

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

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

Article 14

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

Article 15

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

III. Other business and future work

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

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

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

[Original: English/French]

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INTRODUCTION

1. The Commission, at its seventeenth session (1984), assigned to its Working Group on International Contract Practices the task of formulating uniform legal rules on the liability of operators of transport terminals (hereinafter referred to as "operators").¹ The Working Group commenced its work on this topic at its eighth session, held at Vienna from 3 to 13 December 1984 (A/CN.9/260). In accordance with the decision of the Commission at its seventeenth session,² the Working Group decided to base its work on document A/CN.9/252, as well as on the preliminary draft Convention on the Liability of Operators of Transport Terminals adopted by the International Institute for the Unification of Private Law (UNIDROIT) and the Explanatory Report thereto prepared by the UNIDROIT secretariat.³

2. At its eighth session the Working Group engaged in a comprehensive consideration of the issues arising in connection with the liability of operators before attempting to draft detailed uniform rules (A/CN.9/260, para-

graph 12). These deliberations were based on two working papers prepared by the UNCITRAL secretariat (A/CN.9/WG.II/WP.52 and WP.53). In the context of its consideration of the scope of the uniform rules, the Working Group requested the secretariat to prepare a study on various aspects of the issue, taking into account operations performed by operators as well as circumstances relating to various modes of transport. It 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 operator and which could have implications for recourse actions by a carrier against an operator (A/CN.9/260, paragraph 27).

3. This report has been prepared pursuant to the above-mentioned requests. It deals with various factual and legal matters relevant to the issue of the scope of the uniform rules, and also contains a section describing practices with respect to inspection of goods taken over by operators and documentation issued by operators.⁴ A draft of articles of uniform rules taking into account the discussion in this report is contained in document A/CN.9/WG.II/WP.56.

¹Report 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)*, paras. 105 to 113; see, also, 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)*, paras. 109 to 115.

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

³The UNIDROIT preliminary draft Convention is reproduced in A/CN.9/252, annex II, the Explanatory Report is reproduced in A/CN.9/WG.II/WP.52/Add.1.

⁴In addition to engaging in its own investigations and research for the preparation of this report, the UNCITRAL secretariat was provided with a draft of a report prepared by the secretariat of the United Nations Conference on Trade and Development (UNCTAD) on rights and duties of container terminal operators and users (see A/CN.9/260, para. 96). The final version of that report will be presented to the 12th session of the UNCTAD Committee on Shipping, which will be held from 10 to 21 November 1986.

I. Overview of operators dealing with goods involved in carriage

4. There exists a wide variety of types of operators who deal with goods involved in carriage. They do not fall into neat categories; rather, they present considerable overlapping of functions as well as wide disparities with respect to such factors as the nature of the operator, the types of goods with which they deal, the operations they perform, and the parties with whom they are in contractual relationship and for whom they perform their services. Moreover, as will be seen, the nomenclature which has traditionally been used to describe various types of operators is not a satisfactory way of distinguishing between them. The following discussion presents certain characteristics of such operators in a systematic manner designed to facilitate a treatment of some of the issues arising in the context of legal rules governing the liability of operators of transport terminals.

5. Some operators render comprehensive terminal services for carriers or cargo interests (i.e. consignors and consignees), including loading and unloading of goods, storage, and the types of operations described in section III, below, within premises which they occupy, usually as owners or lessees. These operators include those who operate airports and sea, river, rail and road terminals. Such operators very often serve more than one mode of transport. For example, sea or river terminals usually have rail and road links, and often load and unload railway wagons and lorries, in addition to ships or river craft. An inland road or rail facility may serve both rail and road transport. Airports also have road and often rail links, although airport personnel seldom load or unload goods on to or from means of transport other than aircraft. Sometimes such operators lease space or facilities within their terminals to other operators, as in the case of an operator of a rail terminal at which storage space is leased to road carriers or freight forwarders.

6. There exist other types of operators who offer more limited types of services in respect of goods than those described above but who still perform their operations within areas occupied by them. Such operators may limit their services to one principal type of operation. They include, for example, operators of "consolidation centres", who consolidate goods for transport, e.g. by containerizing goods of one or more consignees, and who break down containerized or other consolidated shipments which have been transported internationally for delivery to one or more consignees. They also include operators of warehouses who store goods prior to, during or after carriage. Warehouse operators may engage in short-term storage directly related to transport (e.g. by storing goods waiting to be loaded on to a means of transport or to be picked up by the consignee after unloading (often called transit storage)), long-term storage, or both. Customs or bonded warehouses store goods pending the completion of customs formalities. Consolidation centres and warehouses may be located within or near the premises of other operators who load or unload the goods on to or from the means of transport; however,

warehouses used for long-term storage are often located a distance from the place where the goods are loaded or unloaded.

7. There also exist operators who perform certain types of operations with respect to goods, but who do not have their own premises where they perform such operations. Rather, they perform their operations on goods located within the premises of another operator or within or on the means of transport. Such operators include those who supply labour and equipment to be used by a second operator, a carrier or a cargo interest to unload goods from a means of transport and deposit them in a terminal owned by the second operator or load them directly on to another means of transport, or to load goods from a terminal owned by a second operator onto a means of transport. (In sea transport such operators are sometimes referred to as longshoremen or stevedoring companies.) They also include various types of operators who inspect goods, fumigate goods, and perform similar operations in the premises of another operator or within or on the means of transport.

8. As already indicated, the distinction among the various types of operators who perform operations in respect of goods involved in carriage is blurred, because the functions and operations performed by one type of operator are also performed by other types. An effort to distinguish between various types of operators is not assisted by reference to the traditional nomenclature used for entities who perform services other than carriage in connection with international transport. For example, operators styling themselves as stevedoring companies may perform certain other operations in addition to their traditional function of loading and unloading goods. They may also have premises of their own where they store the goods or keep them during the performance of those operations. Storage and other types of operations, including loading and unloading of goods, may also be performed by operators known as ship-brokers or ship's agents, dock agents, and landing agents, as well as by freight forwarders (whether they act as principals or as agents for cargo interests). Warehouse operators often perform various operations in addition to storage. An inland road/rail terminal may act as a storage and distribution centre (see paragraph 17, below). Carriers sometimes operate their own sea, road or rail terminals where they store goods and perform handling and other operations. Certain manufacturing enterprises operate their own terminals in connection with their import of raw materials or export of their products; such operations may also be performed at these terminals for other enterprises. Finally, a combined or multimodal transport operator may undertake carriage and all storage, handling and other operations in respect of the goods from the time they are taken over from the consignor until the time they are handed over to the consignee.

