INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

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**UNIDROIT Working Group on a Model Law on Warehouse Receipts**

***Fifth session (hybrid)***
**Rome, 5 - 7 December 2022**

UNIDROIT 2023
Study LXXXIII – W.G.5 – Doc. 6
English only
January 2023

**SUMMARY REPORT**

**OF THE FIFTH SESSION**
**(5 - 7 December 2022)**

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1. The fifth session of the UNIDROIT Working Group on a Model Law on Warehouse Receipts (hereafter the "Working Group") took place in a hybrid format between 5 and 7 December 2022. The Working Group was attended by 28 participants, comprising Working Group members, observers, including representatives of international and regional organisations as well as the private and public sector, and members of the UNIDROIT Secretariat (List of participants available in Annex I).

**Item 1: Opening of the session by the Chair**

2. *The Chair* opened the session and welcomed the participants to the fifth meeting of the Working Group.

3. *The Secretariat* welcomed the participants and thanked them for participating in the fifth session. It provided an update on the composition of the Working Group, welcoming several new observers that had joined the Group since the previous session in March 2022: Mr Alistair Dunbar and Ms Sulithi Dewendra, both from the Private International and Commercial Law Section of the Attorney-General's Department of Australia, as well as Ms Jacqueline Odundo, Head of Legal of the Warehouse Receipt System Council, Kenya, and Ms Osendo Rachel, Principal Legislative Officer of the Ministry of Justice, Kenya. In addition, Mr Spiros Bazinas had joined the Group as a representative of NatLaw. Next, the Secretariat informed the Group on the intersessional work that had been undertaken since the last Working Group meeting. The Drafting Committee had revised Chapters I-III to incorporate the decisions previously adopted and to ensure the Model Law accommodated electronic warehouse receipts on the same level as paper-based receipts. The Committee had also prepared a set of new drafting suggestions with comments for a Chapter on rights and obligations of warehouse operators. Furthermore, participants had prepared two discussion notes, respectively on security rights and conflict of laws. Lastly, the Secretariat invited the Group to agree on a final structure for the Model Law by the end of the session.

**Item 2: Adoption of the agenda and organisation of the session**

4. *The Chair* introduced the annotated draft agenda and the organisation of the session. *The Working Group adopted the draft agenda (UNIDROIT 2022 – Study LXXXIII – W.G.5 – Doc. 1, available in Annex II) and agreed with the organisation of the session as proposed.*

**Item 3: Consideration of substantive matters**

5. *The Chair* drew the Working Group's attention to Item 3 on the agenda, which contained the consideration of substantive matters.

**1. Preliminary draft Model Law on Warehouse Receipts (Study LXXXIII – W.G.5 – Doc. 2)**

6. *The Chair* introduced Doc. 2, which contained the preliminary draft Model Law on Warehouse Receipts (MLWR).

**(a) Scope and general provisions**

7. Turning first to the drafting suggestions for Chapter I, "Scope and general provisions", set out in Doc. 2, *the Chair* noted that the Chapter had been revised based on the Working Group's discussion at its fourth session.

*Scope of application*

8. First, *the Chair* drew the Working Group's attention to Article 1, "Scope of application" and raised the question of whether the description of a warehouse receipt in paragraph 2 was compatible with both the single and the dual receipt system. Furthermore, she anticipated that the compatibility of all draft provisions with both systems ought to be considered throughout the discussions, in particular with regard to Article 6, "Information to be included in a warehouse receipt", and Chapter III, Part B, "Effect of a transfer of a warehouse receipt".

9. The participants confirmed that the Model Law should contemplate both the single and the dual receipt system, and that no priority should be given to either one. It was highlighted that both systems had been adopted in many countries, and therefore only a Model Law that contemplated the respective systems would be useful to reform existing legislation. Furthermore, the Model Law would have to respect the approaches chosen by different jurisdictions. It was indicated that electronic warehouse receipts would contain all the required information by both single and dual receipt systems in a single data message, whose information could be selectively shared with relevant business partners. Accordingly, it was suggested that that the distinction between single and dual receipt systems might be nuanced in an electronic environment given that, unlike in a paper-based environment, the information relating to the warrant would not circulate separately. In terms of the conceptual approach for the MLWR, it was agreed that the warrant be considered an annex to the warehouse receipt similarly to the French system.

10. Participants discussed whether the legislator should have to opt for the introduction of either the single or the dual receipt system, or if it might introduce both simultaneously, and how this ought to be considered in the revision of the Model Law. It was reported that most laws provided for one format only, while others, for instance the former Japanese law, provided for both options, allowing parties to choose the single or the dual receipt format. The majority of participants supported the introduction of both receipt formats simultaneously, while an enacting State might nevertheless decide to introduce only one format. *The Working Group agreed accordingly.*

11. Continuing with Article 1, all participants agreed that its paragraph 2, as drafted, would be sufficiently broad to cover both the single and the dual format. In particular the terms "electronic record" and "document" in singular form could cover both formats and could thus be retained. *The Working Group agreed that Article 1 was sufficiently flexible to cover both single and dual receipts.*

12. However, participants agreed that the fact that dual receipts were contemplated was not clear from the current draft Model Law in its entirety, and that changes ought to be introduced to that effect. A participant highlighted that, among other aspects, the dual system would have to set out the function of each of the two documents. For example, the Brazilian law defined in Article 1 the certificate of deposit as a negotiable instrument that represented the promise of delivery of agricultural products in accordance with the law. The warrant was defined as a negotiable instrument that represented the promise of payment of a monetary sum and conferred a pledge on the corresponding certificate of deposit as well as the products covered by that certificate. *The Working Group agreed that the Model Law should be revised with a view to signal clearly that it not only contemplated single but also dual receipts.*

13. Lastly, a participant questioned whether Article 1, paragraph 2(b) would cover field warehousing arrangements, i.e. when the collateral manager controlled stock on behalf of a financier, issued a non-negotiable warehouse receipt as a record of the stock, and then released the stock to the borrower on the instruction of the financier. Participants agreed that such an arrangement still contained an undertaking to make the goods available under certain conditions, and would therefore be covered by subparagraph (b). *The Working Group agreed on including a corresponding clarification in the Guide to Enactment.*

*Definitions*

14. *The Chair* drew the participants' attention to Article 2, "Definitions", and invited them to consider the definition of "negotiable warehouse receipt". She asked whether the concept of a bearer warehouse receipt should also apply to electronic warehouse receipts (EWRs).

