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REPORT OF THE WORKING GROUP ON INTERNATIONAL CONTRACT PRACTICES ON THE WORK OF ITS EIGHTH SESSION (Vienna, 3-13 December 1984)

CONTENTS

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INTRODUCTION

1. At its sixteenth session, 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 this topic to the Commission for its consideration, and to assign work on the preparation of uniform rules on this 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 at the sixteenth session, UNIDROIT transmitted its preliminary draft Convention to the Commission. At its seventeenth session, the Commission decided to assign to the 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. 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.

4. The Working Group held its eighth session at Vienna from 3 to 13 December 1984. All members were represented except Central African Republic, Cyprus, Czechoslovakia, Senegal, Sierra Leone, Singapore, Trinidad and Tobago, Uganda and United Republic of Tanzania.

5. The session was attended by observers from the following States: Argentina, Canada, Chile, Ecuador, Holy See, Indonesia, Iran (Islamic Republic of), Ivory Coast, Netherlands, Nicaragua, Norway, Oman, Republic of Korea, Romania, Switzerland and Turkey.

1/ Report 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.

2/ Report 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.

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

(a) United Nations organs
United Nations Conference on Trade and Development
United Nations Industrial Development Organization

(b) Intergovernmental organizations
Commission Centrale pour la Navigation du Rhin
International Air Transport Association
Office Central des Transports Internationaux par Chemin de Fer
International Institute for the Unification of Private Law

(c) International non-governmental organizations
International Association of Ports and Harbors
International Federation of Freight Forwarders Associations
International Law Association

7. The Working Group elected the following officers:

Chairman: Mr. Michael Joachim BONELL (Italy)

Rapporteur: Mr. K. VENKATRAMIAH (India)

8. The following documents were placed before the session:

(a) Provisional agenda (A/CN.9/WG.II/WP.51);

(b) Liability of operators of transport terminals: issues for discussion by the Working Group (A/CN.9/WG.II/WP.52 and Add.1);

(c) Liability of operators of transport terminals: additional issues for discussion by the Working Group (A/CN.9/WG.II/WP.53). 3/

9. 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 (A/CN.9/236);

(b) Liability of operators of transport terminals (A/CN.9/252);

(c) UNIDROIT Preliminary draft Convention on Operators of Transport Terminals 4/ and the Explanatory Report thereto 5/ (UNIDROIT document 1983, Study XLIV, Doc. 24).

3/ Issued during the course of the session.

4/ Also reproduced in Annex II of document A/CN.9/252.

5/ Also reproduced in document A/CN.9/WG.II/WP.52/Add.1.

10. 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

11. The Working Group commenced its deliberations by discussing its method of work for carrying out the task of preparing uniform rules on the liability of operators of transport terminals (hereinafter referred to as OTTs). It was generally agreed that, in conformity with the mandate given to it by the Commission (see paragraph 2), the Working Group should base its work on the UNIDROIT preliminary draft Convention and on the Explanatory Report thereto as well as on document A/CN.9/252. In addition, it was agreed that the Working Group should be free to consider issues which were not dealt with in the preliminary draft Convention. The view was expressed that the objective of the Working Group in this project should be to fill in the gaps in the liability regimes governing the international transport of goods by unifying the legal rules governing the operations of terminal operators, and to build upon the work already performed in this area by UNIDROIT. It was noted at the same time that such rules could also have great importance of their own, regulating relations which, though connected with the field of transportation, were legally quite distinct from relations arising from the contract of carriage.

12. It was agreed that the Working Group should engage in a comprehensive consideration of the issues arising in connection with the liability of OTTs before it attempted to draft detailed uniform rules. In this regard, it was agreed that the working papers prepared by the UNCITRAL Secretariat on issues for discussion by the Working Group (A/CN.9/WG.II/WP.52 and A/CN.9/WG.II/WP.53) provided a useful basis for these discussions. Accordingly, the Working Group decided to base its discussions on the issues set forth in those documents.

13. The Working Group considered whether it would be appropriate at this stage of the work to decide upon the ultimate form in which the rules should be cast. According to one view, it might be useful to decide this issue at the outset of the work in the Working Group since it might have some influence in the discussions on a point of substance. The prevailing view, however, was that the form of the rules could best be decided after the Working Group had established the substance and content of the rules. In accordance with this view, the Working Group was agreed that the discussions should proceed under the assumption that the uniform rules would have a normative character (e.g. a convention or a model law) rather than a contractual character (e.g. general contract conditions).

II. CONSIDERATION OF ISSUES POSSIBLY TO BE DEALT WITH IN THE UNIFORM RULES

A. Scope of application of uniform rules

1. Relationship of uniform rules to international transport

14. The Working Group considered whether the uniform rules should deal only with operations of OTTs related to international transport (issue 1 in document A/CN.9/WG.II/WP.52). The prevailing view was that since the objective of the uniform rules was to fill gaps in the liability regimes left by international transport conventions, the uniform rules should deal only with operations of an OTT related to international transport. According to this view, operations of OTTs which were not related to international transport were of a domestic rather than of an international nature, and there was no need to unify the legal rules governing such operations. It was observed, however, that States wishing to do so could apply the rules also to domestic operations of OTTs, and that OTTs performing domestic operations could contractually subject themselves to these rules. According to another view, all operations of OTTs, whether domestic or international, should be governed by the uniform rules, since an OTT might not be able to determine whether or not the goods were involved in international transport.

15. A view was expressed that even if the rules were to be limited to operations related to international transport, due to the different factual circumstances in which OTTs operated the mandatory application of the rules to all cases of safekeeping of goods related to international transport might not be warranted. According to this view, it might be useful to make the uniform rules subject to an opting-in provision, i.e. that the rules would apply only in respect of those OTTs who had undertaken to be bound by the rules. The prevailing view, however, was that the question of mandatory or conditionally mandatory application of the uniform rules was closely linked to the ultimate form which the rules should take and that, in view of the decision previously taken (see paragraph 13), the decision on this question should be left to a later stage.

16. A suggestion was made that, in cases where the transport of goods was performed by a multimodal transport operator under the United Nations Convention on International Multimodal Transport of Goods (1980) (hereinafter referred to as the "Multimodal Convention"), there was no need for rules on OTT operations, since the cargo interest would have a claim against the multimodal transport operator for loss of or damage to the goods while in the hands of an OTT. However, it was pointed out that even in such cases the uniform rules would be useful by providing to the multimodal transport operator a unified recourse action against the OTT.