9. With respect to their ownership, some operators are state enterprises or publicly owned; this is often the case with rail terminals and airports, as well as with customs warehouses (although bonded warehouses are frequently

privately owned). Other operators are owned by private commercial enterprises. Some are owned by enterprises whose sole business is to store or perform terminal operations with respect to goods involved in carriage; others are owned by enterprises involved in other aspects of the transport of goods (e.g. carriers, freight forwarders); still others are owned by manufacturing or trading enterprises. Some are owned by entities comprised of various combinations of the enterprises mentioned above.

10. Operators represent a wide range of levels of technical and operational sophistication. Some are heavily labour-intensive and use equipment and handling techniques of relatively low levels of sophistication. Others employ equipment and techniques of highly advanced levels of technological and engineering sophistication. These facilities are generally able to handle goods with greater speed and efficiency, and often with less risk of loss of or damage to the goods, than less sophisticated ones.

II. Types of goods involved in carriage

11. The goods handled by operators are of many different types. These include unitized goods (e.g. goods unitized in containers, roll-on/roll-off (RO/RO) carriers, and barge-carrying vessels); break-bulk goods; bulk goods (e.g. ores, cement, grains; goods of this nature may also be containerized or transported in bags as break-bulk cargo); and liquid goods (such goods may also be containerized). Some operators specialize in serving particular types of goods (e.g. containerized goods, bulk goods, liquid goods, timber, ores); others serve a wide variety of goods. Specialization in particular types of goods often represents a relatively advanced stage of development in the organization of transport-related operations serving a particular area. Some operators, such as operators of sea terminals, sometimes store, and even manage the distribution of, empty containers belonging to a carrier or a container supplier, as well as other equipment associated with the transport of goods, such as chassis for the road transport of containers or barges for the transport of goods on barge-carrying vessels.

12. The differing characteristics of and circumstances associated with various types of goods often result in differing practices of operators with respect to each type. These differing practices include differences as to:

(a) Methods of handling (e.g. containers may be handled with gantry cranes, straddle carriers, and fork-lift trucks; bulk cargo may be loaded and unloaded with scoops, conveyor belts running between the terminal and the means of transport, or chutes; break-bulk cargo may be handled with cranes and fork-lift trucks; liquid cargo may be loaded and unloaded through pipes or tubing);

(b) Types of operations performed (e.g. operations may be performed with respect to certain types of goods which are not performed with respect to other types, such as cleaning grain, compacting coal to avoid spontaneous

combustion, edging timber (e.g. cutting the ends to make uniform stacks), washing and disinfecting containers; see chapter III, below);

(c) Methods of storage (e.g. containers, RO/RO vehicles and some bulk goods may be stored in open areas, while other goods (e.g. grain, break-bulk goods) are stored in covered or sheltered areas; refrigerated containers with perishable goods must be connected to an electricity supply to run the refrigeration mechanism);

(d) The flow of goods through the premises of the operator (e.g. full containers are usually kept in a container terminal only for short periods of time; they are either transferred directly from one means of transport to another or are kept within the terminal for a maximum of a few days to await loading on to a means of transport or pick-up by the consignee; break-bulk goods are often kept for longer periods of time); and

(e) Practices concerning inspection of goods taken over by an operator (e.g. goods which are enclosed in sealed containers or RO/RO vehicles, and some bulk goods, are seldom inspected, while uncrated machinery is normally inspected (see chapter VI, below)).

III. Operations performed with respect to goods involved in carriage

13. The following overview of the various types of operations performed with respect to goods involved in carriage is provided in order to facilitate consideration of the scope of the uniform rules (discussed in chapter IV, below).

A. Loading and unloading of goods

14. Although goods are sometimes loaded on to and unloaded from means of transport by carriers or by cargo interests, they are typically loaded and unloaded by operators. The identity of the party who loads and unloads the goods and the legal regime applicable to these operations is important since, statistically, goods are at greatest risk of damage during these operations.

15. When goods are unloaded by an operator, they are removed from the means of transport by the personnel and equipment of the operator. At that point, various things might happen to the goods. For example, they may be loaded directly on to another means of transport without ever touching the ground or they may be carried within the premises of the operator before being loaded directly on to another means of transport; they may be put on the ground for a very short period of time and then loaded on to another means of transport; they may be brought to a transit shed or transit area within the premises of the operator to await loading on to another means of transport or pick-up by the consignee; they may be brought to a customs or bonded warehouse pending clearance of customs formalities; or they may be brought to a long-term storage area. The situations in the case of

loading of goods on to a means of transport are essentially the opposites of those just described.

16. An operator may perform various operations ancillary to loading and unloading operations while the goods are on board or within a means of transport. Such operations may include, for example, stowage (placing cargo in proper order in the hold of a means of transport), trimming (distributing the load in the means of transport), dunnage (placing material about or below cargo to prevent damage during transport), and lashing of containers on board a vessel. In some cases, such as cargo aboard an ocean vessel, such operations are usually performed by the operator under the supervision of the master of the vessel. In other cases, these operations may be performed without the supervision of the carrier, such as when they are performed in respect of goods loaded on to a rail wagon on a private siding within the premises of the operator.

B. Storage of goods

17. Goods may be kept or stored by an operator under various circumstances. As mentioned above, outbound goods may be kept for short periods of time in a transit shed or transit area or kept or stored in a warehouse for varying periods of time prior to loading on to the means of transport, while inbound goods may also be kept or stored in a customs or bonded warehouse. Sometimes, consignors and consignees store goods with operators for indefinite or long periods of time until they are needed. (Such goods should probably not be regarded as being involved in carriage: see chapter IV, B, below.) In some cases, a cargo interest may use an operator as a distribution centre, his goods being taken over from the carrier by the operator and stored within the premises of the operator until the cargo interest instructs the operator to release or deliver the goods to a customer of the cargo interest or to load the goods on to a means of transport to be transported to the customer. In effect, the cargo interest uses such an operator to store his inventory. In such cases the operator may also engage in pick-up and delivery of goods (see paragraph 22, below).

18. While the goods are being kept or stored by the operator, various other operations, such as many of those discussed in the following paragraphs, may be performed with respect to the goods by the operator or by some other person.

C. Packing and packaging of goods; stuffing and stripping of containers

19. An operator may be requested by his customer to pack or re-pack goods in packaging which is suitable for transport. For example, goods received by the operator in bags may be placed into smaller bags. In addition, the operator may repair packaging which has been damaged, whether the packaging was received by the operator in the damaged condition or suffered damage while in the charge of the operator.

20. An operator may also be requested by his customer to package goods for commercial marketing, e.g. by filling bottles with wine received in tanks. The performance of such operations usually takes place during long-term storage or at distribution centres (see paragraph 17, above).

21. Some operators may also stuff or strip containers. Stuffing operations may involve consolidating shipments of several consignors into a single container (e.g. a container owned by the carrier, a container leasing company or the operator); or goods of a single consignor may be stuffed into a container (which may also be owned by the carrier, a container leasing company, or the operator, or by the consignor). An operator may also strip containers received by him under circumstances analogous to those just described.