15. A participant observed that under the UNCITRAL Model Law on Electronic Transferable Records (MLETR), which also applied to EWRs, electronic records might be transferred to bearer. The explanatory note to the MLETR contained a detailed description of this scenario, distinguishing between the control over the record and the application of commercial law rules on the transfer. Similarly, the Guide to Enactment for the MLWR could contain explanation of this issue. Several participants supported this stance, highlighting the advantage of using commercial concepts in the Model Law that were well established across jurisdictions, such as the concept of bearer. *The Working Group agreed to retain the definition of "negotiable warehouse receipt" as suggested in Article 2.*

16. One participant suggested that the Model Law ought to include a definition of "electronic warehouse receipt", arguing that users might know what a paper-based warehouse receipt was, but this would not be the case for an electronic warehouse receipt. The large majority of participants objected to including such a definition that it was already clear by virtue of Article 1, paragraph 2 which set out the description of a warehouse receipt for the purposes of the MLWR. *The Working Group agreed not to include a definition of "electronic warehouse receipt" in the MLWR.*

*Control of an electronic warehouse receipt*

17. *The Chair* introduced Article 2A, "Control of an electronic warehouse receipt". The ensuing discussion focussed on the placement and the purpose of this provision.

18. As to the placement, several participants suggested moving this provision to Chapter III, "Transfers of warehouse receipts", precisely after Article 10, "Transfer of a negotiable warehouse receipt". They argued that the provision aimed to explain the transfer of control for the purposes of transferring an EWR, rather than setting out a substantive definition of "control". Other participants objected that that the provision should remain after Article 2, "Definitions", because that was where the term control was used for the first time in the MLWR, and Article 2A aimed to explain its meaning. A third group of participants proposed moving the current Article 2A to Chapter III and adding a definition of control in Article 2.

19. At this juncture, several participants expressed the view that the purpose of Article 2A was not clear. One participant noted that it neither contained a definition of control nor any substantive provision, and that the provision appeared circular in referring to control twice. Several participants objected to this, arguing that the provision contained two essential elements – exclusivity and identification of the party who was in control – which were substantive requirements.

20. A participant suggested reformulating Article 2A to establish a definition of control for the purposes of the MLWR. Conversely, the large majority of participants agreed that the MLWR should not include a definition of control – as it should not include a definition of possession – but rely on the substantive definitions of control and possession of the enacting jurisdiction. Rather, the Model Law should merely establish the functional equivalence of control and possession. It was highlighted that this approach was consistent with the MLETR, which did not define control but established its functional equivalence.

21. *The Working Group agreed to retain Article 2A as currently placed after Article 2, not include a definition of "control" in the MLWR, and rephrase the current formulation of Article 2A to clarify its purpose of establishing functional equivalence.*

*International origin*

22. *The Chair* turned to Article 4, "International origin", and invited the participants to consider whether this title would be appropriate.

23. A participant suggested changing the title to "Interpretation", as the provision concerned the interpretation and relied on both international origin and the need to promote uniformity in its application, as the parameters for interpretation of the Law. *The Working Group agreed to modify the title of Article 4 to "Interpretation"*.

### (b) Issue of a warehouse receipt

24. *The Chair* introduced draft Chapter II on the issuance of a warehouse receipt. The Chapter had been revised by the Drafting Committee based on the Working Group's discussions during its fourth session.

*Issue of a warehouse receipt*

25. The Working Group considered Article 5, "Issue of a warehouse receipt".

26. It was proposed to change the title of Article 5 to "Obligation to issue a warehouse receipt" to reflect the main purpose of the provision to establish such an obligation. *The Working Group agreed accordingly.*

27. Next, the participants discussed the temporal element of the provision requiring the warehouse operator to issue a receipt "after taking possession of the goods".

28. Some participants suggested replacing "after taking possession of the goods" with "upon receipt" in order to avoid any issues related to the understanding of the concept of possession. A participant proposed "after deposit of the goods" instead, to which others objected that possession and deposit were not identical. Again, other participants expressed the view that the temporal requirement would be implied through the mere reference to "depositor", and suggested modifying the definition of "depositor" in Article 2 to the past tense "has deposited" for clarification. Other participants objected to this suggestion explaining that goods in transit would not be "deposited".

29. Some participants questioned if this temporal requirement was necessary at all and suggested removing it. Conversely, the majority of participants spoke out in favour of retaining the current formulation. They argued that this temporal requirement was important to ensure that the goods had actually been deposited before a receipt was issued. The obligation to issue a receipt should arise only after the goods had been deposited with the warehouse operator. While the warehouse operator might always issue the receipt voluntarily before the goods were deposited in the warehouse, it should not be obliged to do so.

30. *The Working Group agreed to retain the current formulation of the provision as suggested in Article 5.*

31. Furthermore, the participants agreed that Article 5 would be one of the mandatory provisions, from which the parties may not derogate from according to Article 3. *The Group agreed on including Article 5 in the list of mandatory provisions according to Article 3.*

*Information to be included in a warehouse receipt*

*Compatibility with the dual receipt format*

32. *The Chair* then drew the Working Group's attention to Article 6, "Information to be included in a warehouse receipt", and invited the participants to consider whether the provision was compatible with both the single and the dual warehouse receipt system.

33. A participant observed that, as currently drafted, the provision was not compatible with the dual format, but rather clearly contemplated only one receipt. Several participants agreed and suggested that Article 6 be reformulated to clarify that a few content requirements differed for dual receipts. In particular, the provision should require the denomination as certificate of deposit and warrant for the dual format. Furthermore, participants recalled that, as noted previously, electronic warehouse receipts would contain all the required information by both single and dual receipt systems in a single data message, and thus the distinction between single and dual receipt systems might be nuanced in an electronic environment.

34. Beyond the denomination, no further content requirements were suggested. A couple of participants reported that the laws of Brazil and Uruguay, which both provided for a dual system, contained lists of content requirements that were identical for the certificate of deposit and the warrant. Both laws required the denomination as a certificate of deposit and as a warrant. Another participant reported that Spanish legislation took an identical approach.

35. *The Working Group agreed on the general compatibility of Article 6 with the dual format, but noted that the provision ought to be reformulated to clearly also contemplate dual receipts, in particular requiring the denomination as certificate of deposit and warrant.*

*Non-negotiable warehouse receipts*

36. In the context of Article 6, the participants discussed how the Model Law should address non-negotiable warehouse receipts in broader terms.

37. A participant observed that Article 6, paragraph 1(a), which required the warehouse operator to include the negotiable or non-negotiable designation in the receipt itself, would not apply to dual receipts, which by their very nature were negotiable.

38. Recalling that the objective of the MLWR was to facilitate and promote transactions with warehouse receipts – an objective that did not apply to non-negotiable receipts – several participants questioned the added value of extending the Model Law to non-negotiable receipts. They proposed not to provide for such receipts at all in the Model Law. The majority of participants objected to excluding non-negotiable receipts entirely, arguing that the Model Law should take account of the fact that non-negotiable receipts were being used in practice, in collateral management arrangements in particular. When a collateral manager issued a warehouse receipt to the lender, the receipt usually became the record of the pledged goods, and the receipt was used as a basis for quantifying and valuing the collateral. Furthermore, many companies used non-negotiable warehouse receipts for inventory control or tax purposes.