17. The Working Group discussed the way in which the uniform rules should define the required relationship with international transport (issues 2 to 4 in document A/CN.9/WG.II/WP.52). It discussed two basic approaches in this regard. Under one approach (the "objective approach") the uniform rules would apply if the goods in fact had been, were being or were to be carried in international transport. Under the other approach (the "subjective approach") the rules would apply if the OTT knew or should have known of such a link with international transport.

18. In support of the objective approach it was suggested that it would be difficult to prove the knowledge of such a link by the OTT. Moreover, such an approach would be consistent with the approach adopted in the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) 6/ (hereinafter referred to as the "Hamburg Rules") and the Multimodal Convention. A suggestion was made, however, that the uniform rules might contain an "escape clause" whereby the OTT would be able to prove that he had no knowledge of such a link, in which case the uniform rules would not apply. It was suggested that in most cases an OTT would be able to determine the existence of a link with international transport from the documents accompanying the goods, since such documents would show the places of origin and destination of the goods.

19. In support of the subjective approach a view was expressed that for the uniform rules to apply it should be sufficient if it were apparent from the documents accompanying the goods that the goods were involved in international transport. It was also observed that, if the uniform rules were to require a document to be issued by the OTT, the OTT would have to become aware of a link with international transport in order to know whether he was obligated to issue a document conforming to the uniform rules. According to an additional view an OTT could be made aware of a link with international transport by being notified thereof by his customer. A suggestion was also made that the application of the uniform rules could be based upon a combination of the objective and subjective approaches.

20. The prevailing view favoured an objective approach, bearing in mind that the drafting of such an approach should result in the application of the uniform rules to operations of OTTs in connection with international transport, rather than to domestic operations. Questions were raised as to whether the uniform rules should apply when goods were deposited with an OTT prior to the commencement of transport or after transport had ended, for example when the goods were to be further distributed domestically. Support was expressed for a formulation such as that contained in alternative "(a)" in the remarks to issue 3 in document A/CN.9/WG.II/WP.52 (i.e. that the uniform rules are to apply to operations of an OTT which are related to carriage in which the place of departure and the place of destination are situated in two different States). It was considered that such a formulation offered the simplest and most acceptable solution, although a view was expressed that the words "related to" might give rise to some uncertainty and should be re-examined. Views were also expressed in support of the formulation contained in alternative "(b)" in the remarks to issue 3, although it was suggested that this formulation excluded the case in which goods destined for international transport were delivered by the shipper to an OTT, rather than to a carrier. With respect to alternative "c", a view was expressed that this alternative was unacceptable because the time at which the goods became subject to or ceased to be subject to legal rules governing international transport was in many cases uncertain, and because such a formulation would require research by the OTT into whether this had occurred.

6/ A/CONF.89/13, annexes I and II. See Official Records of the United Nations Conference on the Carriage of Goods by Sea, United Nations publication, Sales No. E.80.VIII.1.

21. A suggestion was made that it might be sufficient to provide that the uniform rules were to apply to operations performed before, during or after carriage of the goods, when such operations were related to carriage in which the place of departure and place of destination were situated in two different States.

2. Types of operators and operations to be governed by uniform rules

22. The Working Group considered the types of operators and operations to be governed by the uniform rules (issues 5 and 6 in document A/CN.9/WG.II/WP.52). It was observed that there existed wide variations with respect to the types of operations performed by OTTs. In addition to safekeeping, OTTs often performed other operations in relation to the goods. It was generally agreed that the scope of application of the uniform rules should clearly set forth the types of operations which were to be governed by the rules.

23. According to one view, the uniform rules should apply to all operations performed by OTTs, whether or not such operations related to the safekeeping of the goods. The prevailing view, however, was that the rules should apply only when safekeeping was included. A question was raised as to whether safekeeping performed without remuneration should be governed by the uniform rules.

24. It was suggested that the rules might apply to operations performed by an OTT in addition to safekeeping. According to one view, the rules should apply only where safekeeping was the primary operation to be performed, and should also apply to ancillary operations. According to another view, the application of the rules should not be based upon such a relationship, which was difficult to define in concrete cases; rather, the rules should apply whenever safekeeping constituted a distinct and intrinsic part of the obligation of the OTT.

25. Various views were expressed concerning the question of which operations in addition to safekeeping should be governed by the uniform rules. According to one view, all additional operations performed by an OTT should be governed by the rules. In support of this view it was stated that such an approach would completely fill the gaps in the legal regime governing the transport of goods. According to another view, however, it would not be appropriate to subject the wide variety of such additional operations to a single unified legal regime to be established by the uniform rules. In this connection, it was observed that, although it was not possible to fill all such gaps by a single legal regime, a substantial contribution would be made if the uniform rules governed safekeeping as well as certain types of additional operations.

26. With respect to how the uniform rules should delimit the types of additional operations to be covered, one approach suggested was that the rules might contain an exhaustive itemization of such operations, such as loading, unloading and stowage. According to another view, however, the uniform rules should only list examples of the types of such additional operations to be covered. Questions were raised as to whether the uniform rules should govern operations such as pick-up and delivery, packaging and processing of goods.

27. The Working Group agreed that it was not yet prepared to reach final conclusions as to the types of operations to be governed by the uniform rules, and that it would have occasion to return to a consideration of this issue at

a future time. In this connection a request was made that the Secretariat prepare a further study for the Working Group on various aspects of the issue, taking into account operations performed as well as circumstances relating to various modes of transport. It was also requested that the study consider legal aspects of the issue arising from various international transport conventions, including the points of time at which a carrier's responsibility for the goods began and ended, which could result in the liability of a carrier overlapping that of an OTT, and which could have implications for recourse actions by a carrier against an OTT. It was suggested that the proposed study should take account of the information contained in the documentation prepared by UNIDROIT.

28. The Secretary of the Commission observed that, as a result of the discussions thus far, it had become apparent that due to technological developments functions were being performed in respect of goods in transport which had not been envisaged when rules governing various aspects of transport had evolved. As a result, such rules might in some instances become inappropriate. Moreover, inconsistencies could arise with respect to the application of existing international conventions dealing with transport. Therefore, the study requested of the Secretariat would also address not only the implications with respect to the rules governing the operations of OTTs, but also the broader implications with respect to the existing rules governing international transport. The study would seek to ascertain whether the Commission, pursuant to its co-ordinating function in the field of international trade law, could make a contribution toward dealing with these broader implications. Such a project could be carried out by the Commission concurrently with the work on the liability of operators of transport terminals, and without affecting the scope or importance of this work. The Working Group agreed with the importance of such a project and agreed to recommend that the Commission should consider this matter.

B. Issuance of document

29. The Working Group considered whether the uniform rules should provide for a document to be issued by the OTT, whether such a document should be obligatory in all cases or only upon request of the customer, and what should be the contents of such a document (issues 8 and 9 in document A/CN.9/WG.II/WP.52).