D. Carriage of goods by operator

22. Operators sometimes undertake to transport goods between their premises and places outside their premises. For example, some operators pick up goods from consignors or deliver goods to consignees. Others transport goods between a main terminal and a warehouse or consolidation centre located away from the main terminal, which may be owned by the operator who owns the main terminal or by a different operator. Operators of distribution centres sometimes pick up goods from their customers for storage prior to transport, and carry goods to their ultimate destinations on instructions from their customers. In the case of barge-carrying vessels, the vessel may moor offshore and the barges containing the goods may be unloaded into the water to be towed to the terminal by tug boats owned by the operator of the terminal.

E. Preparation or processing of goods

23. Operators sometimes engage in operations involving the preparation or processing of goods. In some cases, these operations change the nature, condition or quantity of the goods; in other cases, they do not. Still other cases fall somewhere in between. Examples of preparation or processing operations are the following: cleaning and fumigating grains; ripening fruit; drying timber; edging timber; de-salting hides; processing iron ore to improve its characteristics or to increase its iron content (this involves, e.g., washing, grinding, screening, processing into pellets or briquettes); grinding soybeans and manufacturing soymeal and oil from ground beans.

F. Operations with respect to empty containers

24. Some operators store containers for their owners (e.g. carriers or container leasing companies). They often deodorize, disinfect, clean and repair these containers. In addition, they may manage the stocks and distribution of containers on behalf of their owners.

IV. Issues relating to scope of application of uniform rules

25. Prevailing views were expressed at the eighth session of the Working Group concerning two issues bearing upon the scope of application of the uniform rules: that the rules should apply only when safekeeping was involved, and that the rules should apply only in the context of international transport (A/CN.9/260, paragraphs 14 and 23). These issues are discussed in the following subsections.

A. Safekeeping of goods

26. Since safekeeping of goods is a key element in the delimitation of the scope of application of the uniform rules, it is important for there to exist within the Working Group a common understanding as to the meaning of safekeeping. Also, it will be useful for the uniform rules themselves to define what is meant by this term.

27. For the purpose of determining the scope of application of the uniform rules, safekeeping may be defined as the exercise by an operator of custody over goods within an area under his control. This definition has two key elements: the concept of custody and that of an area being under the control of the operator.

1. Custody

28. The concept of custody connotes the keeping, guarding, care, or security of the goods. It carries with it the notion of the goods being within the immediate physical control of the one exercising custody. It would usually not be applied in cases where a person has the overall legal responsibility over or ownership of goods, but does not have immediate physical control. In some cases, whether goods are within the custody of an operator may depend upon provisions of the contract between the operator and his customer, or upon laws, regulations or usages applicable at the place where the goods are located. For example, when an operator performs loading or unloading operations, or operations on or within a means of transport, such as stowage, dunnage, lashing or trimming (see paragraph 16, above), such contractual provisions, laws, regulations or usages may determine whether and, if so, when, the goods come into or leave the custody of the operator. In the case of operators such as stevedores or longshoremen who simply supply labour and equipment to be used in loading or unloading goods and who perform their operations exclusively within a means of transport or within the premises of another operator, such operators would often not be considered to have custody of the goods during the operations performed by them.

2. Area under control of operator

29. The area under the control of the operator includes an area where the operator is an exclusive occupant (e.g. as an owner or as a lessee). The operator would be an

exclusive occupant in the area within the boundaries of the terminal or other premises of the operator and, in most cases, the water areas adjacent to quays where vessels serviced by the operator are moored. In the case of offshore loading and unloading terminals for bulk or liquid goods, vessels moor alongside loading and unloading platforms which are linked to the shore terminal by a pipe or other conveyor of the goods to and from the vessel. The offshore platform and conveyor would be regarded as areas under the control of the operator.

30. The area under the control of the operator should perhaps also include areas where the operator is not an exclusive occupant, but to which he has a right of access and use in common with other operators or other entities, such as wharves which are shared by two or more operators. An operator using such a wharf or comparable area could be deemed to have the area within his control during the time when he has an exclusive right to its use for the purpose of loading, unloading or performing other operations with respect to goods.

31. The Working Group may wish to consider whether the area under the control of the operator for the purpose of defining safekeeping should be limited to the types of areas described in the preceding paragraphs, or whether the operator should be considered to be in control of any area which he occupies for the performance of operations with respect to the goods, even those which he does not occupy exclusively, such as areas within the premises of carriers or other operators. Such an approach would considerably broaden the scope of safekeeping. It would, for example, include operations performed by operators within or on board a means of transport (e.g. stowage, dunnage, lashing and trimming). It would also include the operations of longshoremen and stevedores, if the goods were within the custody of those operators.

3. Application of definition in concrete cases

32. To assist in a further understanding of the possible scope of the definition of safekeeping proposed above, the following paragraphs contain examples of concrete situations which would and which would not constitute safekeeping.

33. The following situations would be covered by the definition of safekeeping proposed above, and would be covered by the uniform rules if the requisite relation to international carriage also existed (see section B, below):

(a) When the goods (including, e.g., those within containers as well as the containers themselves) are in indefinite or long-term storage within an area under the control of the operator;

(b) When the goods are kept by the operator in a transit shed or transit area under his control;

(c) During those portions of loading and unloading operations when the goods are within the custody of the operator in an area under his control (see paragraph 28, above);

(d) When the goods are unloaded by the operator from one means of transport, brought within an area under his control and immediately loaded on to another means of transport, whether or not the goods ever become stationary within the area or actually touch the ground. In such cases safekeeping would exist during the period when the goods were within the custody of the operator and within an area under his control. Note may be taken of the case of a sea terminal dealing with bulk goods or with containers where equipment of the operator extending beyond the edge of the quay picks up the goods from one vessel moored alongside the quay and immediately deposits them in another vessel, also moored alongside the quay, without bringing the goods back over the edge of the quay. In most cases the mooring area adjacent to the quay would be included within the premises owned by or leased to the operator, or would be an area to which the operator had a right of access and use in common with others, and safekeeping could thus be said to exist during the performance of those operations. Where it is not, safekeeping would not exist;

(e) While the goods are within the custody of the operator within an area under his control and are undergoing any other operations (e.g. packing and re-packing, packaging, consolidation, preparation and processing: see chapter III, C and E, above);

(f) While goods are in or on a rail wagon or lorry chassis within an area under the control of the operator, during such time as the wagon or chassis is within the custody of the operator (e.g. until the road or rail carrier takes over the chassis or wagon);

(g) While goods are on a barge in water alongside the operator's quay, during such time as the barge is within the custody of the operator (e.g. until it is taken over by the carrier of the barge), if the water area is under the operator's control.