39. Several participants pointed out that, however, such a warehouse receipt could not have a security function if it was non-negotiable, but merely an evidentiary function. Therefore, the term "non-negotiable warehouse receipt" might be misleading, as it suggested a similar type of instrument as the negotiable warehouse receipt, while both were fundamentally different in nature. None of the warranties that a negotiable receipt carried applied to non-negotiable warehouse receipts, which was merely a receipt of deposit. To avoid any risk of confusion, such receipts should be given a distinct

name, their nature clearly defined, and corresponding provisions should be clearly separated from the provisions applying to negotiable receipts.

40. *The Working Group decided to limit the core provisions of the Model Law to negotiable warehouse receipts, add a separate section on non-negotiable receipts, and rename the latter to distinguish it clearly from (negotiable) warehouse receipts.*

*Additional information that can be included in a warehouse receipt*

41. *The Chair* turned to Article 7, "Additional information that can be included in a warehouse receipt", and asked whether the words "if it is for a fixed period" in paragraph 1(a) were necessary. All participants agreed that this clause was redundant. *The Working Group agreed to delete the words "if it is for a fixed period" in Article 7, paragraph 1(a).*

*Special rule for goods in sealed packages and similar situations*

42. *The Chair* drew the participants' attention to Article 7A, "Special rule for goods in sealed packages and similar situations".

43. Several participants highlighted the importance of this provision and commented that it should apply to negotiable and non-negotiable receipts alike.

44. A participant queried whether the first part of Article 7A, paragraph 1 ("If goods are deposited in a sealed package") was necessary, explaining that this could be confusing in practice as sometimes sealed packages had to be opened. All participants supported deleting that first part and reformulating the provision to refer to sealed packages as an example for a case in which a warehouse operator might not have practicable or commercially reasonable means of verifying the goods.

45. Another participant questioned whether the Article was sufficiently comprehensive, cautioning that the "said to contain" clause might be limiting and suggested to include a more general reference. It was proposed to reconsider the formulation with regard to the relevant provisions of the Rotterdam Rules.

46. *The Working Group agreed to reformulate Article 7A to refer to sealed packages as an example as suggested and to follow the pertinent provisions of the Rotterdam Rules more closely.*

*Amendment of information in a warehouse receipt*

47. *The Chair* invited the participants to consider Article 8, "Amendment of information in a warehouse receipt".

48. Several participants remarked that Article 8, paragraph 2 should require that the holder "is not aware" of the lack of authorisation, rather than "does not have notice" thereof. *The Working Group agreed accordingly.*

49. Moreover, a participant suggested to revise paragraph 2 to specify that the holder did not have knowledge "at the time the holder became the holder", arguing that it should not affect the effectiveness of an amendment of information in the receipt if the holder gained knowledge afterwards. *The Working Group agreed to the suggested specification.*

*Replacement of a paper warehouse receipt with an electronic warehouse receipt*

50. *The Chair* turned to Article 9A, "Replacement of a paper warehouse receipt with an electronic warehouse receipt", asking whether the provision was needed and, if so, whether it should also allow conversion from electronic to paper form.

51. The large majority of participants were of the opinion that the provision was needed and that it should also allow the conversion from electronic to paper form. A couple of participants reported that it was common in developing economies to request a paper receipt if the holder did not have the necessary technological means.

52. Several participants pointed out that the provision ought to state that only one warehouse receipt always existed more clearly. They suggested reformulating the provision – and its title – to reflect that the receipt was not replaced, but rather that its medium merely changed. Furthermore, the provision should clarify that no more than one receipt ought to be circulating at a time.

53. One participant suggested that the conversion should be mandatory if requested by the holder of the receipt. The majority of participants however objected to imposing such an obligation, arguing that different risks were connected to each medium and therefore the warehouse operator should not be obligated to convert the receipt.

54. The majority of participants agreed that paragraph 3 should be retained for clarification that it was purely a conversion of medium without any legal effect on the rights and obligations, while paragraph 4 was redundant and should be deleted.

55. *The Working Group decided to retain only paragraphs 1-3 of Article 9A, and to defer them to the Drafting Committee for reformulation to reflect the existence of one receipt with a mere change of medium from paper to electronic or vice versa.*

### (c) Transfer of warehouse receipts

56. *The Chair* introduced draft Chapter III on the transfer of warehouse receipts, noting that it had been revised by the Drafting Committee based on the outcome of the Working Group's discussions during its fourth session.

*Transfer of a negotiable warehouse receipt*

57. First, she drew the Working Group's attention to Article 10, "Transfer of a negotiable warehouse receipt".

58. A participant suggested reversing the order of paragraphs 1 and 2, in order to make it clear for the reader that the transfer of control of an EWR was the functional equivalent of the delivery of a paper receipt. All participants supported this suggestion.

59. Concerning current paragraph 2, one participant objected to the replacement of the phrase "person transferring it" with the term "holder" suggested in the draft, arguing that the provision then might become too broad. Other participants seconded this view.

60. Turning to paragraph 3, one participant asked whether it would be necessary to include an express provision that the deposit of the goods by the depositor was deemed to be an authorisation of the warehouse operator to issue the warehouse receipt directly to the benefit of the holder. Another participant replied that the purpose of paragraph 3 was rather to protect the financing institution, which typically obtained a warehouse receipt that was issued in its name to ensure that it was protected against competing claims. The purpose was to allow the initial holder to have the protection

of being a protected holder. Another participant proposed to include a more general provision on the authorisation of the warehouse operator in a separate provision. Several participants noted that this would make the formulation of paragraph 3 too broad, and suggested reformulating the provision to clarify that this was confined to the effect of the transfer only.

61. *The Working Group decided to reverse the order of Article 10, paragraphs 1 and 2, retain the phrase "person transferring it" in current paragraph 2, and reformulate paragraph 3 as proposed.*

*Transfer by assignment*

62. *The Chair* next invited the Group to consider Article 11, "Transfer by assignment".

63. Initially, participants confirmed that the meaning of a transfer of the rights under the warehouse receipt "by assignment" was clear in English and other languages.

64. All participants were of the opinion that the provision was not needed for negotiable warehouse receipts in Chapter III and therefore suggested its removal. They suggested moving the provision to the new section on non-negotiable warehouse receipts and reformulating it to reflect that it concerned the assignment of rights evidenced by the receipt rather than the assignment of the receipt itself. *The Working Group agreed with these suggestions.*

*Rights of a transferee generally*

65. *The Chair* turned to Article 12, "Rights of a transferee generally".