30. According to one view, a document should be required in all cases. In support of this view it was suggested that a document was necessary in order to establish that the goods had been taken in charge by the OTT. In addition, it was suggested that a document was necessary in order to prove whether the goods were involved in international transport. Furthermore, if a document was required only upon the request of the customer, it would be difficult to prove whether such a request had been made. It was observed, however, that cases in which an OTT refused to issue a document when he had been requested to do so were not frequent. A suggestion was made that the OTT should be obligated in all cases to issue a simple receipt for the goods, and that further information should be required in the document only upon the request of the customer.

31. The prevailing view was that the OTT should be obligated to issue a document only upon the request of the customer. In support of this approach it was noted that there had been a trend toward discouraging the issuance of

needless documentation covering goods involved in international transport. Moreover, such an approach was consistent with several international transport conventions which obligated the carrier to issue a transport document only upon the request of the shipper. It was observed that a document might not be needed by the customer in all cases. It was also observed that an OTT could issue a document upon his own initiative, without a request from his customer, if the OTT wished to protect his interests by establishing the date when he received the goods or the condition of the goods. Furthermore, it was pointed out that even without a document the customer could demand the release of the goods by the OTT in accordance with his contract with the OTT.

32. With respect to the contents of the document, one view suggested that the document should simply constitute a receipt for the goods, identifying the goods and showing when they were received by the OTT. In this regard it was observed that a receipt of the OTT might be stamped upon a transport document covering the goods. The view was expressed that this should be regarded as the issuance of a document. Another view suggested that further information should be required, such as particulars concerning the condition and description of the goods, whether the OTT claimed rights of security in the goods, and if so, the charges in respect of which such rights were claimed, and whether the document was negotiable. A further view suggested that if the document was issued by the OTT upon his own initiative it should be simply a receipt for the goods, but that the OTT should be obligated to provide further information if requested to do so by the customer.

33. A view was expressed that the uniform rules should provide for the issuance of a document by electronic or mechanical means. In this regard a suggestion was made that the uniform rules should adopt the approach contained in article 5(2) of 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. Under this approach the OTT would be obligated to provide the customer with a receipt for the goods and allow him access to further information stored electronically. It was suggested that the Montreal Protocol served as the most advanced and acceptable model in this regard. According to another view, however, the provision of the Montreal Protocol might not serve as an appropriate model for uniform rules governing OTTs, since the purpose of the data envisaged in the Montreal Protocol was to provide a record of the carriage by air, and since there was no need to provide for the OTT to issue a receipt which did not also contain all the other information stored electronically.

34. The Working Group considered the legal effect of a document to be issued by the OTT (issue 10 in document A/CN.9/WG.II/WP.52). According to one view, the legal effect should be governed by rules of national law other than the uniform rules. According to this view a provision in the uniform rules as to the legal effect of a document could interfere with questions of proof, which were of domestic concern. The prevailing view, however, was that the document should constitute prima facie evidence of the taking of the goods in charge by the OTT as set forth in the document.

35. With respect to the question of whether the uniform rules should set forth a time-limit within which the OTT would be required to issue a document (issue 11 in document A/CN.9/WG.II/WP.52), one view was that the uniform rules should not specify a time-limit. In support of this view it was suggested

that, in accordance with the objective to simplify documentation, only a simple receipt should be issued for the goods; since such a receipt would normally be issued simultaneously with the taking over of the goods by the OTT, it was not necessary for the uniform rules to specify a time limit. It was also suggested that the practice regarding the time when documents were to be issued varied with the type of operation concerned, and that it was not possible to establish a single time-limit. Moreover, it was suggested that the problem of a delay in issuing a document did not arise in practice.

36. Another view expressed support for specifying in the uniform rules the period of time within which a document must be issued. It was suggested that the absence of a time-limit would weaken an obligation of the OTT to issue a document. It was also suggested that the absence of a time-limit would make it difficult to apply sanctions for the untimely issuance of a document. According to one view, the uniform rules should contain a flexible formula for determining the period of time within which such a document must be issued (e.g. a reasonable time). According to another view a short time-limit should be specified (e.g. 24 hours). A further view was expressed that no time-limit needed to be specified if a simple receipt was to be issued by the OTT, but that a short time-limit should be specified for a document containing more particulars. It was suggested that, if a time-limit was to be provided, the uniform rules should specify when the period of time would begin to run.

37. The Working Group considered whether the uniform rules should contain sanctions for a failure by an OTT to issue a document as required (issue 12 in document A/CN.9/WG.II/WP.52). According to one view, sanctions were not needed, since the failure of an OTT to issue a document as required was not a problem in practice. It was in the interest of the OTT to issue such a document. It was also suggested that the question of sanctions should be resolved by rules of national law other than the uniform rules. However, considerable support was expressed for the view that if the OTT failed to issue a document as required, he should be presumed to have received the goods in good condition. It was suggested, however, that if the OTT had not received the goods and when there was no document issued, it was not reasonable to impose upon him the burden of proving that he did not receive the goods. It was pointed out that a failure to issue a document as required could make it difficult to identify the goods and, thus, could result in a delay in handing them over. In such a case the sanction could be liability of the OTT for such delay.

38. The Working Group considered whether the unform rules should provide for a negotiable document (issue 13 in document A/CN.9/WG.II/WP.52). According to the prevailing view the uniform rules should not contain provisions concerning a negotiable document. In such a case, the parties could still agree that a negotiable document was to be issued if such a document was permitted under the rules of national law other than the uniform rules. In support of this view it was suggested that the issuance of negotiable documents should not be encouraged by the uniform rules, in particular due to the problem of fraud connected with the use of such documents. In addition, there was no need for a negotiable document to be issued by the OTT, particularly if the goods were covered by a negotiable transport document. Moreover, problems could arise if two documents of title for the same goods were in existence at the same time. It was also pointed out that some legal systems prohibited the creation of a new negotiable document by agreement of the parties, and that a provision in the uniform rules concerning the issuance of a negotiable document could

interfere with such a prohibition. However, it was noted that the Multimodal Convention foresaw in article 6 the issuance of a negotiable document for multimodal transport, while in article 13 it did not limit the issuance of other documents, negotiable or non-negotiable, for each of the various modes of transport or other services of which multimodal transport consisted.