34. In the following situations the goods would not be within the safekeeping of the operator under the definition proposed above:

(a) During operations performed by an operator with respect to goods on or within a means of transport and performed under the control of the carrier, as in the cases of stowage, dunnage, lashing, and trimming. These operations would be excluded because they do not take place within an area under the operator's control as defined above, and in most cases also because the goods are not in the custody of the operator (see paragraph 28, above);

(b) During those portions of loading and unloading operations when the goods are not within the custody of the operator or within an area under his control;

(c) During operations performed by an operator while the goods are within an area under the control of another operator (see paragraph 7, above), for example, in the case of stevedores or longshoremen who simply remove the goods from a means of transport located within or alongside the premises of another operator, and either deposit the goods in those premises or carry the

goods through those premises and load them on to another means of transport. The goods would not be within the safekeeping of the operator who performed those operations, although they could be within the safekeeping of the operator within whose premises the goods were deposited or carried if that operator could be said to have custody of them;

(d) During other operations performed with respect to goods, such as fumigation and inspection (see paragraph 7, above), while the goods were within the custody of, and an area under the control of, another operator or a carrier. The goods would be in the safekeeping of the operator who has the custody of the goods, and not the one performing the operations.

B. Relationship with international carriage

35. With respect to the required relationship of the uniform rules with international carriage, a choice may be made as to the focus of this relationship. The following possibilities exist: (a) that the safekeeping and other operations to be covered by the rules must be related to international carriage, and (b) that the goods to be covered by the uniform rules must be involved in international carriage. The approach designated as (a) was the one adopted in the UNIDROIT preliminary draft Convention (article 2 (b)). The choice between these two approaches may make little difference with respect to the points of time at which the uniform rules apply or cease to apply. However, for ease of analysis, and on the theory that the objective of the uniform rules is to deal with liability for loss of or damage to goods while the operator is responsible for them, rather than a failure of the operator to achieve certain results from particular operations, the following discussion will be based on the approach designated as (b), without, however, prejudging the ultimate result on the issue. The discussion would apply equally to either approach.

36. With respect to the nature and extent of the required involvement of the goods in international carriage, and thus the breadth of application of the uniform rules, the following illustration may be considered:

(domestic) (domestic) (int'l) (domestic) (domestic)
consignor — A — B — C — D — consignee

[——— State X ———] [——— State Y ———]

In this illustration goods are transported domestically to operator A (e.g. an inland road or rail terminal) located in State X. There, they are taken over by another domestic carrier and transported to operator B (e.g. a sea terminal) also located in State X. At B, the goods are loaded on to a means of transport (e.g. a ship) and transported internationally to operator C (e.g. a sea terminal) located in State Y. There, they are taken over by a domestic carrier and transported to operator D (e.g. an inland road or rail terminal) located in State Y. They are then transported to the consignee.

37. The Working Group may wish to consider whether the uniform rules should cover goods in the custody of all of the operators in the chain of transport from the consignor to the consignee (i.e. A, B, C and D). Such a result may be appropriate when the goods are covered by a contract for multimodal transport or combined transport, in which the multimodal transport operator (MTO) or combined transport operator (CTO) undertakes to perform or procure the carriage of the goods as a principal from the consignor to the consignee. In such a case the goods would be legally as well as factually involved in international carriage at all stages in the chain of transport. Moreover, in the case of an MTO who is subject to a unitary liability regime such as will exist under the United Nations Convention on International Multimodal Transport of Goods (the "Multimodal Convention") when it comes into force, his right of recourse against each operator within the chain would be best protected by subjecting all of them to the uniform rules, since the liability regime applicable to the operator under the uniform rules would be similar to that applicable to the MTO under the Multimodal Convention. In the case of the CTO, the question of protecting the right of recourse against an operator by co-ordinating the liability regimes applicable to the CTO and to the operator would in some cases be less important. Combined transport contracts typically provide in essence that in cases where the loss or damage can be proved to have occurred during a particular stage of carriage, the liability of the CTO is governed by the mandatory liability regime (i.e. one which cannot be departed from by contract) applicable to that stage under an international convention or national law. In such cases, therefore, the regime governing the liability of the CTO would be the same as the regime governing an operator against whom he seeks recourse. However, the question of recourse is important for a CTO where loss or damage can be proved to have occurred while the goods were in the custody of an operator, but the liability regime under national law can be departed from by contract. In such cases the CTO is typically subject to a more severe liability regime under his combined transport contract with his customer than the regime governing the operator's liability to the CTO.

38. Even in the case of segmented transport (i.e. when each stage of the transport is performed pursuant to a separate contract and is governed by a separate liability regime) the goods could be regarded as being factually involved in international carriage while they are in the custody of all of the operators in the chain of transport. There would be maximum uniformity if the uniform rules covered goods in the custody of all such operators. However, it may be questioned whether such uniformity is necessary. In this regard it may be noted that operators A and D in the illustration in paragraph 36, for example, each take over the goods from a domestic carrier and hand them over to another domestic carrier. The liabilities of those carriers for loss of or damage to the goods would be governed by domestic law. The goods in the custody of such operators are not involved in international carriage in the legal sense; and operations performed by these operators with respect to the goods

would not be immediately relevant to the relationship between parties to a contract of international carriage (see, e.g., paragraphs 67 and 68, below). Since an international carrier (other than an MTO or a CTO, discussed in the previous paragraph) would not be responsible for the goods in the custody of the operators, the necessity to protect the right of recourse of an international carrier does not arise. It therefore might be considered unnecessary for an international uniform regime to govern the liability of those operators, whether from the point of view of a claim by the cargo interest directly against the operator, or a recourse action by a carrier against the operator.

39. With regard to the way in which the involvement of the goods in international carriage is to be formulated in the uniform rules, the Working Group at its eighth session favoured an objective approach (A/CN.9/260, paragraph 20). If it were desired that the uniform rules cover goods in the custody of all operators within the chain of transport of goods from one State to a destination in another State (e.g. in the custody of operators A, B, C and D in the illustration in paragraph 36), the rules might provide that they apply to goods involved in carriage in which the place of departure and the place of destination are situated in two different States.⁵ However, such a formulation might give rise to questions in particular situations. An example is the following case: in the illustration given in paragraph 36, above, operator A, who received the goods from the domestic carrier, is a distribution centre (see paragraph 17, above); when the goods were transported to A, the consignor had not yet sold the goods and thus had not determined their ultimate destination, but he instructed A to store the goods pending further instructions; one month later, the consignor sold the goods to a foreign buyer and instructed A to hand them over to a domestic carrier to be transported to B, who would hand the goods over to the international carrier. In such case a question may arise as to whether the goods became involved in international carriage when they were handed over by the consignor to A, or only when they were handed over by the domestic carrier to B. It may be noted that in the case given even when A is instructed to hand the goods over to a domestic carrier for transport to B, he might not know that the goods will ultimately be transported to another State. The transport documentation which would be handled or seen by A would not necessarily show that the goods were to be transported internationally (see paragraphs 46 to 49, below).

