group (A/38/17, para. 115).[1]

2. In response to that request, UNIDROIT transmitted its preliminary draft Convention to the Commission. At its seventeenth session, the Commission assigned to the Working Group on International Contract Practices the task of formulating uniform legal rules on the liability of operators of transport terminals (A/39/17, para. 113). 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 (A/CN.9/252),

[1] *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17* (A/38/17).

and that the Working Group should also consider issues not dealt with in the UNIDROIT preliminary draft Convention, as well as any other issues that it considered to be relevant.

3. The Working Group commenced its work on the topic at its eighth session with a comprehensive consideration of the issues arising in connection with the liability of operators of transport terminals (A/CN.9/260). At that time it decided to settle the form that the uniform rules should take after establishing their substance and content. At its ninth session, the Working Group held an initial discussion of all the draft articles of uniform legal rules on the liability of operators of transport terminals that had been prepared by the Secretariat (A/CN.9/WG.II/WP.56). It also prepared texts of draft articles 1, 2, 3 and 4, with accompanying notes, to serve as a basis for further consultations by delegations and for its future work (A/CN.9/275). At its tenth session, the Working Group considered draft articles 1 to 3 of the uniform legal rules and revised draft articles 5 to 15 and new draft articles 16 and 17 that had been prepared by the Secretariat (A/CN.9/WG.II/WP.58) and prepared texts for several of those draft articles. (A/CN.9/287).

4. The Working Group, which was composed of all States members of the Commission, held its eleventh session in New York from 18 to 29 January 1988. The session was attended by representatives of the following States members of the Working Group:

Argentina, Australia, Austria, Brazil, China, Cuba, Czechoslovakia, Egypt, France, German Democratic Republic, India, Italy, Japan, Lesotho, Libyan Arab Jamahiriya, Mexico, Netherlands, Nigeria, Spain, Sweden, Union of Soviet Socialist Republics, United States of America and Yugoslavia.

5. The session was attended by observers from the following States:

Bangladesh, Canada, Democratic People's Republic of Korea, Democratic Yemen, Ecuador, Federal Republic of Germany, Holy See, Peru, Poland, Republic of Korea, Romania, Sudan, Switzerland, Thailand, Togo, Uganda and Venezuela.

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

(a) United Nations specialized agency

United Nations Conference on Trade and Development;

(b) Intergovernmental organizations

Central Commission for the Navigation of the Rhine, International Institute for the Unification of Private Law (UNIDROIT), Office Central des Transports Internationaux Ferroviaires;

(c) International non-governmental organizations

Comité Maritime International, Institute of International Container Lessors, International Cargo Handling Co-ordination Association, International Chamber of Commerce.

7. The Working Group elected the following officers:

Chairman: Mr. Michael Joachim BONELL (Italy)

Rapporteur: Mr. Kuchibhotha VENKATRAMIAH (India).

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

(a) Provisional agenda (A/CN.9/WG.II/WP.59);

(b) Liability of operators of transport terminals: revised text of draft uniform rules on liability of operators of transport terminals based upon discussions and decisions at tenth session of Working Group (A/CN.9/WG.II/WP.60).

9. The Working Group adopted the following agenda:

1. Election of officers.
2. Adoption of the agenda.
3. Formulation of uniform legal rules on the liability of operators of transport terminals.
4. Other business.
5. Adoption of the report.

DELIBERATIONS AND DECISIONS

I. Method of work

10. The Working Group engaged in a review of all articles of the draft uniform rules on the liability of operators of transport terminals on the basis of document A/CN.9/WG.II/WP.60. Chapter II of the present report contains the discussion and decisions of the Working Group in the context of that review. The Working Group decided to recommend that the draft uniform rules be adopted in the form of a convention.

11. After completing its review of the draft uniform rules, the Working Group convened a drafting group to which it referred the draft uniform rules. The drafting group was requested to incorporate into the draft uniform rules the decisions taken by the Working Group and to review the draft uniform rules in order to ensure linguistic consistency within each language version and correspondence among the different language versions. The draft uniform rules as modified and submitted by the drafting group were then reviewed by the Working Group (see below, chapter IV). Upon completion of that review the Working Group approved the draft uniform rules as contained in annex I to the present report.

II. Review of the draft uniform rules on the basis of document A/CN.9/WG.II/WP.60

Article 1

Paragraph (1)

12. The Working Group discussed the words "involved in international carriage", which were within square brackets. According to one view, the words were

unnecessary since the requirement that the goods be involved in international carriage was also contained in article 2(1)*(b)*. The prevailing view, however, was that the words should be retained and the square brackets deleted, since it was useful to emphasize that the rules applied only in respect of goods involved in international carriage.

13. A suggestion was made that the restriction of the uniform rules to operations in respect of goods involved in international carriage should be reflected in the title of the uniform rules; that suggestion was referred to the drafting group. A suggestion to change the words "to provide or to procure transport-related services" to "to perform or to procure the performance of transport-related services", in order to achieve consistency with other provisions of the uniform rules, was also referred to the drafting group.

14. It was decided to delete subparagraph *(a)* for the following reasons: Retaining that subparagraph would exclude from the scope of the uniform rules a significant portion of operations performed by operators, particularly operations performed at container terminals, and would thus leave a large gap in the coverage of the rules. Moreover, the dividing line between the temporary placement of goods on the ground during direct transfer, which under that subparagraph would not be covered by the uniform rules, and the storage of goods, which would be covered, was not clear and would be difficult to define. It was noted that, with the deletion of the subparagraph, stevedores would be covered by the uniform rules; although they would prefer to benefit from an extension of the liability regime applicable to carriers, it was not always possible for them to do so, and they should be able to receive comparable protection under the uniform rules. It was further observed that storage of goods was no longer the central function of a terminal operator; rather, his essential undertaking, reflected in paragraph (1), was to take goods in charge in order to perform transport-related services.

15. In favour of retaining the provision it was stated that the uniform rules should apply only when the goods were stored by the operator.

16. A question was raised as to whether the uniform rules applied when the operator accepted goods for long-term storage and did not know the ultimate destination of the goods. It was suggested that article 1(3) could assist in resolving that question.