39. Another view, however, favoured the inclusion of provisions in the uniform rules concerning the issuance of a negotiable document. Such a document could, for example, be useful in connection with storage of the goods for a length of time. In accordance with this view it was suggested that the uniform rules should provide for the issuance of a negotiable document if the parties so agreed and such a document was otherwise permitted under the law of the place where the operations of the OTT were performed. It was also suggested that, if the uniform rules provided for a negotiable document, they might also provide for other forms of transferrable documents in use in the place where the operations of the OTT were performed. Other views were expressed that, if a negotiable document were to be issued, it should be nominative and not made out to order or bearer.

40. An observation was made that in connection with the document to be issued by the OTT, as well as in other contexts, the questions should be borne in mind as to what would constitute a writing (see, e.g. article 1(8) of the Hamburg Rules), and whether a requirement of a writing could be satisfied by new information storage and transmission techniques.

C. Standard of liability

41. The Working Group considered the standard of liability to which an OTT should be subject under the uniform rules (issue 15 in document A/CN.9/WG.II/WP.52). It was generally agreed that the liability regime governing OTTs should be aligned with the liability regimes under international transport conventions, in particular the Hamburg Rules and the Multimodal Convention, since an objective of the uniform rules was to fill the gaps in such transport liability regimes. Accordingly, it was generally agreed that the standard of liability governing OTTs should be the "presumed fault" standard as contained in those international transport conventions. It was noted that insurance considerations should be borne in mind when considering matters concerning the liability of OTTs. A view was expressed that further study of these considerations was required in respect of certain aspects of the proposed liability regime.

42. It was generally agreed that an OTT should be liable for the acts of his servants and agents. However, a view was expressed that an OTT should not be liable for acts of servants or agents outside their course of employment (e.g. theft by a servant not employed to look after the goods). According to another view, an OTT should be liable for such acts. It was observed, however, that this issue was treated in various ways by national law, and it was therefore preferable not to deal with it in the uniform rules.

43. The Working Group considered the question of whether liability for loss or damage attributable to the OTT and to another cause should be apportioned with respect to the OTT and the other cause. According to one view, the OTT should be jointly and severally liable with another person causing loss of or damage to the goods in order to protect the interests of the customer of the OTT. The prevailing view, however, was that the OTT should be liable in such cases only to the extent that the loss or damage was attributable to his fault

or neglect, provided that he proved the amount of the loss or damage not attributable thereto. In support of this view it was suggested that the uniform rules should not purport to regulate the liability of persons who were not within the scope of the rules. It was, however, suggested that in this respect, reference should be made not to the fault or neglect of the OTT, but only to a fact imputable to him by virtue of the rules governing his liability.

D. Liability for delay

44. The Working Group considered whether the uniform rules should deal with the liability of the OTT for delay in handing over the goods (issue 16 in document A/CN.9/WG.TI/WP.52). According to one view, which received significant support, the uniform rules should provide for the liabililty of the OTT for such delay. In support of this view it was suggested that delay by the OTT in handing over the goods was a problem which could occur in practice. A provision imposing liability for such delay was important for the protection of both consignees and shippers, as well as for carriers and forwarders who would be liable to their customers for delay which had been caused by OTTs and who would seek recourse against the OTTs for such delay. It was observed that without a provision imposing liability for delay an OTT might be able to exclude such liability in his contract. In addition, a provision on liability for delay could also protect OTTs, in that their liability for delay could be limited by the uniform rules. If liability for delay were not included in the uniform rules, it would be governed by national law other than the uniform rules, which might expose the OTT to unlimited liability. Such liability could be extensive and could include, for example, liability for economic losses resulting from the delay. It was also suggested that international transport conventions imposed liability for delay, and that a provision on liability for delay in the uniform rules would contribute to filling the gaps in international transport liability regimes. Those favouring the inclusion of a provision on liability for delay considered that such a provision should in substance be similar to the comparable provisions in the Hamburg Rules and the Multimodal Convention.

45. According to another view, delay by the OTT was not a problem in practice, since the OTT who had the goods deposited with him had no reason to fail to hand over the goods on demand or at the specified time; the view was expressed that a provision on delay would meet with opposition by OTTs and would impair the acceptance of the rules without being of any practical benefit. It was also suggested that it was difficult for OTTs to insure against liability for delay. A further view was expressed that delay might not present a significant problem in connection with safekeeping operations, but might more frequently occur in connection with other types of operations.

46. It was agreed that an eventual draft of the uniform rules to be prepared for the Working Group should contain a provision dealing with delay by the OTT in handing over the goods, so that such a provision could be reviewed by the Working Group when it considered the draft. In addition, references to delay should be included in other provisions as appropriate.

47. It was observed that article 6(2) of the UNIDROIT preliminary draft Convention, which provided that the goods might be treated as lost if they were not handed over within 60 days following the request of the person entitled to take delivery of them, did not deal with the question of delay. It was generally agreed that it would be useful for the uniform rules to contain such a provision in addition to any provision on liability for delay.

E. Limit of liability

48. The Working Group considered whether the liability of the OTT for loss of or damage to the goods should be limited to a monetary amount and, if so, whether such a limit should be based upon an amount per kilogramme, or some combination of an amount per kilogramme and an amount per package (issues 17 and 18 in document A/CN.9/WG.II/WP.52). It was agreed that such liability should in any case be limited to an amount per kilogramme. It was also agreed that it was premature to attempt to specify such an amount. A view was expressed that the limit of 2.75 units of account provided for in article 7(1) of the UNIDROIT preliminary draft Convention was too low. It was observed that the limits of liability in some transport conventions were higher, and that too low a limit of liability in the uniform rules could prejudice recourse by a carrier against an OTT.

49. A view was expressed that the uniform rules should provide that the amount of the per-kilogramme limit governing the liability of the OTT was to be the same as the amount of the limit contained in the international transport convention which governed the mode of transport to which the operations of the OTT were linked. According to another view, however, such an approach could be difficult to apply in cases where the OTT did not know which mode of transport was involved, in cases where more than one mode of transport was involved, and in cases, such as inland navigation, in which the liability of a carrier was not subject to a limit under an international convention.

50. According to one view, which received significant support, the liability of the OTT for loss of or damage to the goods should not be subject to a per-package limit. It was observed that it would not be appropriate for a single limit to apply to packages of differing sizes and containing goods of differing values. Moreover, courts had experienced difficulty in defining what was a "package". It was also suggested that problems could arise in respect of a per-package limit in the case of goods arriving in a terminal, for example in a container, which were damaged while still in the safekeeping of the OTT after being re packed in smaller units.