40. Another approach may be, for reasons given in paragraph 38, above, to limit the scope of the uniform rules to goods which are in the custody of an operator who deals directly with an international carrier (e.g. goods in the charge of operators B and C in the illustration in paragraph 36, above). A starting point for such an approach might be to provide that goods are

⁵This is in essence the approach adopted in the UNIDROIT preliminary draft Convention (article 2(b)) and one which received support within the Working Group (see A/CN.9/260, paras. 20 and 21).

involved in international carriage if the operator takes over the goods from an international carrier, i.e., one who carries the goods from a place of departure in one State to a place of destination in another State, with instructions to hand them over to someone entitled to take delivery of them (e.g. another carrier or the consignee), and when the operator takes over the goods from anyone (e.g. the consignor or a carrier) with instructions to hand them over to an international carrier. In both cases, the instructions might appear on a document accompanying the goods (e.g. a transport document or a cargo manifest); or they may be communicated to the operator by a relevant party (e.g. a carrier or a cargo interest) or his agent. The reasons for the requirement in each case that the indicated instructions be given to the operator when he takes over the goods are the following. Where the consignor hands over the goods without an undertaking to deliver the goods to an international carrier (e.g. the case where a supplier delivers goods to a distribution centre with instructions to store the goods for an indefinite period of time until they are sold by the supplier and the supplier further instructs the distribution centre regarding to whom to hand them over), it may not be realistic to consider the goods to be involved in international carriage unless and until the operator is instructed to hand the goods over to an international carrier (see paragraphs 43 and 44, below), or unless they are the subject of a combined or multimodal transport contract (see paragraph 42, below). Similarly, when an operator takes over goods from an international carrier without instructions as to their further disposition, the international carriage might be regarded as having ended when he takes them over. It may be noted that cases in which an operator takes over goods without instructions as to their further delivery are often cases where the goods are to be stored by the operator for an indefinite or long period of time (e.g. by a distribution centre pending instructions from his customer regarding to whom to deliver the goods) or where the operator is the final destination of the goods. The requirement that the goods be taken over by the operator with instructions as to their delivery would exclude these cases from the uniform rules. (However, such goods might later be deemed to be involved in international carriage if the customer later instructs the operator to deliver them to an international carrier: see paragraphs 43 and 44, below). If the Working Group wished to include within the coverage of the uniform rules the cases described above in which the operator takes over the goods without instructions as to their delivery, it could provide simply that the goods are considered to be involved in international carriage if the operator handed them over to an international carrier or took them over from an international carrier.

41. If it is decided that an international carrier should be covered by the uniform rules during a period when he is not responsible for the goods under an international convention or even under national law governing carriage (see paragraph 50, below), then the goods may be considered to be involved in international carriage when he takes them over, as well as during any period when he retains them after his responsibility as a carrier ends.

42. In some cases, goods which are the subject of a contract for multimodal transport or combined transport may be within the custody of an operator, who is not the MTO or CTO, in circumstances other than those mentioned above. For example, the operator may receive the goods from a consignor or a domestic carrier with instructions to hand them over to a domestic carrier. The Working Group may wish to consider whether such goods should also be considered to be involved in international carriage. First, such goods may in a factual sense be regarded as being involved in international carriage. Second, considering such goods to be involved in international carriage and thereby making the uniform rules applicable to them would protect the right of recourse against the operator by an MTO, and in many cases by a CTO (see paragraph 37, above).

43. The Working Group may wish next to consider cases in which goods which are not involved in international carriage might be converted into being involved in such carriage while still in the custody of the same operator. For example, goods may be deposited with an operator by his customer for storage with no instructions as to their delivery and for an indefinite period of time, and the customer may later decide to transport the goods internationally. Or, the operator may receive the goods from a person or entity who is not an international carrier, with instructions to deliver to another person or entity who is not an international carrier, and the customer may later change his mind and instruct the operator to deliver the goods to an international carrier. With respect to such situations, an approach may be to provide that the goods are converted to being involved in international carriage when the operator agrees to deliver the goods to an international carrier. Such an agreement might occur, for example, when the operator enters into a new contract with his customer in which he undertakes to deliver the goods to an international carrier, when he accepts instructions from his customer to effect such delivery, or, if such instructions have not previously been accepted, when he begins to implement such instructions.

44. The uniform rules may also deal with the case where goods which are involved in international carriage may cease to be so involved. This could occur when the operator takes over goods from a person who is not an international carrier with instructions to deliver them to an international carrier, or takes over goods from an international carrier with instructions to deliver them to a person entitled to take delivery of them (who may or may not be an international carrier), and either the instructions concerning delivery are withdrawn or amended, or the operator cannot comply with such instructions (e.g. due to an inability to locate the person or entity who is to receive the goods or the failure of such person to take over the goods). In such cases the question of involvement of the goods in international carriage might be resolved in the following ways:

(a) *Where the operator has taken over the goods from a person who is not an international carrier with instructions to deliver the goods to an international carrier. If the instructions are withdrawn or amended so as to require*

delivery of the goods to an entity who is not an international carrier or if the operator cannot effect delivery to the international carrier, one approach may be to provide that the goods are not considered to have been involved in international carriage at all from the time the operator took them over. The theory behind this approach is that the goods would not have actually entered international transport. Another approach may be as follows: in the case of the withdrawal or amendment of the instructions, to provide that the goods cease to be involved in international carriage from the time of the withdrawal or amendment of the instructions; in the case of inability of the operator to effect delivery to the international carrier, to provide that the goods cease to be involved in international carriage either after the expiration of a reasonable period of time after the operator has placed the goods at the disposal of the international carrier or at such time as the operator and his customer may agree. In any event, if the operator later agrees to deliver the goods to an international carrier (e.g. by accepting instructions to deliver the goods to an international carrier), or becomes able to deliver the goods to the international carrier, the goods might be considered as being involved in international carriage from the time of such agreement or when the operator begins to effect such delivery, as the case may be. The operator may be regarded as beginning to effect such delivery when, for example, he prepares the goods for transport or moves them from a long-term storage area to a transit area;

(b) *Where the operator has taken over the goods from an international carrier with instructions to deliver them to a person entitled to take delivery of them.* An approach may be to provide that the involvement of the goods in international carriage ends when the original instructions concerning delivery are withdrawn, or, if the person to whom the operator was instructed to deliver the goods cannot be located or the operator otherwise cannot effect such delivery, either upon the expiration of a reasonable period of time after the operator has placed the goods at the disposal of that person, or at such a time as the operator and his customer may agree.⁶ It may be questioned whether the international carriage should be considered finally to have come to an end upon such events, or whether the goods might again be considered to be involved in international carriage if the operator later agrees to deliver the goods to an international carrier, or when the operator begins to effect delivery to the original international carrier, as the case may be.