Paragraph (2)

17. It was stated that the definition of "goods" should not include articles of transport or packaging that were owned by persons other than the shipper or the person who engaged the operator; to do so would subject those articles to the operator's rights of security in the goods under article 10, which would conflict with the rights of their owners and with international conventions or national laws governing rights of security in those articles. It was agreed that the issue should be dealt with in the context of article 10.

18. A view was expressed that vehicles used to transport goods, such as barges, railway wagons, trailers and chassis, should not be subject to the liability regime of the uniform rules, and thus should not be included in the definition of "goods". It was noted that those vehicles were in many cases subject to their own legal rules under international conventions or national laws. The liability regime under the uniform rules on the liability of operators of transport terminals was said not to be intended or suitable to deal with loss of or damage to such vehicles. For example, because the value of those vehicles was often much greater than the value of the goods carried by them, the limits of liability provided in the uniform rules for loss of or damage to goods would in many cases not be adequate to compensate for loss of or damage to the vehicles. Accordingly, the Working Group decided to follow the approach used in article 1(5) of the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) (hereinafter referred to as the "Hamburg Rules")[2], namely, to include in the definition of "goods" articles used to consolidate or package goods, but not articles used purely to transport the goods. It was noted, however, that the distinction between the two types of articles was becoming less clear as a result of developments in transport practice and technology. In accordance with its decision, the Working Group adopted a definition of "goods" along the following lines:

> "'Goods' includes a container, pallet or similar article of packaging or transport to the extent that the goods are consolidated or packaged therein and the article of packaging or transport was not supplied by the operator."

Paragraph (3)

19. Paragraph (3) was found to be acceptable. A view was expressed that the paragraph should be interpreted in such a way that, in the case of segmented transport, the term "international carriage" covered only segments in respect of which the places of departure and destination were identified as being situated in two different States. That view, however, was not accepted by the Working Group.

Paragraph (4)

20. Paragraph (4) was found to be acceptable. It was understood that the term "transport-related services" covered services that were relevant for the movement of the goods and not, for example, financial services with respect to the goods.

Paragraph (5). Form of notices and requests under uniform rules

21. The Working Group engaged in a discussion concerning the form of notices and requests under the uniform rules. The discussion focused on draft articles 1(5) and 11(1). It was understood, however, that the

[2]See *Final Act of the United Nations Conference on the Carriage of Goods by Sea* (A/CONF.89/13).

discussion also related to the references to notices and requests in draft articles 5(3), 5(4), 10(3), 11(2), 11(5), 12(2), 12(4) and 12(5).

22. According to one view the uniform rules should contain, in article 1(5) or in a separate article, a general requirement as to the form of all notices and requests under the rules. Support was expressed for a proposal to amend article 1(5) to read as follows:

> "'Notice' means a written or oral communication given pursuant to this [Law] [Convention] which is immediately preserved in a form or manner which provides a retrievable record of the information contained therein."

23. The proposal also called for the deletion of the last sentence of article 11(1). It was explained that under the proposal any notice pursuant to the uniform rules could be given orally so long as the giver of the notice preserved a record of the notice that was retrievable whenever needed in connection with a claim under the uniform rules.

24. In opposition to the proposal it was stated that the uniform rules should permit oral notice to be given without any formalities. According to that view it should be left to each party to determine the appropriate form of notice to use in accordance with good commercial practice and to protect his interests. It was noted that the recipient of an oral notice could protect his interests by making a written acknowledgement of the notice. The sufficiency of proof that oral notice had been given was said to be a question to be resolved by a court or tribunal resolving a dispute in which the notice was relevant. It was pointed out that, under the proposal, even if there was no dispute that oral notice had been given, the notice would be of no effect if it was not preserved. It was also pointed out that the reference in the proposal only to a "written or oral communication" precluded notice from being effective if it was given by computer-to-computer communication.

25. According to another view, the uniform rules should not contain a general requirement as to the form of all notices and requests under the rules; rather, the question of form should be dealt with in connection with each individual notice and request under the rules. Thus, it was proposed that article 1(5) should be deleted. Another proposal was to delete both article 1(5) and the last sentence of article 11(1), and leave the question of the form of a notice or request to the applicable national law. In that connection, another suggestion was made that notice under article 11(1) should be given in writing.

26. In the course of the discussion the view emerged that article 1(5) should be retained in its present form since it unified in an acceptable manner the differing practices and national legal rules relating to the form of notices and that the question of whether, as an exception to that general provision, certain types of notice or request should be able to be given orally should be resolved separately. The Working Group accepted that approach. In that connection, support was expressed for permitting notice of apparent loss or damage under article 11(1) to be given orally. The prevailing view, however, was that the notice should be subject to the general notice provision in article 1(5), since the notice was important and requiring it to be given in a form which provided a record of it would avoid the problems that would arise if the fact that the notice had been given was questioned or if the contents of the notice was uncertain.

Article 2

Paragraph (1)

27. Opposition was expressed to the present version of paragraph (1)*(a)* on the ground that it departed from general conflict of laws principles. Under those principles the uniform rules would apply if they were part of the law of the place where the goods were located; they also allowed parties autonomy to agree that the rules were to apply to their relationship. In addition, it was noted that there existed transport terminals that straddled the boundaries of two or more States, and that some of those States might apply the rules and others might not. In such cases neither the place where the transport-related services were performed nor the place where the goods were located provided a suitable criterion for the application of the uniform rules, since the operator could influence the application of the rules by performing the transport-related services or locating the goods in the portion of the terminal that was in the State where the operator's legal position was more favourable.

28. The Working Group decided that the Convention should apply whenever the transport-related services were performed by an operator whose place of business was located in the territory of a contracting State or whenever the rules of private international law led to the application of the law of a contracting State. The Working Group also decided to retain the requirement presently set forth in paragraph (1)*(b)*. The drafting group was requested to draft a provision to implement those decisions, and to consider including a provision to deal with the case where an operator had more than one place of business, such as article 10 of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)[3] (hereinafter referred to as the "United Nations Sales Convention").