66. Several participants commented that the structure of Part B overall ought to be reconsidered and simplified, and the relation between Articles 12,13 and 14 clarified.

67. Regarding the scope of Article 12, it was clarified that this provision aimed to cover the protected holder, a holder that did not fulfil all requirements of a protected holder, and an assignee of a non-negotiable receipt. However, the latter would no longer be included in its scope given that the Working Group had decided to address non-negotiable receipts in a separate section.

68. Some participants questioned whether Article 12 was necessary at all, arguing that it was merely reflecting the *nemo dat* rule. In particular the clause "as the transferor was able to convey" at the end of Article 12 was unnecessary. Other participants argued in favour of retaining the provision as it could not be assumed that every user of the Law would be aware of this rule, and that the MLWR should be conceptualised as a standalone law. Any user should understand what rights it acquired if it was not a protected holder.

69. Several participants supported replacing "title" by "rights" in Article 12, arguing that it could not be translated as title in Latin languages.

70. Furthermore, with regard to accommodating the dual receipt system, it was highlighted that the text needed to cater for a dual terminology (warehouse receipt/certificate of deposit). In a dual system, the provision of Article 12 should only apply to the certificate of deposit, not to the warrant, as a warrant did not confer rights to the receipt. Accordingly, a separate provision in the Model Law would be needed for the warrant.

71. *The Working Group agreed on replacing "title" by "rights" in Article 12, and deferred the reconsideration of the Article to the Drafting Committee in the light of the contemplation of dual receipts.*

*Rights of a protected holder of a negotiable warehouse receipt*

72. Before considering Article 14, *the Chair* observed that most provisions referred to goods being "covered" by a receipt, rather than "represented", and asked which expression the Group preferred throughout the text. The participants supported referring to "covered" to ensure consistency with the terminology of the MLST which referred to "covered". *The Working Group agreed to refer to goods being "covered" by a receipt consistently throughout the MLWR.*

73. A participant highlighted that Article 14 also needed to be adjusted for the dual system, as paragraph 1(a) and (b) would not apply to the warrant. Rather, in a dual system, this provision ought to apply to the certificate of deposit only.

74. Several participants took the stance that Article 14, paragraph 1(a) was redundant, arguing that the provision was already captured in Article 12, and therefore suggested combining Articles 12 and 14. Participants argued that Article 14 only needed to state that the protected holder acquired the title free from third-party claims. Other participants opposed this stance, arguing that Article 14, paragraph 1(a) was needed because it clarified that the protected holder acquired more rights than the transferor had.

75. Several participants noted that it was important to clarify what rights were being conferred, such as proprietary rights.

76. *The Working Group agreed that the formulation and structure of Articles 12 and 14, paragraph 1(a) should be revisited, and deferred the matter to the Drafting Committee.*

77. Turning to paragraph 2(c) of Article 14, *the Chair* asked whether the clause "unless that person took its interest in the goods or the receipt in the ordinary course of business" should be included and, if so, whether it should be expanded to refer to the ordinary course of business "or financing". A participant explained that financing had not been included in paragraph 2(c) because this provision targeted the scenario where goods were sold by the warehouse in its ordinary course of business. The majority of participants agreed on not including that clause in paragraph 2(c).

78. A participant highlighted the potential conflict between pre-harvest input financing and post-harvest financing through warehouse receipts, recalling that, in the context of agriculture, farmers were usually pre-harvest financed, for example under contract farming arrangements. In response to this concern, other participants explained that this scenario was covered by Article 15 of the MLWR, according to which the rights of a protected holder were subject to certain claims.

79. *The Working Group agreed on not including the clause at the end of Article 14, paragraph (c).*

*Transfer of a negotiable receipt to a protected holder*

80. The participants then turned to Article 13.

81. A participant suggested modifying the title of Article 13 to "Protected holder", noting that the provision merely described who a protected holder was. *The Working Group agreed accordingly.*

82. The discussion then focussed on the clause at the end of paragraph 1 ("unless it is established that the transfer was not in the ordinary course of business or financing"). A participant suggested a positive reformulation of the clause under a new subparagraph (c). Other participants objected to this proposal, reasoning that the purpose of the clause was to reverse the burden of proof, as it should not be at the protected holder to prove these facts. *The Working Group did not reach a decision on this matter.*

83. A participant explained that Article 13, paragraph 1(b) covered knowledge of all sorts, of all kinds of claims, and knowledge could be gained from any source including any registration system. Paragraph 2 stipulated that that source was immaterial to the protection, but the other sources of knowledge that impacted good faith were still valid under paragraph 1(b). It was noted that it would be important to explain the apparent departure of the Model Law from the promotion of publicity and transparency of registries in the Guide to Enactment, and explain the particular commercial reason for this. *The Working Group agreed on including an explanation in the Guide to Enactment.*

*Rights of a protected holder subject to certain claims*

84. *The Chair* invited the participants to consider Article 15. A participant suggested deleting it, arguing that the allocation of risks under this provision would not promote security and predictability for warehouse receipts. In case of deletion, the importance of including a clear provision on the warranty given by the depositor as to the right of disposal of the goods was emphasised, as was the statement that the goods were unencumbered. *The Working Group agreed on deleting Article 15.*

*Subsequent transfer of a warehouse receipt by transferor in control or possession*

85. *The Chair* then turned to Article 16. The participants agreed that the provision of Article 16 was unnecessary, because the protected holder could regardless claim protection under Article 14. *The Working Group agreed on the deletion of Article 16.*

*Non-negotiable warehouse receipts*

86. *The Chair* introduced Article 17.

87. Considering paragraph 1, a participant recalled that a non-negotiable receipt only constituted proof that a person had received the goods, and that the Group had agreed that a non-negotiable receipt was not transferable. The provision was to be redrafted accordingly and refer to "assignor" and "assignee" instead of "transferor" and "transferee". It was also noted that, as far as a non-negotiable paper was concerned, the provision could only state the assignment of the rights to claim delivery of the goods from the warehouse operator. *The Working Group invited the Drafting Committee to reformulate Article 17, paragraph 1 accordingly.*

88. Turning to paragraph 2, several participants cautioned that jurisdictions had adopted different approaches to the issue of when an assignment of rights became effective. Moreover, they observed that paragraph 2 addressed – beyond the obligation of the warehouse operator – the assignment of rights in general, and was thus beyond the scope of the MLWR. Accordingly, it was suggested to delete paragraph 2, and leave it to the more general rules on assignment of the enacting State. An explanation of the priority rules that was captured in paragraph 2 should instead be included in the Guide to Enactment. *The Working Group agreed to delete Article 17, paragraph 2 and include an explanation of the priority rule in the Guide to Enactment*.