45. Under the approaches discussed above it may be difficult in some cases to establish whether loss or damage suffered by the goods occurred while they were involved in international carriage, or before such involvement began or after it ended. To deal with such cases, the

⁶For example, general conditions of one operator contain the following provision: "The temporary warehousing which [the operator] performs in the scope of its stevedoring services, lasts up to 14 days after the goods have been unloaded from the vehicle, unless a shorter or longer term has been agreed upon. After this time-limit, the client has either to remove the goods, or to make an agreement on public warehousing of the goods, in compliance with these General terms and conditions "

uniform rules might provide a rebuttable presumption that the loss or damage occurred while the goods were involved in international carriage.

46. An additional question which the Working Group may wish to consider in connection with the formulation of the requisite relationship with international carriage is the possibility of applying a particular formulation satisfactorily in practice. This may be viewed from two perspectives – that of the operator and his insurer being able to determine whether or not goods are involved in international carriage at or before the time when the operator takes over the goods (e.g. with respect to the operator's liability insurance coverage and the price to be charged by the operator for his services), and that of an operator and his insurer, and a court or arbitral tribunal, being able to make this determination after a question or dispute has arisen. It may also be important for the operator to know at the time when he takes over goods whether they are involved in international carriage if his obligations in respect of documentation are different under the uniform rules from what they would be under the otherwise applicable law.

47. It may not be necessary for an operator or his insurer to identify with certainty at the time of taking over the goods whether that particular consignment of goods is or is not involved in international carriage, and thus subject to the liability regime under the uniform rules. With respect to liability insurance coverage, for example, an operator may obtain coverage on a blanket basis, under which the insurer would cover the operator's liability for all goods in his custody, whether liability was under the legal regime of the uniform rules or not. The cost of such coverage would be an overall premium based upon an estimate that a certain percentage of the goods coming within the custody of the operator would be subject to the liability regime under the uniform rules, and the rest would be subject to another liability regime. This overall cost would be incorporated by the operator in his general pricing scheme. With respect to documentation which the operator is obligated to issue, the operator would not have to know the status of the goods when he takes them over if the document which he issues is adequate to satisfy his obligations both under the uniform rules and under rules of law which would otherwise apply (e.g. if he routinely issues a document which includes at least the information which he would be obligated to include if the goods were covered by the uniform rules). His normal document would be more likely to satisfy the requirements of the uniform rules if these requirements were restricted to a minimum.

48. In any event, under the approach described in paragraph 39, above (i.e. where the uniform rules apply to goods involved in carriage in which the place of departure and the place of destination are situated in two different states), in most cases it would be evident to an operator when he takes over goods whether or not the goods were involved in international carriage. For example, the goods may be accompanied by a transport document or another document indicating that the places

of departure and destination are located in two different States. Moreover, in the illustration given in paragraph 36, above, operators B and C (who hand the goods over to and take them over from the international carrier) would know of the involvement of the goods in international carriage. Under the approach described in paragraphs 40 to 42, above (i.e. limiting the scope of the uniform rules to goods which are in the custody of an operator who deals directly with an international carrier), there is an even greater likelihood that the operators who would be subject to the rules would know of the involvement of the goods in international carriage.

49. Even if it is not necessary for an operator to be able to identify with certainty at the time of taking over goods whether the goods are involved in international carriage, when goods do suffer loss or damage while in the custody of the operator, it would ultimately have to be determined whether or not the operator's liability was governed by the uniform rules (e.g. in the context of negotiation between the operator and his insurer, or between the operator or his insurer and the claimant or, if necessary, in dispute settlement proceedings). Either of the approaches to formulating the requisite link with international carriage discussed above (i.e. those discussed in paragraph 39 and in paragraphs 40 to 42), could be applied with reasonable facility in negotiations or by dispute settlement bodies to determine whether or not the goods were involved in international carriage.

V. Periods of responsibility of carrier

50. The following discussion concerns the periods of responsibility of carriers⁷ engaging in various modes of transport of goods under international transport conventions.⁸ The time when this responsibility begins and ends are of relevance in two respects. First, in some cases a carrier in charge of goods may be responsible for the goods under the convention only for part of the period during which the goods are in his charge, and may be responsible for the goods as a bailee for the remaining time. By virtue of international transport conventions a degree of uniformity has been achieved as to the liability of carriers for loss of or damage to goods during periods of carriage regulated by the conventions; however, the liability of carriers for loss of or damage to goods in their custody outside those periods remains subject to disparate rules contained in contracts between carriers and cargo interests, and in rules of national law. The Working Group might consider it desirable to promote uniformity with respect to the liability of carriers for loss or damage occurring during those later periods by having the uniform rules on the liability of operators cover the safekeeping of goods by carriers during those periods. A consideration of the situations which may arise in this

regard might assist the Working Group in considering this issue.

51. Second, during a period when the goods are in the custody of an operator, the carrier may also be responsible for the goods, either as a carrier under an international transport convention or as a bailee. If so, and if the goods suffer loss or damage during this period, the carrier would be liable to the cargo interest and would seek recourse from the operator. The ability of the carrier to obtain full recourse would depend upon the extent to which the rules governing the liability of the operator coincide with the rules governing the liability of the carrier.

52. International transport conventions vary with respect to the points of time when the responsibility of a carrier for goods as a carrier under the conventions begins and ends. Relevant provisions of such conventions are set forth in the following paragraphs.

A. International transport conventions

1. Carriage of goods by sea

53. *International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (1924)* [Original: French]. The carrier's responsibility for the goods as a carrier covers the period "from the time when the goods are loaded on to the time they are discharged from the ship" (article 1(e)). The Convention provides that the carrier or shipper may enter into an "agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea" (article 7).

54. *United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg)* ("Hamburg Rules") Article 4 provides as follows:

"1. The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.

"2. For the purpose of paragraph 1 of this article, the carrier is deemed to be in charge of the goods

"(a) from the time he has taken over the goods from:

(i) the shipper, or a person acting on his behalf; or

(ii) an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;

⁷The term "carrier" as herein used includes a multimodal transport operator under the Multimodal Convention.

⁸It should be noted that the issues discussed in this section also arise when no international convention is applicable to the international carriage, and when the carriage is governed by national law.

“(b) until the time he has delivered the goods:

- (i) by handing over the goods to the consignee; or
- (ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or
- (iii) by handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over.

“3. In paragraphs 1 and 2 of this article, reference to the carrier or to the consignee means, in addition to the carrier or the consignee, the servants or agents, respectively of the carrier or the consignee.”

2. Carriage of goods by air

55. *Convention for the Unification of Certain Rules relating to International Carriage by Air (1929)* (“*Warsaw Convention*”) [Original: French]. The period of the carrier’s responsibility is the period of “carriage by air”, i.e. the “period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever” (article 18(2)). If carriage by land, sea or river outside an airport takes place as part of the performance of carriage by air for the purpose of loading, delivery or trans-shipment “any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air” (article 18(3)).