51. The prevailing view, however, was that it was desirable for the uniform rules to contain a per-package limit in addition to a per-kilogramme limit. Such an approach would be consistent with the approach adopted in the Hamburg Rules and the Multimodal Convention, and would assist in recourse actions by carriers under those conventions. It was generally agreed that the uniform rules should contain the expedited revision procedure which was one of the provisions for revising limits of liability adopted by the Commission at its fifteenth session 7/ and recommended for use by the General Assembly. 8/

52. An observation was made that it was the practice in some areas for OTTs to limit their liability to an amount per cubic meter. Opinions were expressed that the uniform rules should not contain a total limit of liability for each event (issue 19 in document A/CN.9/WG.II/WP.52).

7/ Report 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), para. 63, annex III.

8/ Resolution 37/107 of 16 December 1982.

53. It was generally agreed that the uniform rules should enable the parties to agree to a higher limit of liability than the limit contained in the rules (issue 21 in document A/CN.9/WG.II/WP.52). It was suggested that carriers should be able to negotiate with OTTs limits equal to those to which the carriers were subject, so as to enable them to recover fully in recourse actions against OTTs. It was also suggested that it was in the interest of both parties to be able to agree to higher limits when valuable goods were deposited with the OTT.

54. The Working Group considered whether the uniform rules should enable the limit of liability to be broken in certain circumstances (issue 22 in document A/CN.9/WG.II/WP.52). It was generally agreed that the limit of liability should be broken if the loss of or damage to the goods resulted from certain acts or omissions of the OTT itself, such as those acts or omissions referred to in article 9(1) of the UNIDROIT preliminary draft Convention (e.g. acts or omissions of the OTT done with the intent to cause such loss or damage, or recklessly and with the knowlege that such loss or damage would probably result).

55. Differing views were expressed, however, as to whether the limit of liability should apply to the OTT if such acts or omissions were committed by his servants or agents. According to one view, the acts or omissions of the servants or agents of an OTT should not result in the breaking of the limit of liability applicable to the OTT. According to another view, the limit should be broken if such acts or omissions were committed by the servants or agents. A further view was expressed that the solution adopted in article 8 of the Hamburg Rules should be incorporated in the uniform rules. It was generally agreed that in view of the opinions expressed on this subject the eventual draft of the uniform rules should reflect the various points of view as alternatives.

56. It was generally agreed that in an action against a servant or agent of the OTT the limit of liability should not apply to the servant or agent if such acts were committed by him under the same conditions under which if an act were committed by the OTT he would not have been permitted to limit his liability.

F. Limitation or prescription period

57. The Working Group considered whether the uniform rules should establish a limitation period and, if so, how long the period should be and how it should be computed (issue 23 in document A/CN.9/WG.II/WP.52). It was agreed that a limitation period should be established with respect to actions against an OTT under the uniform rules, and that two years was an appropriate limitation period. It was observed that such a period would be consistent with the limitation periods established in other transport conventions. However, a view was expressed that in cases where the loss of or damage to the goods resulted from the wilful misconduct or acts or omissions of the OTT in bad faith, the limitation period of 2 years would not be appropriate and the establishment of a separate limitation period of a longer duration would be desirable.

58. A suggestion was made that the limitation period for actions against an OTT should commence on the day when the OTT handed over the goods. In the case of goods which were lost, it was suggested that the limitation period should commence at the time when the OTT informed his customer that the goods

were lost, or when the goods could be treated as lost (see paragraph 47). A suggestion was made that, if the OTT was responsible for the goods during operations performed even after having handed them over (e.g. stowage), the limitation period in respect of damage caused by the OTT during such operations should commence at the time when such damage was caused.

59. The Working Group considered problems which could arise in connection with limitation periods applicable in recourse actions by or against an OTT. With respect to recourse actions against an OTT, it was observed that such a recourse action might be barred in cases, for example, where the OTT handed the goods over to the carrier, and the limitation period applicable in the recourse action against the OTT expired before the limitation period applicable in an action by a consignee against the carrier. There was large support for the view that the carrier's recourse action against the OTT should be preserved by providing in the uniform rules that such a recourse action could be brought even after the expiration of the limitation period. A suggestion was made that such a recourse action should be allowed to be brought within a specified period of time (e.g. 90 days) after the carrier had been held liable in the action against him. The view was expressed that the relevant time for the commencement of the specified period of time should be when the carrier had been held liable, rather than when he had been served with process or had settled the claim against him. Alternatively, the uniform rules should permit such a recourse action to be brought, notwithstanding the expiration of the limitation period provided in the rules, within the time allowed by the law other than the uniform rules in the State where the proceedings were instituted, which should be not less than a specified period of time (e.g. 90 days) from the time when the carrier had been held liable. It was, however, suggested that under such a provision the OTT would not have knowledge in advance of the time when recourse actions against him could be initiated. It was generally agreed that a recourse action by an OTT against another person whose liability was governed by the uniform rules should also be preserved by allowing such a recourse action to be brought even after the expiration of the limitation period applicable in actions against such persons.

60. The Working Group considered whether the uniform rules should contain a similar mechanism to preserve a recourse action by an OTT against a person whose liability was not governed by the uniform rules. The view was expressed that it would be beyond the scope of the uniform rules, which did not deal with the liability of such persons, to regulate the time when actions against such persons might be brought. Furthermore, when the liability of such persons was governed by international conventions, which established limitation periods for actions against such persons, the uniform rules should not interfere with such limitation periods. According to another view, however, the uniform rules should preserve a recourse action against a person whose liability was not governed by the uniform rules, if the limitation period applicable to actions against such persons was governed by national law, and not by an international convention.

61. In view of the different possible approaches with respect to the issues referred to in paragraphs 57 to 60, it was agreed that the eventual draft of the uniform rules should contain alternative provisions reflecting the various possible approaches for further consideration by the Working Group.

62. The Working Group considered whether the uniform rules should contain provisions dealing with the interruption and suspension of the limitation period and other related issues (issue 24 in document A/CN.9/WG.II/WP.52). According to one view the uniform rules should contain provisions regulating these issues in a uniform manner, since the treatment of such issues by national legal systems varied. According to another view, however, the uniform rules should contain no provisions at all on these issues, which would result in their being regulated by other rules of national law. It was observed, however, that the absence of provisions on these issues might be interpreted to exclude the possibility of interrupting or suspending the limitation period. The prevailing view was that these issues should be regulated by national law other than the uniform rules, and that the uniform rules should specify which national law would apply (e.g. the law of the forum).