*Warranties on transfer of a negotiable warehouse receipt; Transferor not a guarantor*

89. Next, *the Chair* invited the Group to consider Articles 18 and 19 on the warranties of a transferor.

90. Starting with Article 18, paragraph 1(b), one participant suggested deleting the "validity of the receipt", arguing that the validity largely depended on the issuer's behaviour and thus the transferor could not warrant it. Other participants objected that according to paragraph 1(b), the transferor warranted only that it does not have any knowledge of any fact that would impair validity of the receipt.

91. Several participants supported retaining both the validity of the receipt and the value of the goods, recalling that both were typically referred to in warehouse receipt legislation. All participants seconded this proposal.

92. Turning to Article 18, paragraph 1(c), the majority of participants supported the retention of the provision, arguing that it was important because otherwise, if the transfer was ineffective, then the transferee had no recourse.

93. *The Working Group agreed to retain both the validity of the receipt and the value of the goods covered by it in Article 18, paragraph 1(b). Furthermore, the Group agreed to retain Article 18, paragraph 1(c).*

94. Next, participants considered Article 18, paragraph 2. A participant reported a recommendation of practitioners in favour of retaining paragraph 2. However, a few drafting changes were suggested, namely to remove "collecting bank" and "bill of exchange", as well as that it warranted "acting in good faith". Furthermore, several participants suggested deleting the last clause of paragraph 2 ("even if the collecting bank …"), arguing that it only restated the general rule and was thus superfluous. Moreover, it was more a rule concerning general secured transactions law rather than specific to warehouse receipts. It was suggested to elaborate this aspect in the Guide to Enactment. *The Working Group agreed with all these suggestions.*

95. Participants then discussed the terminology used in Articles 18 and 19. Several participants noted that the terms "warranty" and "guarantee" might not be clear in all jurisdictions. For example, both terms would be translated into the same word in Japanese. Therefore, it was suggested that the Model Law be more specific about the differences and the consequences of each expression. Furthermore, it was also suggested to modify the title of Part C to use "Representation" instead of "Warranties", as the latter did not capture the substance of Article 19. *The Working Group agreed accordingly.*

96. Turning to the structure of Part C, it was suggested to combine Article 18, paragraph 1 and Article 19, and to move paragraph 2 of Article 18 to a separate Article for the specific case it addressed. *The Working Group agreed.*

97. One participant observed that two important warranties were missing and needed to be added to the Model Law: the depositor would need to warrant that the goods were free and unencumbered by any third-party rights, and the warehouse operator would need to warrant that the information included in the warehouse receipt was accurate. *The Working Group agreed on including corresponding provisions.*

#### (d) Application and transition of this Law

98. *The Chair* invited the participants to consider the draft Chapter on the application and transition of the Law, more precisely Articles [A], "Entry into force", and [C], "Repeal and amendment of other laws". *The Working Group endorsed the provisions as suggested.*

### 2. Drafting suggestions for Chapter IV – Rights and Obligations of the Warehouse Operator (Study LXXXIII – W.G.5 – Doc. 3)

99. Next, *the Chair* invited the Secretariat to introduce the drafting suggestions for Chapter IV.

100. *The Secretariat* drew the participants' attention to Doc. 3 which contained the drafting suggestions for Chapter IV, "Rights and Obligations of the Warehouse Operator", and explained that this draft Chapter was being presented for the first time. Therefore, it was suggested that the Group first consider for each article whether a provision of that nature should, in principle, be included in

the Model Law or rather defer the issue to the Guide to Enactment. Once the Group had decided on whether or not to include a particular article in the Model Law, it would then be invited to consider the suggested text in more detail in conjunction with the questions raised in the discussion column of Doc. 3.

*Duty of care; Contractual limitations of warehouse operator's liability*

101. The Chair introduced Article 1, "Duty of care; Contractual limitations of warehouse operator's liability", set out in Doc. 3.

*Paragraph 1*

102. There was consensus on the value of including such a provision, setting out the underpinning minimum expectations of the warehouse operator's duty of care in the Model Law.

103. At the same time, participants agreed that the MLWR should avoid formulating new standards that might be unfamiliar to many jurisdictions. For example, it was noted that including the requirement to "act in a commercially reasonable manner" would not be familiar to civil law jurisdictions, which instead relied on the "diligence of a professional in the relevant sector" or "reasonable care". Therefore, it was suggested to formulate the provision in a more general manner, stating the content of the warehouse operator's obligations ("store, safekeep and take measures to maintain the quantity and quality of the goods") and then refer to the law on bailment contracts or the general legislation for the applicable diligence standard. *The Working Group agreed with this suggestion.*

*Paragraphs 2 and 3*

104. The participants then turned to paragraphs 2 and 3 concerning contractual limitations of liability of the warehouse operator.

105. All participants took the view that paragraphs 2 and 3 should not be included in the Model Law, arguing that paragraph 2 invited warehouse operators to limit their liability, and thus would not send the right message, especially for public warehouses that were regulated and could only limit their liability if damage was attributable to the depositor. Moreover, there were fundamentally different approaches to limitations of liability across jurisdictions, and it would appear impossible to find a solution acceptable to all of them. Therefore, the Model Law should merely contain a reference to national law, and the Guide to Enactment might explain the matter further, including insurance options etc.

106. One participant emphasised that, as opposed to negotiable warehouse receipts, paragraphs 2 and 3 would be relevant for non-negotiable receipts, particularly in the case of collateral management arrangements. It was suggested to consider including a corresponding provision in the separate chapter on non-negotiable receipts.

107. *The Working Group agreed not to include paragraphs 2 and 3 in this Chapter.*

*Termination of storage at warehouse operator's option*

108. The participants then considered Article 2, providing for the termination of storage at the warehouse operator's option.

109. Overall, the participants considered Article 2 to be a useful and important provision, and none of the provisions controversial as such.

110. A baseline consideration was, again, the extent to which the MLWR should contain provisions on bailment. The majority were of the opinion that bailment should be regulated in the MLWR only to the extent necessary, that is the provision should include only those aspects that would influence the business decision of a potential buyer to acquire the receipt or of a potential financier to extend credit against it. From that perspective, participants supported including paragraphs 1-4, yet rephrasing it in a simpler and less detailed way, while paragraphs 5 and 6 were unnecessary for the purposes of Article 2.

111. One participant recalled that most States had legislation governing negotiable documents on the one hand, and bailment and custody of goods by warehouse operators on the other, and argued to therefore focus on the negotiable document and leave issues related to bailment and warehousing contracts to general legislation. Another participant objected to this approach, suggesting that a legislator might find the Model Law deficient if it did not contain provisions that were typically found in warehouse receipt laws. Especially common law jurisdictions, even when they had codified rules, often lacked some of these key provisions of bailment law and such rules were often not sufficient for warehouse receipts. Other participants seconded this stance, highlighting that the law needed to be self-standing to the extent possible. For example, one participant reported that many African economies were trying to encourage the emergence of the warehousing industry, as there were no warehousing services on offer. Therefore, it was important to provide the appropriate conditions for investors to enter the market, and for them to be confident that their rights would be protected.