29. It was noted that paragraph (1)*(a)* did not require the transport-related services to be performed in a transport terminal, which raised the question of whether the uniform rules would apply if the services were performed within the territory of the relevant State but outside a terminal. Moreover, the uniform rules did not define what was a transport terminal.

Paragraph (2)

30. It was decided to delete paragraph (2) for the following reasons. The paragraph contained a rule of

[3] *Final Act of the United Nations Conference on Contracts for the International Sale of Goods* (A/CONF.97/18).

evidence, and such matters should not be dealt with in the uniform rules. The rule was too subjective and thus inconsistent with article 1(3) and would be difficult for courts to apply. Although it was important for the operator to know whether or not the goods were involved in international carriage and therefore subject to the uniform rules, an operator who did not have such knowledge would be sufficiently protected by article 1(3). That article implicitly required a reasonable indication to the operator when he took over the goods that they were involved in international carriage and enabled him to claim that the rules did not apply in the absence of such an indication.

31. In favour of retaining paragraph (2), it was argued that the paragraph was needed in order to protect the operator who did not know that the goods were involved in international carriage; it was stated, however, that the provision should be set forth separately as a defence of the operator and not in the article dealing with the scope of application of the rules. According to a further view, the provision would protect an operator who took over and delivered goods in the domestic leg of segmented international transport, particularly in view of an uncertainty in the case of segmented transport as to what were the relevant places of departure and destination for the purpose of establishing whether the goods were involved in international carriage under article 1(3). It was pointed out, however, that article 2(2) did not help to resolve that question.

Article 3

32. A proposal was made to change the words "made them available to" to "placed them at the disposal of" in order to correspond with language used in article 4(2)*(b)*(ii) of the Hamburg Rules. However, that proposal was not adopted and article 3 was retained in its present form.

Article 4

33. Among the alternative wordings for the opening phrase of paragraph (1) the Working Group preferred alternative 5. That alternative obligated the operator to issue a document at the customer's request and clarified that the operator could also do so in the absence of such a request. The drafting group was requested to review the drafting of that alternative.

34. A view was expressed that the phrase "without unreasonable delay" might give rise to difficulties in interpretation, and it was suggested that a more objective phrase, such as "within a customary time period", be used instead. It was agreed, however, to retain "without unreasonable delay". It was understood that, in order to determine whether a delay was "reasonable", it would be relevant to consider the customary practice in the type of terminal in question.

Paragraph (1)(a) *and* (b)

35. The Working Group agreed that the operator should have a high degree of flexibility with respect to the manner in which he acknowledged his receipt of the goods. The Working Group was of the view that the text of subparagraphs *(a)* and *(b)* allowed for such flexibility, since it enabled the operator to acknowledge his receipt of the goods by issuing a document, by signing a document produced by the customer or by making an appropriate notation on a document prepared or issued by a third party, such as a carrier. It was understood that the operator could satisfy the documentation requirement under the present text of paragraph (1) by delivering to the customer a document issued by a third party, such as a carrier, signed on behalf of the operator by the third party.

36. A suggestion was made that the operator should expressly be permitted to enter a reservation on the document signed or issued by him if he had no reasonable means of checking the goods or had grounds to question their condition or quantity. That was said to be particularly important where the operator was to sign a document prepared by the customer or make a notation on a document prepared or issued by a third party. It was understood that under the present text of subparagraph *(a)* the operator could enter such a reservation; thus, no further provision to that effect was necessary. It was further understood that the "reasonable means of checking" in subparagraph *(b)* did not require an operator to open a sealed container. The Working Group accordingly found the text of subparagraphs *(a)* and *(b)* to be acceptable, but requested the drafting group to review those subparagraphs with a view towards ensuring their suitability for electronic data-processing techniques.

Paragraph (2)

37. Paragraph (2) was found to be acceptable.

Paragraph (3)

38. Paragraph (3) was found to be acceptable. It was noted that the paragraph did not specify how long the record of the information contained in the document issued by the operator should be preserved.

Paragraph (4)

39. The Working Group decided to delete the first sentence of paragraph (4) as unnecessary. The second sentence of paragraph (4) was found to be acceptable. It was understood that, if the operator did not sign the document as required, article 4(2) would apply.

Paragraph (5)

40. A suggestion was made that paragraph (5) might be more useful if it were modified to make it clear that the absence from the document of information required in paragraph (1) did not affect the existence or the validity of the contract between the operator and the customer. 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). In opposition to the suggestion it was

noted that the document required under the Warsaw Convention played a more central role in the liability scheme of that Convention than did the document under the present uniform rules. Such a provision was therefore regarded as unnecessary. Accordingly, the suggestion was not adopted and paragraph (5) was deleted.

Article 5

Paragraphs (1) and (2)

41. Paragraphs (1) and (2) were found to be acceptable.

Paragraphs (3) and (4)

42. A view was expressed that the person entitled to receive goods should be able to make the request under paragraphs (3) or (4) for handing over the goods in any form he considered appropriate and sufficient to protect his interests, including orally. According to another view, the request should be required to be made in a form which provided a retrievable record of the request. In accordance with its discussion and decision concerning the form of notices and requests under the uniform rules (see paragraphs 21 to 26, above), the Working Group decided to retain paragraphs (3) and (4) in their present form.

43. The Working Group decided that the period of time referred to in paragraph (4) should be 30 days.

Article 6

Paragraph (1)

44. The approach contained in paragraph (1) was found to be acceptable. A view was expressed that the amounts of the limits set forth within square brackets were too low; according to another view, however, they were satisfactory. The Working Group decided to retain the square brackets around those amounts so that the forum that was to adopt the rules as a convention or as a model law could consider them further.

45. A view was expressed that if the uniform rules were adopted as a convention a reservation should be permitted whereby a contracting State could apply higher limits to air terminals. According to a further view a reservation should be permitted whereby a contracting State could apply the convention only to sea terminals. The Working Group returned to the question of reservations after it had reached its decision with respect to the form in which the uniform rules should be adopted (see paragraph 96, below).