3. Carriage of goods by road

56. *Convention on the Contract for the International Carriage of Goods by Road (CMR) (1956)*. The carrier is liable for loss of or damage to the goods “occurring between the time when he takes over the goods and the time of delivery...” (article 17(1)).

57. When the carriage cannot be carried out in accordance with the terms of the consignment note, or when the carrier cannot effect delivery of goods after their arrival at the destination,

“the carrier may immediately unload the goods for account of the person entitled to dispose of them and thereupon the carriage shall be deemed to be at an end. The carrier shall then hold the goods on behalf of the person so entitled. He may however entrust them to a third party, and in that case he shall not be under any liability except for the exercise of reasonable care in the choice of such third party” (article 16(2)).

4. Carriage of goods by rail

58. *Agreement concerning the International Carriage of Goods by Rail (SMGS) (1966)* [Original: French].

“The railway shall be liable ... from the time of acceptance for carriage until delivery of the goods at the station of destination, or, where goods are forwarded to a country whose railways are not party to the present Agreement, until dispatch of the goods with a waybill conforming to that laid down in the other international agreement” (article 22(1)).

59. *Appendix B to the Convention concerning International Carriage by Rail (COTIF) (1980)*.

“The railway shall be liable for loss or damage resulting from the total or partial loss of, or damage to, the goods between the time of acceptance for carriage and the time of delivery ...” (article 36(1)).

“Acceptance is established by the application to the consignment note and, where appropriate, to each additional sheet, of the stamp of the forwarding station, or accounting machine entry, showing the date of acceptance” (article 11(1)). This procedure “must be carried out immediately after all the goods to which the consignment note relates have been handed over for carriage” and the relevant charges have been paid or a security has been deposited. “The procedure shall be carried out in the presence of the consignor if he so requests” (article 11(2)). “The handing over of goods for carriage shall be governed by the provisions in force at the forwarding station” (article 20(1)).

“Loading shall be the duty of the railway or the consignor according to the provisions in force at the forwarding station, unless otherwise provided in the Uniform Rules or unless the consignment note includes a reference to a special agreement between the consignor and the railway” (article 20(2)). “The consignor shall be liable for all the consequences of defective loading carried out by him The burden of proof of defective loading shall rest upon the railway” (article 20(3)).

“It shall be equivalent to delivery to the consignee if, in accordance with the provisions in force at the destination station:

- “(a) the goods have been handed over to Customs or *Octroi* authorities at their premises or warehouses, when these are not subject to railway supervision;
- “(b) the goods have been deposited for storage with the railway, with a forwarding agent or in a public warehouse” (article 28(2)).

“The provisions in force at the destination station or the terms of any agreements with the consignee shall determine whether the railway is entitled or obliged to hand over the goods to the consignee elsewhere than at the destination station, whether in a private siding, at his domicile or in a railway depot. If the railway hands over the goods, or arranges for them to be handed over

in a private siding, at his domicile or in a depot, delivery shall be deemed to have been effected at the time when they are so handed over. Save where the railway and the user of a private siding have agreed otherwise, operations carried out by the railway on behalf of and under the instructions of that user shall not be covered by the contract of carriage" (article 28(3)).

5. Multimodal transport of goods

60. *United Nations Convention on International Multimodal Transport of Goods (1980)*:

"The responsibility of the multimodal transport operator for the goods under this Convention covers the period from the time he takes the goods in his charge to the time of their delivery" (article 14(1)). (The delimitation of this period is comparable to the delimitation of the period during which a carrier is responsible for goods under the Hamburg Rules (see paragraph 54, above)).

B. Summary

61. The identification of precise points of time when the responsibility of a carrier under an international transport convention begins and ends (e.g. when the goods are considered to have been loaded or unloaded, when the carrier is considered to have taken the goods over or taken them in charge, and when he is considered to have delivered them) is extremely complex, subject to differing interpretations,⁹ and sometimes depends upon the particular facts of individual cases, including the provisions of the contract between the parties. However, for the purposes of the work of the Working Group, the following general observations may be relevant.

62. Under all international transport conventions, the carrier is responsible for the goods as a carrier during the period of actual transport, and he would not be considered an operator during that period. Therefore, the question of whether the uniform rules on the liability of operators should apply during that period does not arise. Also, since a separate operator is not involved during that period, the question of recourse does not arise.

⁹For example, in some legal systems, under the Warsaw Convention, the carrier ceases to be "in charge" of goods at an airport when the goods are handed over to the consignee or when they have been made available to the consignee. In other legal systems a carrier ceases to be in charge of the goods when he can no longer exercise control and supervision over the goods, e.g. when he complies with an obligation to deliver the goods to the customs authorities at an airport. In still other legal systems the responsibility of the carrier under the contract of carriage does not cease until he ceases to be legally (as distinct from factually) in charge of the goods, and he does not cease to be legally in charge until the goods are accepted by the consignee or his agent. This may occur before, when or after the goods are physically handed over to the consignee or his agent. Some legal systems following the latter approach have held the carrier responsible as a carrier even when the goods were in a customs warehouse. Similarly, questions may arise as to when goods are "loaded" or "unloaded" under the Hague Rules, or when goods are "placed at the disposal" of the consignee under the Hamburg Rules and Multimodal Convention.

63. The situation is more complex with respect to the periods prior to the time when the goods have been loaded on to the means of transport and after they have been unloaded. For example, some shipping companies own facilities where goods are stored and handled prior to or after transport by them, as do railways, road carriers and combined and multimodal transport operators. Prior to loading, the goods may be handed over by the consignor directly to the carrier. The responsibility of the carrier under the regime established by some transport conventions commences when he takes the goods over¹⁰ (e.g. under the Hamburg Rules, Warsaw Convention, CMR, SMGS and Multimodal Convention). Under the Hague Rules, however, the carrier does not become subject to the mandatory liability regime provided therein until the goods are loaded. If he has custody of the goods before that time, he could be regarded as a bailee. Under the Hague Rules the carrier may enter into any agreement or stipulation regarding his responsibility and liability for the goods during that period, as well as during the period after unloading when he retains custody of the goods. Such an agreement could, for example, extend the applicability of the liability regime under the Hague Rules to the periods of time prior to loading or after unloading, or it could limit or exclude liability for loss of or damage to goods during those periods.

64. In other cases prior to loading, the consignor might hand over the goods to an operator for keeping or storage and subsequent loading on to the means of transport. The operator might act either for the consignor or the carrier; also, the operator might be one to whom the goods are required by law to be handed over (e.g. a customs authority) prior to loading for export. If the operator were acting for the consignor, the carrier would normally have no responsibility for the goods. If the operator were acting for the carrier, the carrier might be responsible for the goods prior to loading as a carrier under an international transport convention, or as a bailee, depending upon when, under the convention, his responsibility as a carrier began (e.g. upon taking the goods over or upon loading). In either case, if the carrier were held liable for loss or damage occurring while the goods were in the custody of the operator, he would seek recourse against the operator. In the case of the handing over of the goods by a consignor to a customs authority or similar entity, questions may arise as to when the goods had been handed over by the consignor or taken over by the carrier.