112. *The Working Group agreed on including only paragraphs 1-4 in Article 2 and deferred their reformulation to the Drafting Committee.*

113. It was suggested to include a new Article in the MLWR covering all matters concerning the sale of goods, which were currently included in Article 2, paragraphs 5 and 6, and in Article 4, paragraphs 4 and 5. *The Working Group agreed accordingly.*

*Duty to keep goods separate*

114. *The Chair* then invited the participants to consider Article 3, "Duty to keep goods separate".

115. With regard to fungible goods covered by paragraph 2, the participants discussed who might decide on whether or not the goods might be commingled. It was highlighted that, in practice, most warehouses were silo complexes and those only allow for bulk storage, as was the prevailing practice across Africa.

116. A few participants argued that it should be up to the depositor to specify whether or not the goods should be stored separately. Others objected that most countries had accepted industry practices in this regard. In the absence of such practices, it ought to be the commercial decision of the warehouse operator how to store goods in the warehouse.

117. The majority of participants supported leaving whether the goods might be commingled to the contract. It was agreed to add "in accordance with the storage contract" at the end of paragraph 2. It was noted that, importantly, whether or not goods were commingled ought to be stated in the receipt, because that would be important for any holder.

118. One participant reported on recent practice from Latin America, whereby fungible goods from sustainable producers were tagged as green warehouse receipts, and questioned whether they could still be tagged as such if they were commingled. This would however be resolved if the depositor could request that the goods not be commingled.

119. *The Working Group endorsed paragraph 1 as suggested in the draft. The Group agreed to add "in accordance with the storage contract" at the end of paragraph 2.*

120. Continuing with Article 3, the participants discussed paragraph 3 concerning commingled goods.

121. While a few participants highlighted the usefulness of the provision, the large majority of participants spoke against including a corresponding provision in the MLWR, and favoured the course of specifying that enacting States should have clear rules on shortfall in case of insolvency in the Guide to Enactment. They argued that the pro rata rule was only fair in the context of insolvency, yet it was not otherwise workable. It was observed that the rule suggested that the holder did not own what it acquired. The first holder who requested delivery could demand the entire amount of goods covered under its receipt, and the warehouse operator could not refuse to deliver that amount applying the pro rata rule stated as currently suggested in paragraph 3. Moreover, it was highlighted that additional provisions would be necessary to make the rule captured by paragraph 3 operational, for instance on the time for calculating the proportion.

122. *The Working Group agreed to delete paragraph 3.*

*Lien of the warehouse operator*

123. Next, the participants considered Article 4 on the warehouse operator's lien.

124. The Group agreed, in principle, on including an article on the warehouse operator's lien in the MLWR.

125. Noting that the MLST avoided the term lien and instead referred to preferential right, a participant suggested that the MLWR adopt the same terminology. Other participants responded that the term preferential right would be confusing in this context because, according to paragraph 3 of Article 4, it was not effective against protected holders. It was suggested to bracket "lien" and leave the choice of the appropriate terminology to the enacting State.

126. A participant questioned the necessity of paragraph 1(b) on the expenses necessary for the preservation of the goods, arguing that those expenses usually fell under the charges for the storage of goods covered by paragraph 1(a), and suggested to therefore delete subparagraph (b).

127. Participants explained that additional expenses under subparagraph (b) might apply for fumigation, or in case of leakage, thus in cases of any unexpected situation in general. It was also highlighted that laws often listed (a) and (b) separately.

128. Whether or not the charges covered by this provision had to be limited to those that were stated in the warehouse receipt itself was also discussed, given that Article 7, paragraph 1(e) (in Chapter II or the MLWR) listed the amount of the storage fees and their calculation method only as optional information that might be included in a receipt. Most participants took the view that the reformulated Article 1, including the clause "in accordance with the storage agreement", would be sufficient, and that the Guide to Enactment should explain that the contract should indicate who would bear the various charges.

129. *The Working Group decided to retain paragraph 1 as suggested in the draft.*

130. Turning to paragraph 2, a participant noted that there was no need for a such a separate paragraph specific to negotiable receipts. *The Working Group agreed to delete paragraph 2 accordingly.*

131. Concerning paragraph 4, it was suggested to avoid stating how the lien was being enforced in the MLWR and rather insert a bracketed cross-reference stating that, as to the enforcement of the

lien, the enacting State was to insert an appropriate cross-reference to its secured transactions law. *The Working Group agreed to include only such a general cross-reference in paragraph 4.*

132. It was noted that the Group had decided to include a separate Article in the MLWR that covered all matters concerning the sale of goods which were currently included in Articles 2 and 4.

*Obligation of warehouse operator to deliver; Obligation to cancel the document or indicate partial delivery*

133. *The Chair* then turned to Article 5. With regard to the wording of paragraph 1(a), participants noted that it was not the "lien" but the "claim" secured by the lien that was being satisfied. One participant questioned the reference to an "outstanding" warehouse receipt in paragraph 1(b) and suggested only referring to "the warehouse receipt". A participant suggested reversing the order of paragraphs (a) and (b) to start with the latter.

134. *The Working Group agreed on reformulating subparagraph (a) accordingly, deleting "outstanding" in subparagraph (b), and reversing the order of subparagraphs (a) and (b). The Group endorsed paragraph 2 as suggested in the draft.*

*Excuses from delivery obligation*

135. *The Chair* introduced the excuses from the delivery obligation laid down in Article 6.

136. While one participant questioned the necessity of Article 6 at all, the large majority of the participants agreed on including a corresponding provision in the Model Law.

137. A participant suggested reformulating the chapeau of Article 6 replacing "need not" – which implied the operator had a choice – by "is excused", highlighting that this provision concerned the operator's liability.

138. After a participant asked for clarification as to the meaning of subparagraphs (a) and (c), it was noted that paragraph (a) referred to a situation of overissuance, where the operator had issued more than one receipt for the goods. The participants agreed that, in such a case, the operator should be liable rather than being excused from its delivery obligation, and therefore supported the deletion of paragraph (a).

139. As to subparagraph (c), while the participants agreed on including the provision in the Model Law, it was suggested to reformulate and possibly split it into two separate paragraphs for clarity.