Limitation based on number of packages or shipping units

46. A proposal was made to reintroduce an alternative limit of liability based on the number of packages or shipping units, which had been deleted by the Working Group at its tenth session. In support of the proposal it was stated that, in particular with respect to goods of high value, which were often transported in containers, the limits based on weight would in many cases be considerably below the actual value of the goods. Reference was also made to the respective provisions in the Hamburg Rules and in the United Nations Convention on International Multimodal Transport of Goods (hereinafter referred to as the "Multimodal Convention").[4] It was noted, however, that the application of limits based on the number of packages or shipping units had given rise to problems in practice. It was also noted that the reintroduction of such limits would require further provisions with respect to the document to be issued by the operator. The Working Group decided not to alter its previous decision to delete the limits based on the number of packages or shipping units, but recommended that when the uniform rules were circulated for comments Governments should consider the question of whether such limits should be reintroduced.

Paragraph (2)

47. Paragraph (2) was found to be acceptable. It was noted that in a situation where the operator rendered his services free of charge, such as in the case of a public facility in which incoming or outgoing cargo was required by law to be deposited, it might not be possible to calculate a limit of liability under paragraph (2). It was stated, however, that such cases, which were rare, could be resolved by courts through appropriate construction.

Paragraphs (3) and (4)

48. Paragraphs (3) and (4) were found to be acceptable.

Article 7

Paragraphs (1) and (3)

49. Paragraphs (1) and (3) were found to be acceptable.

Paragraph (2)

50. The drafting group was requested to review the wording "if he proves that he acted in the performance of the services for which he was engaged by the operator" so as to avoid an unintended implication that the liable person would be deprived of the defences and limits of liability in the case of a minor deviation in the performance of the services required of him by the operator.

Article 8

Paragraph (1)

51. Differing views were expressed as to the circumstances in which the operator should lose the benefit of the limits of liability under the uniform rules. One view was that the operator should lose that benefit only in the case of his own intentional or reckless conduct, and not in the case of such conduct by his

[4] TD/MT/CONF/16.

employees or other persons engaged by him. It was therefore proposed that the words "or his servants" should be deleted from paragraph (1). The following reasons were advanced in support of that view. Relatively unbreakable limits enabled insurers to assess their risks more accurately and resulted in lower insurance costs than if the limits were more breakable. It was more economically efficient for the risk of loss or damage in excess of the limits of liability to be insured by the customer than by the operator. Since a significant proportion of loss of or damage to goods occurred due to the intentional or reckless acts of employees or other persons engaged by the operator, enabling the limits to be broken in cases of such acts would significantly broaden the exposure of the operator to unlimited liability, which would render the uniform rules unattractive. It was also pointed out that the operator should lose the limits only in the case of his own intentional or reckless acts, i.e. acts of his employees that were authorized or in the scope of their duties. It should be a matter for the shipper or owner of the goods to insure against other risks if there was a possibility of loss greater than the specified limits. It was also noted that under article 8(1) of the Hamburg Rules a carrier lost the benefit of the limits of liability only in the case of his own intentional or reckless acts.

52. A second view was that the operator should lose the benefit of the limits of liability not only in the case of his own intentional or reckless acts, but also in the case of such acts by his employees and other persons engaged by him. The following reasons were advanced in support of that view. Under article 8(2) the liability of employees or other persons engaged by the operator for loss, damage or delay resulting from their intentional or reckless acts was unlimited; however, those persons often did not have the financial resources or insurance to cover that liability, and the operator should be fully liable for the loss, damage or delay. The limits of liability contained in article 6 were low; thus the ability of a claimant to recover in excess of those limits should be broadened. The approach used in the Hamburg Rules should not be adopted in the uniform rules, since the Hamburg Rules approach was part of a package of compromises centring around the elimination of the nautical-fault defence of the carrier. A provision whereby the operator would lose the benefit of the limits of liability only in the case of his own intentional or reckless acts would be of little effect, since an operator was usually a legal entity that could act only through its authorized personnel.

53. Since neither of the foregoing views prevailed, the Working Group retained the compromise approach presently contained in paragraph (1), under which the operator lost the benefits of the limits of liability in the case of his own intentional and reckless acts as well as those of his employees, but not in the case of such acts committed by other persons engaged by him. In retaining that approach, the Working Group emphasized that it was desirable for Governments in examining paragraph (1) to consider the underlying policy question of the extent to which the limits of liability of the operator should be breakable.

54. In order to achieve consistency with paragraph (2), the Working Group agreed to change the words "or his servants" in paragraph (1) to "or his servants or agents". It was understood that the phrase "servants or agents" referred to employees of the operator and did not include independent contractors engaged by him.

55. A proposal was made to add at the end of paragraph (1) the following:

> "provided that in the case of such act or omission of a servant or agent it is also proved that he was acting within the scope of his employment."

56. In support of that addition it was said to be unjustifiable to deprive an operator of the benefit of the limits of liability if the intentional or reckless acts of his servants or agents were committed outside the scope of their employment. The addition corresponded with the approach followed in the Protocol to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 (The Hague, 1955).

57. In opposition, it was stated that the addition was not necessary, since all references in the uniform rules to acts of servants or agents of the operator implicitly contained the proviso that those acts should be within the course of the servants' or agents' employment. According to a contrary view, however, that was not implicit in respect of all references to acts of servants or agents of the operator, and it was therefore necessary to include the proviso expressly in paragraph (1). In that connection, it was said to be dangerously and undesirably ambiguous in article 5(1) whether the reasonable measures which servants, agents or other persons engaged by the operator had to take in order for the operator to avoid liability referred only to measures within the scope of the servants' or agents' employment. In the light of the differing views concerning the proposed addition to paragraph (1), the proposal was not accepted.

Paragraph (2)

58. Paragraph (2) was found to be acceptable.

Article 9

59. The drafting group was requested to find more suitable language than "any applicable international, national or other rule of law" to express the requirement that the goods should be marked, labelled, packaged or documented in accordance with any applicable legal requirement. Apart from that request, article 9 was found to be acceptable.