G. Rights of security in goods

63. The Working Group considered whether the uniform rules should grant the OTT rights of security in the goods for his costs and claims (issue 25 in document A/CN.9/WG.II/WP.52). It was generally agreed that the uniform rules should allow an OTT to retain the goods for his costs and claims arising from his operations with respect to the goods. It was also generally agreed that the parties should be able by agreement to grant to the OTT greater rights of security (e.g. by allowing the OTT to retain the goods to secure his costs and claims not only in respect of the same goods but also in respect of other goods which had been deposited with the OTT), if permitted by national law other than the uniform rules. A suggestion was made that the OTT should have such greater rights of security even without agreement if such greater rights were provided for in national law other than the uniform rules. According to another view, however, such an approach would be contrary to the objective of unification of law. A view was expressed that the OTT should have rights of security for costs and claims only in connection with safekeeping.

64. It was generally agreed that the OTT should not be entitled to retain the goods if a sufficient guarantee for the sum claimed was provided or if an equivalent sum was deposited with a mutually accepted third party or with an official institution in the State where the operations of the OTT were performed.

65. With respect to the question whether the OTT should be able to sell the goods to satisfy his costs and claims, it was observed that some legal systems contained mandatory rules regulating such a sale; for example, in some legal systems the goods could be sold only under an order of a court. It was noted in this connection that article 5 of the UNIDROIT preliminary draft Convention came from the work of UNIDROIT in the field of the hotelkeeper's contract. It was therefore generally agreed that the uniform rules should enable the OTT to sell the goods only to the extent that national law other than the uniform rules allowed it and in accordance with the procedures and conditions contained in such national law. A view was expressed that the right of sale should be available only under the most extreme circumstances, and that such a restriction on the right of sale should be applicable whether the rules took the form of a convention or of a model law. A suggestion was also made that rather than referring to "national law" in the contexts discussed in paragraphs 63 and 65, the uniform rules should specify the law of the place where the operations of the OTT were carried out as the applicable national law.

66. The Working Group considered whether the uniform rules should deal with the possible conflict of the exercise by the OTT of rights of security with the rights of a third person who was entitled to receive the goods (issue 26 in document A/CN.9/WG.II/WP.52). According to one view, the uniform rules should provide for such a conflict to be resolved by the national law, other than the uniform rules, of the place where the operations of the OTT were carried out. According to another view, such a conflict should be resolved by a provision in the uniform rules comparable to article 14 of the UNIDROIT preliminary draft Convention. A third view was expressed that the uniform rules should not contain any provisions dealing with this issue. It was suggested that the parties would normally resolve these conflicts between themselves, and it was therefore preferable for the uniform rules to remain silent on the issue. It was also suggested that the question of the effects of the exercise by an OTT of his rights of security on the rights of third parties touched upon many aspects of commercial relations, and that the uniform rules should not attempt to deal with such matters.

67. A view was expressed that the uniform rules should oblige the OTT to notify all persons with an interest in the goods of the exercise by the OTT of his rights of security in the goods. It was observed that such a provision would enable such persons to take steps to protect their interests.

H. Issues not dealt with in the preliminary draft Convention

68. The Working Group considered whether the uniform rules should deal with the questions concerning the place where judicial or arbitral proceedings might be brought to resolve claims against OTTs (issue 27 in document A/CN.9/WG.II/WP.52). According to one view, the uniform rules should contain no provisions dealing with these questions. In support of this view it was suggested that no such provisions were needed because of the stationary nature of the operations performed by OTTs, and that the circumstances which made it desirable for such provisions to be included in certain international transport conventions (e.g. the Hamburg Rules) were not present with respect to the operations of OTTs. It was also suggested that, if the uniform rules contained provisions dealing with these issues, they would also have to contain provisions dealing with the recognition and enforcement of judicial and arbitral awards, which was beyond the scope of the uniform rules.

69. The prevailing view was that it was desirable for the uniform rules to contain some provisions concerning the place where judicial proceedings could be brought. In support of this view it was suggested that, if the uniform rules were silent as to this issue, the rules of national law would apply, which could result in a multiplicity of places where such proceedings could be brought, and possibly conflicts among places claiming jurisdiction. With respect to the contents of such provisions of the uniform rules, a view was expressed that, if the rules were to deal with the issue of the place of jurisdiction over judicial proceedings, they should only permit the parties to agree as to where such proceedings could be brought, and should not specify places where proceedings could be brought in the absence of such an agreement. The prevailing view, however, was that the uniform rules should permit the parties to agree upon the place where judicial proceedings could be brought and should further provide that in the absence of such an agreement the judicial proceedings could be brought in the place where the operations of the OTT giving rise to the claim were performed or in the place where the OTT

had his principal place of business. A suggestion was made that the uniform rules should also permit judicial proceedings to be brought in the place where the contract of the OTT was concluded. A view was expressed that the specification in the uniform rules of places having jurisdiction over judicial claims should not be exclusive.

70. A view was expressed that the uniform rules should also permit the parties to refer claims against an OTT to arbitration, which would be governed by the applicable law governing arbitral procedure.

71. The Working Group considered whether the uniform rules should deal with certain obligations of the customer towards the OTT (issue 29 in document A/CN.9/WG.II/WP.52). It was agreed that the uniform rules should not deal with the obligation of the customer to pay for the services of the OTT. In support of this approach it was suggested that to deal with this issue would have consequences upon other rights and duties which could not be dealt with in the uniform rules. It was also observed that the obligation to pay for the services of the OTT would be referred to in other provisions of the uniform rules, and that this obligation would in any case be governed by the applicable law of contract.

72. It was also agreed that the uniform rules should not deal with an obligation of the customer to hold the OTT harmless from consequences of certain acts or omissions of the customer. In support of this approach it was suggested that such matters could be dealt with in general conditions of contract, or by national law other than the uniform rules.

73. It was, however, agreed that the uniform rules should deal with certain rights and obligations of the parties with respect to dangerous and perishable goods. A view was expressed that article 13 of the Hamburg Rules might be used as a general guide to approaches which might be adopted in respect of such issues. It was suggested that the uniform rules should obligate the customer to clearly mark and label dangerous goods, and to notify the OTT of the dangerous nature of such goods and of special handling needs or precautions to be taken with respect to them.

74. A view was expressed that the OTT should be entitled to reject dangerous or perishable goods tendered by his customer. According to another view, however, the OTT should not be entitled in all cases to reject such goods. A suggestion was made that this right should depend upon the practice with respect to the type of goods concerned. It was pointed out, however, that by virtue of rules to be established, there was no obligation to enter into a contract, and therefore there would be no purpose in providing an exception to such an obligation.

75. Further views were expressed that the OTT should be able to deal with dangerous goods in an appropriate manner (e.g. by causing them to be removed or rendering them innocuous, if possible), and that the obligation of the OTT to hand over the goods in the same condition in which he received them should not apply to dangerous or to perishable goods.