140. *The Working Group agreed on reformulating the chapeau, deleting subparagraph (a), and reformulating subparagraph (c) accordingly.*

*Rights pursuant to a judgment against goods covered by negotiable receipts*

141. *The Chair* addressed Article 7. The participants discussed the order of subparagraphs (a) and (b). Furthermore, a few participants suggested stating that the provision did not apply to a holder who was not a protected holder according to Article 13 (of draft Chapter III of the MLWR) more explicitly. *The Working Group deferred the revision of the provision to the Drafting Committee.*

*Irregularities in the issue of receipt or conduct of warehouse operator*

142. *The Chair* then turned to Article 8 on irregularities in the issue of a receipt or conduct of the warehouse operator, and the Group discussed whether the provision ought to be included in the Model Law.

143. One participant argued to not include Article 8 as it merely stated the obvious. Another participant objected that the operator's duties arose from the storage agreement in regards to subparagraph (a).

144. The majority of participants however supported the retention of the Article, and suggested reformulating the provision to stipulate that, if the receipt did not comply with the requirements of this Law, this did not release the operator from its duties of safekeeping the goods. The inclusion of the provision was deemed useful to avoid cases in which none of the obligations established in this Law applied.

145. *The Working Group decided to include Article 8 as suggested in the draft MLWR.*

### 3. Note on Security Rights (Study LXXXIII – W.G.5 – Doc. 4)

146. *The Chair* drew the participants' attention to the Note on Security Rights enclosed in Doc. 4 and invited Mr Dubovec to introduce that Note.

147. *Mr Dubovec* recalled that the Working Group had already discussed the question of whether, and to what the extent, the Model Law should address security rights in warehouse receipts, and that there had been different views in this respect. He explained that the Note took account of some recent issues that had emerged concerning coordinating warehouse receipts legislation and secured transactions legislation, in legislative reform projects in Kenya and Uganda. Furthermore, he underlined that the digitalisation of warehouse receipts had added new aspects that were not considered in the MLST, which did not provide any asset specific rules on third-party effectiveness and priority of security rights in electronic negotiable documents. This lack of specific rules in the MLST led to the application of the fall-back rule that the only method of perfection would be registration. Against this background, he explained that Section V on page 6 of the Note outlined the proposal to include a single Article in the MLWR on matters that were not addressed in the MLST, namely third-party effectiveness and priority of security rights in electronic warehouse receipts, leaving all other issues concerning security rights to the general secured transactions law. The overarching purpose of this proposed Article was to provide a link between the legislation on warehouse receipts and that on secured transactions.

148. Starting with paragraph 1, a participant addressed the interplay between the registry contemplated in subparagraph (a) and a registry which would have been set up as the means for recording control over warehouse receipts. The participant noted that paragraph 1(a) only had a role to play if there was a separate registry. It was suggested to include paragraph 1(a) in brackets in the Model Law with an indication that this provision depended on the type of registry, and add an explanation in the Guide to Enactment.

149. With regard to the dual receipt system, it was highlighted that paragraph 1(a) was one of the provisions in which the Model Law needed to accommodate the dual system, because the security right would be made effective by possession of the warrant, not by possession of the certificate of deposit. Furthermore, a participant noted that there was no security right in the warrant but rather in the underlying goods, and questioned in how far this ought to be considered in the Model Law.

150. Considering paragraph 2, a participant suggested incorporating it into paragraph 1 of the new proposed Article, which already covered the provision making it redundant. Paragraph 1 outlined the general methods of third-party effectiveness, and the reference to Article 2A in paragraph 2 could be incorporated into paragraph 1.

151. Concerning the cross-reference to Article 2A for electronic warehouse receipts, it was noted that Article 2A was flexible enough to allow the enacting State to specify what should constitute

"control" for the application of the Law in implementing subsidiary legislation, which would in most cases be through a registration system.

152. It was proposed to include a few sentences in the Guide to Enactment explaining how exclusive control functioned in the case of multi-signature arrangements.

153. Turning to paragraph 3, a participant supported retaining that paragraph in brackets to alert an enacting State that this provision would be more appropriate in a secured transactions law. The purpose of paragraph 3 was to reflect that the registration under the warehouse receipts legislation should have priority vis-à-vis a general collateral registry, given that warehouse receipt users would usually consult the former. Other participants argued against including paragraph 3 in the MLWR as the provision was not specific to warehouse receipts, and suggested that its content could instead be discussed in the Guide to Enactment. The main reason for this stance was to avoid fragmentation in the field of secured transactions.

154. *With regard to security rights, the Working Group agreed on including only paragraph 1 as a new Article in the MLWR, leaving subparagraph (a) in brackets and incorporating the reference to Article 2A. The Group furthermore agreed that this provision be included under a new part on security rights within Chapter III and that the title of Chapter III ought to be modified accordingly. It invited the Drafting Committee to ensure that the provisions accommodated the dual system. Concerning paragraph 3, the Working Group agreed that the provision could be included and further explained in the Guide to Enactment, and that a footnote to this article might draw attention of the enacting States to this important issue and refer to the Guide.*

### 4. Note on Conflict of Laws Issues (Study LXXXIII – W.G.5 – Doc. 5)

155. Next, *the Chair* drew the participants' attention to Doc. 5 on conflict of laws issues and invited Mr Johnson and Mr Dubovec to introduce the Note.

156. *Mr Johnson* recalled that the question of conflict of laws had already been discussed by the Working Group, and that typically warehouse receipt laws did not contain provisions specifying the applicable law. Nevertheless, the Note suggested the inclusion of a few provisions in the Model Law to primarily take account of the digitalisation of warehouse receipts. *Mr Dubovec* added that he had shared the draft Note with the Deputy Secretary-General of the Hague Conference on Private International Law, who had provided minor suggestions on its content.

157. The majority of participants were against including provisions on conflict of laws in the MLWR and agreed on including discussion in the Guide to Enactment to flag that the topic required attention by enacting States. To support the approach not to include such provisions in the Model Law, it was argued that these issues were not specific to warehouse receipts. Furthermore, participants doubted that there was a practical need to introduce such provisions because, even though receipts could be used for foreign trade financing, the large majority of cases would concern purely domestic transactions. Moreover, some of the relevant criteria proposed in the Note would be contentious, especially the provision contained in paragraph (a) in Section I of Doc. 5. Although that provision reflected general notions of party autonomy and the underlying philosophy of several international instruments, in view of the proprietary nature of the rights that were being transferred, not all States would endorse that one could chose the law that determined the proprietary effects of a document issued in respect of goods.

158. The same concern would apply to paragraph (d), as suggested in Doc. 5. It was reported that in practice, a number of initiatives aimed to set up cross-border trade platforms, and an operator that was licenced under a particular commodity exchange might be interested in opting to the law of the State of the exchange. Only in such particular circumstances would it seem appropriate to let the operator choose the applicable law. Participants highlighted the difficulty of determining connecting

factors that would be generally agreeable to States. In relation to documents of title in more general terms, this topic had been excluded from international instruments since 1930 because of its complexity, and it might not be advisable to embark on formulating a solution specifically for warehouse receipts in this Model Law. It was also pointed out that there would be many questions, especially if rules were proposed that departed from current rules adopted by States. In view of all of the above, participants cautioned that a lot of time would be needed to consider the appropriate solutions for the conflict of laws issues, while those would not be key to this Model Law.