Article 10

Paragraphs (1) and (2)

60. Paragraphs (1) and (2) were found to be acceptable.

Paragraph (3)

61. A view was expressed that paragraph (3) should serve only as a reminder to the operator that the right to sell goods retained by him pursuant to paragraph (1) depended upon the applicable law and that the paragraph should not change the rules relating to the right of sale under the applicable law.

62. Objections were raised to the designation of the law of the place where the transport-related services were performed as the law applicable to the right of sale of the goods. A view was expressed that paragraph (3) should designate the law of the State where the goods were located, since conflict of laws rules in most legal systems would normally point to that law as the applicable law. It was said to be inappropriate to require a court in the State where the goods were located to refer to the law of the State where the transport-related services were performed in adjudicating the existence of a right of sale or the consequences of a sale. According to a further view, paragraph (3) should simply refer to the "applicable law".

63. The decision of the Working Group was to designate as the applicable law in paragraph (3) the law of the State where the operator had his place of business. It was noted that some transport terminals straddled the boundaries between two or more States and making the exercise of the right of sale subject to the law of the place where the goods were located might encourage the operator to place the goods in a section of the terminal that was located in the State having the most favourable laws concerning the right of sale. In addition, designating the law of the State where the operator had his place of business would be consistent with the decision taken by the Working Group in connection with article 2(1)*(a)*. It was observed, however, that the result of the decision to designate the law of the State where the operator had his place of business would be to create a right of sale in cases where the operator was permitted to sell the goods under that law but would not have been permitted to do so under the law of the place where the goods were located.

64. A proposal was made to exclude from the provisions concerning the right of sale containers and similar articles of packaging or transport that were clearly marked and were owned by a party other than the carrier or the shipper, since the sale of those containers or articles would infringe upon the rights of their owners. A further proposal was to exclude not only containers and similar articles, but also any other goods that were owned by a third party. In opposition to the proposals it was stated that paragraph (3) in its present form was sufficient to protect third-party owners of the containers, articles or goods, since the operator would be able to sell them only when permitted to do so by the applicable law, and subject to the notice and accounting requirements that were provided in paragraph (3) and other safeguards under the applicable law. To exclude the containers or similar articles or goods from the right of sale could conflict with rules in some legal systems that permitted the sale of those items under certain conditions. The decision of the Working Group was to exclude from the provisions concerning the right of sale the containers and similar articles of packaging or transport mentioned above, and the drafting group was requested to effect the exclusion in paragraph (3).

65. It was generally agreed that the substance of the second and third sentences of the paragraph relating to notice of the intended sale and accounting for the proceeds of the sale should be retained, since they provided minimum safeguards. According to another opinion, however, a legal system that provided a right of sale would also contain rules concerning notice and accounting for the proceeds of the sale; thus, paragraph (3) should merely refer to the applicable law with respect to those matters.

66. The decision of the Working Group was to request the drafting group to redraft paragraph (3) taking into account the decisions reflected in the foregoing paragraphs.

Article 11

67. It was noted that parties might in some situations consider the time periods provided in article 11 to be too short. It was understood that the parties might agree to longer time periods within the limits of article 13 (2).

Paragraph (1)

68. The Working Group considered the last sentence of paragraph (1) in connection with its discussion of the form of notices and requests under the uniform rules (see paragraphs 21 to 26, above). In other respects paragraph (1) was found to be acceptable.

Paragraph (2)

69. It was stated that the expression "final destination" was ambiguous. For example, in the case of containerized goods it was unclear whether "final destination" referred to an inland container depot where the container was retained after the goods were unloaded or to the consignee of the goods. It was understood that the term intended to refer to the final recipient of the goods who would be in a position to inspect them. The drafting group was requested to clarify that point. A proposal to delete the 7-day notice period and to retain only the 45-day period was not adopted.

Paragraphs (3) and (4)

70. The paragraphs were found to be acceptable.

Paragraph (5)

71. An observation was made that the time period of 21 days might be too long. The Working Group, however, found paragraph (5) to be acceptable.

Article 12

Paragraph (1)

72. A question was raised as to when juridical or arbitral proceedings were "instituted" for the purpose of the time-bar under paragraph (1). It was understood that the word "instituted" referred to the time when the proceedings were legally considered to have come into being, which depended on the applicable legal system. Paragraph (1) was found to be acceptable.

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

73. The paragraphs were found to be acceptable.

Paragraph (5)

74. It was noted that paragraph (5) in its present form differed from article 20(5) of the Hamburg Rules. A proposal was made to amend the paragraph so as to enable a carrier or other person to institute a recourse action against an operator not only within an additional 90-day period from the time when the carrier or other person had been held liable in an action against himself or had settled a claim upon which such an action had been based, but also within a 90-day period after settling a claim even if no action had been brought against him. According to an opposing view, the two-year limitation period should be permitted only if an action had been brought against the person settling the claim, and not if he had settled the claim voluntarily without an action having been brought against him. The Working Group decided to retain paragraph (5) in its present form.

Article 13

75. Article 13 was found to be acceptable.

Article 14

76. It was generally agreed that the interpretation provision contained in article 7 (1) of the United Nations Sales Convention was preferable to article 14 in its present form, and the drafting group was requested to reformulate article 14 to correspond with that provision. According to an opposing view, however, that provision was too complex and contained terms, such as "good faith", that were difficult to apply in practice.

Article 15

77. It was generally agreed that the words within square brackets, "or any law of [this State] [such State] relating to the international carriage of goods" should be changed so as to subordinate the uniform rules only to national laws giving effect to a convention relating to the international carriage of goods, and not to other national laws relating to the international carriage of goods. The drafting group was requested to implement that decision with appropriate language.

Article 16

78. The Working Group found the version of article 16 for inclusion in a convention to be acceptable.

Article 17

Paragraphs (1), (4), (6), (7) and (8)

79. The paragraphs were found to be acceptable. It was understood that the word "adopted" in paragraph (1)*(b)* referred to the time when the revision was adopted by the relevant revision conference or committee. The Working Group considered that the final determination as to which international transport conventions should be specified in paragraph (1)*(b)* should be made by the forum that would finalize and adopt the uniform rules, taking into account the conventions then in existence.