76. A view was expressed that the uniform rules should also deal with the liability of the customer to the OTT in respect of dangerous goods. A suggestion was made that the customer should be liable to the OTT for damage

caused by dangerous goods if the customer had not notified the OTT of the dangerous character of the goods. According to another view, the uniform rules should not deal with this issue of liability. It was suggested that, if the liability issue was dealt with by the uniform rules, the rules would also have to specify which types of goods were to be considered dangerous. According to another view, however, for the purposes of the uniform rules a definition of dangerous goods would not be required, particularly if the provision of the rules was comparable to article 13 of the Hamburg Rules.

77. With regard to the liability of the parties to third parties for damage caused by dangerous goods, it was observed that such liability was the subject of other international conventions and of work in other organizations, and that it was beyond the scope of the uniform rules to deal with such liability.

78. A view was expressed that the uniform rules should provide that the OTT would not be liable to the customer for the deterioration of perishable goods if the customer did not inform him of the perishable nature of the goods.

III. CONSIDERATION OF ADDITIONAL ISSUES

A. Non-contractual liability

79. The Working Group considered whether the uniform rules should provide that the defenses and limits of liability set forth therein should apply to an action under the uniform rules whether the action was founded in contract, tort or otherwise (additional issue 1 in document A/CN.9/WG.II/WP.53). It was agreed that the uniform rules should contain such a provision. A view was expressed in this connection that under article 1(1) of the UNIDROIT preliminary draft Convention the application of the preliminary draft Convention was not limited to cases where an OTT received the goods under a contract. It was observed that a provision along the lines of article 8(1) of the preliminary draft Convention (subject to some drafting changes) would prevent the claimant from avoiding the application of the defenses and limits of liability contained in the uniform rules by bringing an action other than one based upon the contract with the OTT. It was also observed in this connection that it was possible in some legal systems for a claim to be brought by a person who was not in a contractual relationship with the OTT. It was agreed, however, that the uniform rules should not specify the categories of entities who were entitled to claim against the OTT (additional issue 2 in document A/CN.9/WG.II/WP.53).

B. Defenses and limits of liability applicable to servant or agent of OTT

80. It was agreed that the uniform rules should entitle a servant or agent of the OTT acting within the scope of his employment to avail himself of the defenses and limits of liability which the OTT was entitled to invoke under the rules (additional issue 3 in document A/CN.9/WG.II/WP.53). A view was expressed that the uniform rules might also need to permit any other person of whose services the OTT made use to avail himself of such defenses and limits of liability. On the other hand, it was agreed that the uniform rules should not deal with a situation in which an OTT acting as an agent of a carrier might be entitled, e.g. under an international transport convention, to invoke defenses and limits of liability available to the carrier.

C. Notice of loss or damage

81. The Working Group considered whether the uniform rules should require notice of loss of or damage to the goods to be given to the OTT and, if so, within what period of time such notice should be given and what should be the effect of a failure to give such notice (additional issue 4 in document A/CN.9/WG.II/WP.53). It was agreed that the uniform rules should require such notice to be given in writing to the OTT. It was observed that such a requirement would enable the OTT to preserve evidence relating to the notified loss or damage. A view was expressed that the loss required to be notified should be a partial loss or shortage of the goods, and that notice need not be required in the case of a total loss of the goods.

82. As to the period of time within which such notice should be given, it was agreed that apparent and non-apparent loss or damage should be treated differently. With respect to apparent loss or damage, it was agreed that the period of time should be very short (e.g. not later than the working day after the day when the goods were handed over).

83. Various views were expressed with respect to the period of time which should be required for giving notice of non-apparent loss or damage. It was agreed that in general the period of time should be longer than the notice period for apparent loss or damage. According to one view, notice for non-apparent loss or damage should be required to be given within a certain number of days (e.g. 15) after the goods had been handed over by the OTT. An observation was made, however, that such an approach might create problems with regard to containerized goods which were lost or suffered damage while in the custody of an OTT at the beginning of transport, such loss or damage not being discovered until the container was opened and the goods were examined at the end of the transport and after the notice period had expired. A question was raised as to whether this problem was of practical importance. It was suggested that such a situation could occur, for example, when the container was detained during customs formalities.

84. As one approach for dealing with a problem such as that referred to in the previous paragraph it was suggested that if the notice period was to commence at the time when the goods were handed over by the OTT it should be long enough to enable notice to be given by the recipient of the goods (e.g. 30 to 60 days). Another suggested approach was for the notice period to commence at the time when the goods reached their final destination. A view was expressed, however, that under such an approach the position of the OTT could be insecure, particularly if several weeks elapsed before the goods reached their final destination. It was suggested that this insecurity could render the uniform rules unattractive to OTTs and could create problems for the eventual acceptance of the rules. A third suggested approach was to provide that, if under certain specified circumstances the claimant could prove that it was not possible for the loss or damage to be discovered within the notice period commencing when the goods were handed over by the OTT, the notice could be given when it became possible for the loss or damage to be discovered. It was considered that notice should be required to be given in any case within an overall period of time (e.g. 60 days) from the time when the goods were handed over by the OTT.

85. A view was expressed that it was not possible to accomodate completely the interests of both the claimant and the OTT. The degree of balance between

these interests would to some extent depend upon the legal consequences of a failure to give notice to the OTT as required (e.g. whether a failure to give notice would extinguish a claim for loss or damage or would merely shift the burden of proof of the condition of the goods handed over). In this connection the view was expressed that the decision on the approaches to be adopted with respect to length of the notice period and the time when it should commence to run should be taken bearing in mind the consequences which a failure to give notice would have.

86. It was generally agreed that with respect to both apparent and non-apparent loss or damage, if notice of such loss of or damage was not given as required by the uniform rules, the handing over of the goods by the OTT should be prima facie evidence of their having been handed over as described in the document issued by the OTT or, if no such document had been issued, in good condition. However, one view was that this consequence should apply only in the event of a failure to give notice of apparent loss or damage, and that the uniform rules should not expressly provide for the consequences of a failure to give notice of non-apparent loss or damage.

87. With regard to notice relating to delay, it was noted that in accordance with the previous discussion by the Working Group on the subject of liability for delay, the eventual draft of the uniform rules would contain a provision dealing with this subject, and reference to delay would be included in other provisions of the rules as appropriate (see paragraph 46). With respect to the question of whether the uniform rules should require notice to be given to the OTT of delay in the handing over of the goods, a view was expressed that it was not necessary to require such notice since the delay would be known to him even without notice. According to another view, however, the uniform rules should require notice of loss resulting from delay to be given to the OTT since such notice could assist the OTT in protecting his interests in connection with a claim for such loss. With respect to the contents of such a provision, a view was expressed that article 19(5) of the Hamburg Rules should be used as a model, and that a claim for such loss should be extinguished if notice was not given within 60 days after the handing over of the goods.