65. The situation at the end of transport is comparable to the situation before the beginning of transport. After unloading, the goods may be retained by the carrier, or they may be deposited with an operator engaged by the carrier or by the consignee or with a customs authority. The points of time when the responsibility of a carrier for the goods under the international transport convention

¹⁰Sometimes the responsibility commences when the goods are located in specific places, e.g. under article 4(1) of the Hamburg Rules, at a port. That raises the question, however, whether a container yard operated as part of a port, but not physically contiguous to the berthing facilities, is a part of the port under that text.

ends vary widely. For example, such responsibility may end when the goods are unloaded (as under the Hague Rules), when the goods are handed over to the consignee or his agent (as in some cases under the Hamburg Rules, COTIF and Multimodal Convention), when the goods are deposited for storage (as in some cases under COTIF), when the goods are handed over to customs authorities (as in some cases under the Hamburg Rules, COTIF and Multimodal Convention); when the goods are placed at the disposal of the consignee (as in some cases under the Hamburg Rules and Multimodal Convention), or when the carrier ceases to be "in charge" of the goods (as under the Warsaw Convention). In some of these cases the goods may remain in the custody of the carrier or of an operator engaged by him after his responsibility as a carrier under the international transport convention has ended (e.g. after the goods are unloaded, or after the goods are placed at the disposal of the consignee). The results with respect to the status of the carrier after his responsibility as a carrier under an international transport convention ends, and the overlapping of the liability of the carrier with that of an operator and its implications with respect to recourse actions, are analogous to those prior to the beginning of transport and discussed in the previous paragraph.

VI. Inspection of goods taken over by operator

66. During transport, when goods are handed over by one party and taken over by another they are often inspected as to their apparent or observable condition and as to their quantity (i.e. weight, count, volume or dimensions). The results of the inspection may be recorded in a document issued by the party who takes over the goods. Such documents may serve as evidence of the condition or quantity of the goods when they were taken over by the various carriers and intermediaries in the transport chain, and thus help to establish the stage at which any loss of or damage to the goods occurred. This would be relevant in an action by a cargo interest against a carrier or an operator, or by a carrier against an operator in a recourse action. The last party in the transport chain – the consignee – usually must, within a short period of time after taking over the goods, inspect the goods and notify the relevant parties of any loss or damage. If he fails to do so he may lose the right to claim for such loss or damage.

67. When an inspection is performed upon goods taken over by an operator, the inspection will in some cases be immediately relevant only to the contractual relationship between the operator and his customer. Thus, when an operator acting for a consignor takes over the goods from the consignor, or an operator acting for a carrier takes over the goods from the carrier, an inspection establishing the condition or quantity of the goods when the operator took them over will be immediately relevant only in a claim by the consignor against the operator, or in a claim by the carrier against the operator, as the case may be.

68. In many cases, however, an inspection of goods taken over by an operator will also be immediately relevant to the relationship between the parties to a contract of carriage. For example, if a carrier under an international transport convention becomes responsible for goods as a carrier upon taking them over, and an operator acts in his behalf in taking goods over from a consignor or another carrier, an inspection at the time of taking over the goods by the operator would establish the condition of the goods at the time the carrier became responsible for them as a carrier, and would be relevant in a claim by the cargo interest against the carrier under the contract of carriage. It would also be relevant in a recourse action by the carrier against the operator, and in an extra-contractual claim by the cargo interest against the operator.

69. Similarly, if at the end of carriage the goods are taken over from a carrier by an operator acting for the consignee, an inspection is relevant in a claim by the consignee against the carrier as well as in one against the operator. Moreover, in such cases the operator might be obligated by law or by his contract with the consignee to protect the rights of the consignee against the carrier, by giving due notice to the carrier of any loss of or damage to the goods discovered upon taking them over.

70. The current practices with respect to the inspection of goods taken over by operators vary widely. Whether an inspection is performed at all, and if so, the scope of the inspection, depends on such factors as the nature of the goods, the equipment available to the parties, the time and expense involved in an inspection, the nature and duration of the operations to be performed by the operator, whether the inspection is relevant to the rights of his customer under a contract of carriage (see paragraphs 67 and 68, above) and the scope of the inspection needed under the law governing the carriage. When goods are transferred by the operator directly from one means of transport to another, they are seldom inspected unless the customer of the operator requests an inspection. An inspection is also sometimes dispensed with where only very short-term storage is involved. When an inspection is performed, usually only certain particulars concerning the goods are checked. For example, inspection of containerized goods is normally limited to checking the apparent condition of the container and counting the number of containers loaded or unloaded. Containers may in some cases be weighed (e.g. when there exist grounds to doubt the weight noted on a transport document). Inspecting the condition of goods is sometimes dispensed with where the risk of damage to the goods is small (e.g. in the case of iron ore). Such goods are in many cases, but not always, weighed. The weighing of goods may in some cases be too time-consuming or expensive, as in the case of large quantities of bulk cargo of low specific value. The counting of goods consisting of a large number of items may in some cases be impractical, and may be replaced by weighing or checking volume. In some cases, the operator may take samples of the goods for analysis, but usually only upon the request of his customer.

71. When an inspection is performed upon goods taken over by an operator from a carrier, and also when the operator hands the goods over to a carrier, it is often, but not always, performed in the presence of representatives of the operator as well as of the carrier. In some cases, a representative of the cargo interest may also be present.

72. With respect to documentation issued by operators, here, too, the practice varies. In some cases no document is ever issued (e.g. in cases in which the goods are within the custody of the operator for only a short period of time, such as in the case of direct transfer of goods from one means of transport to another). Also, in some cases, an operator who takes over goods issues certain documents relating to the transport of the goods (e.g. an airport operator may issue a cargo manifest, or on behalf of the carrier, an air waybill), and does not issue a separate depository document. In other cases a deposit-

ory document is issued only upon request of the customer; in still other cases it is issued as a matter of course. The contents of the document and the time of issuance depend in part upon the scope and time of the inspection. In some cases an operator issues a simple receipt for the goods. This may take the form of a separate document, or may be simply a stamp upon an existing document, such as a transport document. In other cases, a document is issued containing information relevant to the condition or quantity of the goods when they were taken over. Even when the document contains information about the condition or quantity of the goods, it may contain a reservation, such as "customer's information" or "said to contain", in effect denying responsibility for the accuracy of the information. Such reservations are included in cases where inspection was performed when the operator took over the goods, as well as in cases where an inspection was not performed.

2. Liability of operators of transport terminals: draft articles of uniform rules on the liability of operators of transport terminals and comments thereon: note by the secretariat (A/CN.9/WG.II/WP.56)

[Original: English]

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