Paragraph (2)

80. The text of paragraph (2) was found to be acceptable. It was noted that, for reasons of cost and efficiency, it was desirable for the meeting of the revision committee to take place on the occasion and at the location of a session of the Commission.

Paragraph (3)

81. A proposal was made to delete subparagraphs *(c)* and *(f)* and the reference in subparagraph *(d)* to insurance covering job-related injuries to workmen, on the ground that an increase in the costs mentioned in those provisions should not be regarded as factors that might give rise to an increase in the limits of liability. The prevailing view, however, was that since an increase in those costs might be thought to justify a reduction in the limits of liability the provisions should be retained. Various suggestions to improve the drafting of paragraph (3) were referred to the drafting group.

Paragraph (5)

82. A proposal was made to add to paragraph (5) the further restriction that no revision of the limits of liability subsequent to the first revision may be considered less than five years from the adoption of the previous revision. The proposal was said to promote stability in the limits of liability. The proposal was not adopted since there might be cases where a revision of the limits would be desirable before a five-year period had expired. It was observed that States would not abuse the revision procedure by calling for a meeting of the committee more frequently than was necessary.

Proposed additional provision

83. It was proposed to add an additional provision to article 17 according to which, in the case of a revision of a limit of liability, the applicable limit would be that which was in effect on the date of the occurrence that caused the loss, damage or delay. The proposal was based on article 42 of the Protocol to Amend the

Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 as Amended by the Protocol done at The Hague on 18 September 1955 (Guatemala, 1971). The view was expressed that it was preferable for such a provision to appear in article 6. The drafting group was requested to formulate a provision in accordance with the proposal so that the Working Group could consider the question further.

III. Form of the uniform rules

84. The Working Group generally agreed to recommend to the Commission that the uniform rules should be adopted in the form of a convention. It was stated that uniformity of law in the area would be better and more completely achieved by means of a convention than by a model law. It was noted that the law relating to the international transport of goods was for the most part contained in international transport conventions. In order effectively to integrate within that scheme and to fill the gaps in the law left by those conventions, it was said to be preferable for the uniform rules to be adopted in the form of a convention.

85. A view was expressed that adoption of the rules as a convention at the present time would be premature, since a link existed between the uniform rules on the one hand and, on the other hand, the Hamburg Rules and the Multimodal Convention, which were not yet in force. According to that view, it was preferable for the time being to adopt the uniform rules in the form of a model law, particularly since the activities of terminal operators were still subject to rapid changes and new developments. It was also noted that a model law might lead to quicker harmonization of law in that area than a convention. However, those who expressed support for a model law did not object in principle to adopting the rules in the form of a convention, and they stressed that their preference did not result from a less than positive attitude towards the content of the uniform rules.

86. The Working Group noted that, in considering its recommendation that the uniform rules should be adopted in the form of a convention, the Commission might wish to consider the financial implications of possible procedures to adopt the convention. It was agreed that the question of whether or not reservations to the convention should be permitted and, if so, whether the question should be dealt with specifically or as a matter of general principle, should be left for consideration by the Commission in connection with its formulation of final clauses of the convention.

IV. Consideration of title and articles of draft convention submitted by drafting group

87. The following paragraphs reflect modifications made by the Working Group 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 title of the draft Convention and the text of the draft articles submitted by the drafting group are as set forth in annex I to this report.

Article 1

88. The Working Group approved the article as submitted by the drafting group. It was noted that the definitions of "notice" and "request" in subparagraphs *(e)* and *(f)* related only to notices and requests specifically provided for in the Convention and that the opening words of article 1, "In the text of this Convention", were intended to eliminate any ambiguity as to that point.

Article 2

Paragraphs (1) and (3)

89. The Working Group approved the paragraphs as submitted by the drafting group.

Paragraph (2)

90. A suggestion was made to delete paragraph (2). It was stated that, in contrast to the international sale of goods, the question dealt with by that paragraph was not of significant practical importance with respect to the activities carried out by terminal operators. Moreover, the reference to "transport-related services as a whole" was said not to be sufficiently clear. The Working Group, however, approved paragraph (2) as submitted by the drafting group.

Articles 3 and 4

91. The Working Group approved articles 3 and 4 as submitted by the drafting group.

Article 5

Paragraphs (1), (2) and (3)

92. The Working Group approved the paragraphs as submitted by the drafting group.

Paragraph (4)

93. The paragraph submitted by the drafting group concluded with the words, "within a period of 30 consecutive days after the request of such person, the goods may be treated as lost." It was observed that the wording did not resolve the question whether the time period commenced with the dispatch of a request for the delivery of the goods or with receipt of the request by the operator. Noting that an analogous question had been resolved in paragraph (3) by reference to the receipt of the request by the operator, the Working Group decided to adopt the same approach in paragraph (4).

Article 6

94. Article 6 as submitted by the drafting group contained, within square brackets, a paragraph (5) as follows:

> "[(5) The limits of liability under paragraphs (1) and (2) are the limits in force on the date of the occurrence pursuant to the provisions of article 17.]"

95. In connection with its discussion of article 17 the Working Group decided not to retain paragraph (5) (see paragraph 116, below). In other respects the Working Group approved article 6 as submitted by the drafting group.

96. The Working Group returned to the question of reservations under the draft Convention that had been raised in connection with article 6 (see paragraph 45, above). The decision of the Working Group was that the question of whether the draft Convention should contain a provision dealing with reservations and, if so, the content of such a provision, should be left for consideration by the Commission in connection with its formulation of final clauses of the draft Convention. It was agreed that, for the present, the draft Convention should include a footnote clarifying that the establishment of preambular and final clauses, including the question of reservations, had been left to the Commission.

97. A view was expressed that it might be desirable for the draft Convention to establish an overall limit to the liability of the operator to cover all claims arising from a single catastrophic event. It was understood that Governments could consider that question when the draft Convention had been circulated for comments.

Articles 7, 8 and 9

98. The Working Group approved the articles as submitted by the drafting group.

Article 10

Paragraph (1)

99. The Working Group approved the paragraph as submitted by the drafting group.

Paragraph (2)

100. It was understood that the words "official institution" referred to an official institution that customarily acted as depository for the sum referred to in the paragraph, such as the office of the clerk of a court.