88. In connection with its discussion of the issue of notice in general the Working Group also referred to the question of whether a carrier should be obligated to give notice to an OTT, and whether an OTT should be obligated to give such notice as may be required to be given to a carrier under applicable legal rules, in order to protect the right of the consignee to recover for loss of or damage to the goods (issue 28 in document A/CN.9/WG.II/WP.52). It was generally agreed that it was not necessary to deal with these questions at this stage.

89. It was agreed that the uniform rules should not deal with the question of to whom notice should be given (additional issue 5 in document A/CN.9/WG.II/WP.53). It was suggested that this issue gave rise to a number of related issues which the uniform rules should not attempt to resolve.

D. Contractual stipulations

90. The Working Group considered whether the uniform rules should permit an OTT by agreement to derogate from the provisions of the rules, or to increase his responsibilities and obligations under the rules (additional issue 6 in

A/CN.9/WG.II/WP.53). A view was expressed that this issue was somewhat related to the question of the extent to which the uniform rules should be mandatorily applicable to all OTTs in States adopting the rules or whether the rules should permit States to apply the rules only to OTTs agreeing to be bound by them. In connection with this view it was suggested that, although that question had not yet been considered by the Working Group, the eventual draft of the uniform rules should contain in square brackets a provision dealing with the question in order to assist the Working Group in considering the relationship of the question with the issue of whether an OTT should be permitted by agreement to derogate from the rules. The prevailing view, however, was that the question related to the form of the uniform rules, consideration of which had been deferred until after work on the substantive issues had been completed, when it would be known how such issues were to be treated (see paragraph 13). It was generally agreed that the eventual draft of the uniform rules to be prepared for consideration by the Working Group should only contain provisions on substantive issues and that they should not contain final provisions, including a clause dealing with the mandatory applicability of the uniform rules, which would not by that stage have been discussed by the Working Group.

91. It was agreed that the OTT should be able by agreement to increase his responsibilities and obligations under the uniform rules. With respect to the question of whether the uniform rules should permit the OTT to reduce his reponsibilities and obligations, a view was expressed that the parties should have freedom of contract, unless a contrary need was demonstrated. The prevailing view, however, was that the OTT should not be able to reduce his reponsibilities and obligations under the uniform rules. It was suggested that to permit the OTT to do so would be inconsistent with the uniform liability regime sought to be established by the uniform rules. Therefore, article 12 of the UNIDROIT preliminary draft Convention was considered to be a broadly acceptable formulation of a provision dealing with this issue. A further view was expressed that, while it was acceptable to prohibit the OTT from reducing his responsibilities and obligations relating to safekeeping, a different approach might be desirable with respect to responsibilities and obligations relating to other operations, if the uniform rules were to cover such other operations.

92. A view was expressed that the uniform rules should require the document to be issued by the OTT to contain a statement that the operations of the OTT were subject to the uniform rules; article 23(3) of the Hamburg Rules would serve as a model for such a provision. According to another view, whether such a provision was desirable depended upon the nature of the document which the rules would require.

E. International transport conventions

93. The Working Group considered whether the uniform rules should provide that they did not modify rights or duties which might arise under an international convention relating to the international carriage of goods (issue 7 in document A/CN.9/WG.II/WP.53). It was agreed that the uniform rules should contain such a provision, but that it should refer only to international transport conventions which were binding on the State where the OTT was located. In particular, if, under the applicable law, provisions of the uniform rules as well as those of an international transport convention applied to a given situation, nothing in the rules should modify rights and

duties arising under the convention. A suggestion was made that consideration might also be given to the question of whether the uniform rules should provide that they were not to modify rights and duties arising under national legal rules relating to transport.

F. Interpretation of the uniform rules

94. The Working Group considered whether the uniform rules should contain a provision dealing with the interpretation of the rules, such as article 15 of the UNIDROIT preliminary draft Convention (additional issue 8 in document A/CN.9/WG.II/WP.53). It was agreed that a provision dealing with the interpretation of the uniform rules was desirable, but that the formulation contained in article 3 of the Hamburg Rules and article 7 of the Convention on the Limitation Period in the International Sale of Goods (New York, 1974) 9/ should be followed. In support of this approach the view was expressed that in uniform rules such as those under consideration the reference to "general principles" in article 15(2) of the preliminary draft Convention was not appropriate. An observation was also made that article 15 of the preliminary draft Convention separated the interpretation of the uniform rules from the application of the rules, which was not desirable.

IV. OTHER BUSINESS AND FUTURE WORK

95. The Working Group requested that the Secretariat, taking into account the discussion at the present session, should prepare for the next session draft provisions of uniform legal rules on operators of transport terminals, accompanied by a study referred to in paragraph 27.

96. A statement was made by the observer from the United Nations Conference on Trade and Development (UNCTAD) that in response to resolution 144 (VI) adopted by the UNCTAD Conference at its sixth session in Belgrade in June, 1983, the UNCTAD Secretariat would prepare a study on the rights and duties of container terminal operators and users. The study would be submitted to the twelfth session of the UNCTAD Committee on Shipping scheduled for 1986. The observer noted that the mandate of UNCTAD was narrower than that of UNCITRAL in its scope of application, since the mandate of UNCTAD was limited to studies on rights and duties of container terminal operators and users. He stated that UNCTAD would contribute to the work of the Commission so that all possible duplication of work would be avoided. The observer stated that the UNCTAD study would also take into account the discussions of the Working Group, as well as the preparatory work undertaken by UNIDROIT with regard to the liability of OTTs. However, he expressed the wish that UNCTAD be given an opportunity to comment upon the outcome of the work of the Working Group before finalization by the Commission.

97. The Working Group welcomed the co-operation offered by UNCTAD as another indication of the increasing co-ordination developing between UNCTAD and UNCITRAL. In view of the expected rapid progress of this project within the Working Group, the Secretary of the Commission also welcomed the agreement of the UNCTAD Secretariat to provide the UNCITRAL Secretariat with the results of its study as it progressed. He referred to the customary practice of the

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9/ A/CONF.63/15. See Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods, United Nations publication, Sales No. E.74.V.8.

Commission to seek the comments of Governments and interested international organizations before a legal text was adopted by the Commission, and stated that, accordingly, the Commission would welcome the views of UNCTAD as an influential and important body in the field of shipping, in particular in the field of international multimodal transport.

98. The Working Group, taking into account circumstances relating to the availability of conference services, as well as 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 next session of the Working Group be held in New York in January, 1986.