101. In paragraph (2) as submitted by the drafting group the words "the State where the operator has his place of business" were placed within square brackets. A proposal was made to delete the words, since the requirement that the depository be an official institution was sufficient protection for the parties. It was also stated that including the words might give rise to problems in connection with laws regulating the transfer of funds from one country to another. The prevailing view, however, was to retain the words and to remove the square brackets. In support of that view it was stated that an operator would normally have a right to be paid at his place of business; therefore, the sum securing his payment should be deposited in the State where he had his place of business. The understanding of the Working Group was that the words in question applied only to the deposit of a sum with an official institution, and not to the deposit of the sum with a mutually accepted third party.

Paragraph (3)

102. The paragraph as submitted by the drafting group was contained within square brackets, which the Working Group decided to remove.

103. The second sentence of the paragraph as submitted by the drafting group read, "The preceding sentence does not apply to containers which are owned by a party other than the carrier or the shipper and which are clearly marked as regards ownership." It was generally agreed that the exclusion of those containers from the right of sale should not apply to containers that the operator repaired or serviced for the owner and in respect of which charges were due to the operator. Therefore, the Working Group agreed to add to the second sentence the words, "except in respect of repairs of or improvements to the containers by the operator". It was understood that the second sentence related only to the right of sale mentioned in the first sentence, and not to the right of retention provided in paragraph (1). In other respects the Working Group approved the paragraph as submitted by the drafting group.

Paragraph (4)

104. A view was expressed that it was preferable for certain procedural aspects of the sale to be governed by the law of the place where the goods were located. The Working Group approved the paragraph as submitted by the drafting group.

Article 11

105. The Working Group approved the article as submitted by the drafting group.

Article 12

106. The Working Group approved the article as submitted by the drafting group. It was noted that the requirement that the declaration mentioned in paragraph (4) be made in writing corresponded with article 22(2) of the Convention on the Limitation Period in the International Sale of Goods (New York, 1974).[5]

[5] *Final Act of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods* (A/CONF.63/14 and Corr.1).

Article 13

107. The Working Group approved the article as submitted by the drafting group.

Article 14

108. The article as submitted by the drafting group contained two alternative formulations. The first alternative used the wording of article 7(1) of the United Nations Sales Convention; the second alternative used the wording of article 3 of the Hamburg Rules. It was noted that the United Nations Sales Convention formulation contained a reference to the observance of good faith in international trade that was not contained in the Hamburg Rules formulation. The concept of the Working Group was in principle to follow the Hamburg Rules approach, since the present draft Convention was, like the Hamburg Rules, within the field of international transport of goods. It was stated that the observance of good faith in international trade was an implicit requirement in international commercial relations, and thus did not have to be specifically expressed in the draft Convention. In opposition, it was stated that the United Nations Sales Convention formulation would better promote uniformity; moreover, the considerations that had led the Commission to adopt that formulation should lead it to adopt the same formulation in the present draft Convention.

109. In formulating the wording of article 14 the Working Group decided to adopt the wording of the United Nations Sales Convention, omitting the reference to the observance of good faith. It was understood, however, that the omission was not to be regarded as a diminished view, in the present context, of the role and importance of good faith in international trade.

Article 15

110. In the article as submitted by the drafting group the words "or under any law of such State giving effect to or derived from a convention relating to the international carriage of goods" were contained within square brackets. It was noted that the words repeated the substance of the second sentence of article 1*(a)*. As reflected in article 1*(a)*, the draft Convention was not intended to interfere with other international transport conventions. The bracketed wording had been proposed in order to deal with problems arising from the manner in which the provisions of international transport conventions were adopted in some legal systems.

111. 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. A proposal was made to delete the words "derived from" because they could raise questions as to whether or not a national law was "derived from" an international transport convention and thus produce uncertainty as to whether or not the draft Convention was subordinate to such a law. The prevailing view, however, was to retain the words "derived from".

112. The Working Group decided to remove the square brackets around the words in article 15 and otherwise to approve the article as submitted by the drafting group. A view was expressed that the words in question should be given further attention by Governments when the draft Convention was circulated to them for comments.

Article 16

113. The Working Group approved the article as submitted by the drafting group.

Article 17

114. The Working Group requested the Secretariat to prepare and annex to the present report a tentative list of international transport conventions that might be included in paragraph (1)*(b)*.

115. Paragraph (9) as submitted by the drafting group was contained within square brackets. The Working Group decided to retain the paragraph as formulated by the drafting group, and to remove the square brackets. In other respects, article 17 was approved as submitted by the drafting group.

116. In connection with its consideration of paragraph (9), the Working Group considered that paragraph (5) of article 6, which had been placed within square brackets by the drafting group, should not be retained.

V. Other business

117. The Working Group noted that, in approving the draft Convention on the Liability of Operators of Transport Terminals in International Trade, it had completed the task entrusted to it by the Commission.

118. A representative of the secretariat of the United Nations Conference on Trade and Development (UNCTAD) reported to the Working Group on the close substantive co-operation that existed between UNCTAD and the Commission in connection with the preparation of the draft Convention on the Liability of Operators of Transport Terminals in International Trade. In particular, UNCTAD had pursued its work on the economic and commercial aspects of transport terminal operator management as a complement to the essential task being performed by the Working Group. A new report on commercial risk factors in container terminal management had been prepared by the UNCTAD Shipping Division. The Working Group took note with satisfaction of the remarks of the representative of the UNCTAD secretariat.

ANNEX I

[Original: Arabic, Chinese, English, French, Russian and Spanish]

DRAFT CONVENTION ON LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE AS PREPARED BY THE WORKING GROUP ON INTERNATIONAL CONTRACT PRACTICES[a]

Article 1

Definitions

In the text of 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 to the extent that he is responsible for the goods as a carrier or multimodal transport operator under applicable rules of law governing carriage;

(b) "Goods" includes a container, pallet or similar article of packaging or transport if the goods are consolidated or packaged therein and the article of packaging or transport 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 contracting State, or

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

(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 or made them available to the person entitled to take delivery of them.

Article 4

Issuance of document

(1) 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 in so far as they can be ascertained by reasonable means of checking.

(2) If the operator fails to act in accordance with either subparagraph *(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 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 under paragraph (1) may be in handwriting, printed, in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means.

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 or make them available to 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.

[a] The establishment of preambular and final clauses of the draft Convention, including the question of clauses pertaining to reservations, has been left for consideration by the Commission.

(4) If the operator fails to hand over the goods or make them available to a person entitled to take delivery of them within a period of 30 consecutive days after the date 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, the goods may be treated as lost.

Article 6

Limits of liability

(1) 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. However, if the goods are involved in international carriage which does not, according to the contracts of carriage, include carriage of goods by sea or by inland waterways, the liability of the operator shall be limited to an amount not exceeding [8.33] units of account per kilogram of gross weight of the goods lost or damaged.

(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 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 limit 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 limit 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 applicable law or regulation relating to dangerous goods, 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 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 to the operator of taking the measures referred to in subparagraph *(a)*.

Article 10

Rights of security in goods

(1) The operator has a right of retention over the goods for costs and claims relating to 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 any 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 sell the goods over which he has exercised the right of retention provided for in this article to the extent permitted by the law of the State where the operator has his place of business. The preceding sentence does not apply to containers 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 repairs of or improvements to the containers by the operator.

(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 other respects be exercised in accordance with the law of the State where the operator has his place of business.

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 working day after the day when the goods were handed over 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 signed or issued by the operator pursuant to article 4 or, if no such document was signed or 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 within seven consecutive days after the day when the goods reached their final destination, 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.

(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 must 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 on the day on which the operator hands over the goods or part thereof to a person entitled to take delivery of them, or, 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, if no such notice is given, on the day that person may treat the goods as lost in accordance with article 5.

(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 contracting State 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 operation and transactions. The equivalence between the national currency of a contracting State 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 contracting State as far as possible the same real value for amounts in article 6 as is expressed there in units of account. Contracting States 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.

Article 17

Revision of limits of liability

(1) 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:

(a) Upon the request of at least one quarter of the contracting States, or

(b) When an amendment of a limit of liability in respect of loss, damage or delay of goods set forth in one of the Conventions hereinafter named is adopted. The Conventions are:[b]

(2) The meeting of the Committee shall take place on the occasion and at the location of the session of the United Nations Commission on International Trade Law immediately following the event giving rise to the convocation of the meeting.

(3) 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 a convention referred to in paragraph (1)*(b)* have been amended;

(b) The value of goods handled by operators;

(c) The cost of transport-related services;

(d) Insurance rates, including, *inter alia*, 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.

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

[b]A list prepared by the UNCITRAL secretariat of international transport conventions that might be included in this subparagraph is contained in annex II to the present report.

(5) 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.

(6) Any amendment adopted in accordance with paragraph (4) 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 contracting States 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 contracting States 18 months after its acceptance.

(7) A contracting State 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 has entered into force. Such denunciation shall take effect when the amendment enters into force.

(8) When an amendment has been adopted in accordance with paragraph (4) but the 18-month period for its acceptance has not yet expired, a State which becomes a contracting State to this Convention during that period shall be bound by the amendment if it comes into force. A State which becomes a contracting State after that period shall be bound by any amendment which has been accepted in accordance with paragraph (6).

(9) The applicable limit 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.

ANNEX II

INTERNATIONAL TRANSPORT CONVENTIONS FOR POSSIBLE INCLUSION IN ARTICLE 17(1)*(b)* OF DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

I. *Air Transport*

— Convention for the Unification of Certain Rules relating to International Carriage by Air (Warsaw, 1929);

— Protocol to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 (The Hague, 1955);

— Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules relating to International Carriage by Air Performed by a Person other than the Contracting Carrier (Guadalajara, 1961);

— Protocol to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 as Amended by the Protocol done at The Hague on 18 September 1955 (Guatemala, 1971);

— Additional Protocol No. 1 to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 (Montreal, 1975);

— Additional Protocol No. 2 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October as Amended by the Protocol done at The Hague on 28 September 1955 (Montreal, 1975);

— Additional Protocol No. 3 to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October as Amended by the Protocols done at The Hague on 28 September 1955 and at Guatemala City on 8 March 1971 (Montreal, 1975);

— Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 as Amended by the Protocol done at The Hague on 28 September 1955 (Montreal, 1975);

II. *Maritime Transport*

— International Convention for the Unification of Certain Rules relating to Bills of Lading (Brussels, 1924);

— Protocol to Amend the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, signed at Brussels on 25 August 1924 (Brussels, 1968);

— Protocol Amending the International Convention for the Unification of Certain Rules relating to Bills of Lading of 25 August 1924, as amended by the Protocol of 23 February 1968 (Brussels, 1979);

— United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg);

III. *Multimodal Transport*

— United Nations Convention on International Multimodal Transport of Goods (Geneva, 1980);

IV. *Rail Transport*

— Accord Concernant le Transport International des Marchandises par Chemins de Fer (SMGS) (1966);

— Convention Concerning International Carriage by Rail (COTIF) (1980);

V. *Road Transport*

— Convention on the Contract for the International Carriage of Goods by Road (CMR) (Geneva, 1956);

— Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR), Geneva, 1956 (Geneva, 1978).

B. Liability of operators of transport terminals: revised text of draft uniform rules on liability of operators of transport terminals based upon discussions and decisions at tenth session of Working Group: note by the Secretariat (A/CN.9/WG.II/WP.60) [Original: English]

CONTENTS

INTRODUCTION

1. At its tenth session (1-12 December 1986), the Working Group on International Contract Practices considered draft articles 5 to 17 of uniform rules on the liability of operators of transport terminals on the basis of texts that had been prepared by the secretariat (A/CN.9/WG.II/WP.58). The Working Group also considered draft articles 1 to 3, for which texts had been prepared by the Working Group at its ninth session (A/CN.9/275, paragraphs 16 to 45). The Working Group did not have time to consider draft article 4. The report of the Working Group on the work of its tenth session is contained in A/CN.9/287.