159. A few participants argued in favour of including provisions on conflict of laws in the MLWR, observing that there was a need for them, and that this might become a more important issue in the future. Warehouse receipts are expected to be used more frequently in cross-border transactions, for instance in supply chain financing. In response to this observation, a participant recalled that part of the transaction, if it were international, would be converted into a transportation transaction, in which case there would no longer be a warehouse receipt representing the goods but another document.

160. The participants then discussed whether the Guide to Enactment could contain a discussion on conflict of laws if there was no corresponding provision in the MLWR. Some participants argued that a Guide to Enactment would usually explain the provisions to be enacted, and therefore there should be a basic rule as reference in the Model Law text itself. In order to have such an anchor in the MLWR for discussion in the Guide, it was proposed to elaborate Article 1, paragraph 1 of the MLWR, to state that the law applied to warehouse receipts [and warrants] "issued in respect of goods received for storage in [this country]". Other participants argued against modifying Article 1 merely to provide an anchor for discussion in the Guide, and noted that even this addition might be controversial. Rather, they were of the opinion that no such anchor was necessary, and referred to the Guide to Enactment of the MLETR as a precedent which discussed matters that were not addressed in the MLETR itself.

161. *The Working Group decided not to include provisions on conflict of laws in the Model Law. The Group decided that the Guide to Enactment should merely set out the relevant issues with some explanation of the different approaches, without promoting any particular approach.*

**Item 4: Any other business**

162. Next, *the Chair* opened the floor for any other business.

163. A participant asked the Chair for an outline of the final structure for the complete draft Model Law. *The Secretariat* noted that the draft Model Law would be composed of the following Chapters: Chapter I, Scope of application and general provisions; Chapter II, Issue of a warehouse receipt; Chapter III, Transfer of warehouse receipts (the title would be amended to also cover the new provision on security rights); Chapter IV, Rights and obligations of the warehouse operator; Chapter V, Implementation and transition of this Law ("transition" would be deleted as no transition rules were included in the Chapter). Two additional Chapters would be added, one on "non-negotiable warehouse receipts" (the denomination of such receipts still ought to be decided) and one optional Chapter taking account of the warrant for the dual receipt system. The additional provisions concerning the dual receipt system would be largely captured in that separate Chapter, rather than added throughout the Model Law in square brackets. The provisions on the warrant would be conceptualised similarly to the French system, considering the warrant as an annex to the certificate of deposit.

164. A participant noted that the current text of the Model Law did not state the purpose and effect of a warehouse receipt, and suggested adding two definitions to Article 2 of the single and the dual receipt, respectively. Furthermore, it was noted that the few articles should provide that the

warehouse receipt and the warrant might be transferred together or separately; the separate endorsement of the warrant from the warehouse receipt represented a pledge of the goods to the benefit of the endorsee; if transferred separately from the warehouse receipt, that the warrant had to state the amount of the debt; the holder of the warrant had the right to collect the debt even before it became due; and that the holder of the warrant may enforce its rights upon default.

**Item 5: Organisation of future work**

165. *The Chair* noted that the sixth session of the Working Group session was scheduled for 1-3 March 2023. *The Secretary-General* emphasised that in-person participation of the participants at that sixth session would be particularly important given that it would be the last session to finalise the draft Model Law before its submission to the UNIDROIT Governing Council in May 2023.

**Item 6: Closing of the session**

166. Lastly, the Chair thanked the Secretariat and all the participants for their active participation and valuable contributions to the session, and declared the session closed.

**ANNEX I**

## LIST OF PARTICIPANTS

### EXPERTS

Ms Eugenia G. DACORONIA (Chair)
Attorney-at-law - Professor of Civil Law
National and Kapodistrian University of Athens Law School

Ms Paula Maria ALL
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| ORGANIZATION OF AMERICAN STATES (OAS) | Ms Jeannette TRAMHEL<br>Senior Legal Officer<br>Department of International Law |
| UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) | Mr José Angelo ESTRELLA FARIA<br>Principal Legal Officer and Head of the Legislative Branch<br>International Trade Law Division |
| | Mr Luca CASTELLANI<br>Legal Officer |
| WORLD BANK GROUP | Mr John WILSON<br>Senior Financial Sector Specialist<br>Former Lead Economist<br>Development Research Group |

**INTERNATIONAL NON-GOVERNMENTAL ORGANISATION**

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| INTERNATIONAL LAW INSTITUTE (ILI) | Mr Marek DUBOVEC<br>Director of Law Reform Programs<br>United States of America<br>Advisor to UNIDROIT Secretariat |
| | Mr Thomas M. JOHNSON<br>Research Attorney<br>United States of America |
| | Mr Robert M. TROJAN<br>Senior Advisor<br>United States of America |

**PRIVATE SECTOR REPRESENTATIVES**

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| ASSOCIATION OF GENERAL WAREHOUSES | Ms Elsa AYALA<br>Executive Director |

**OTHER OBSERVERS**

| | |
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| YORK UNIVERSITY | Mr Benjamin GEVA<br>Professor of Law<br>Osgoode Hall Law School |
| WAREHOUSE RECEIPT SYSTEM COUNCIL (WRSC) | Ms Jacqueline ODUNDO<br>Head Legal & Compliance<br>Kenya |

**SECRETARIAT**

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| INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT) | Mr Ignacio TIRADO<br>Secretary-General |
| | Ms Anna VENEZIANO<br>Deputy Secretary-General |
| | Mr William BRYDIE-WATSON<br>Senior Legal Officer |
| | Mr Yiming SUN<br>Senior Legal Officer |
| | Ms Philine WEHLING<br>Legal Officer |
| | Ms Priscila ANDRADE<br>Legal Officer |
| | Mr Chen MIAO<br>Legal Officer |
| | Ms Michelle FUNG<br>Legal Officer |

**ANNEX II**

## ANNOTATED DRAFT AGENDA

1. Opening of the session by the Chair

2. Adoption of the agenda and organisation of the session

3. Consideration of substantive matters

   (a) Preliminary draft Model Law on Warehouse Receipts (Study LXXXIII – W.G.5 – Doc. 2)

   (b) Drafting suggestions for Chapter IV – Rights and Obligations of the Warehouse Operator (Study LXXXIII – W.G.5 – Doc. 3)

   (c) Note on Security Rights (Study LXXXIII – W.G.5 – Doc. 4)

   (d) Note on Conflict of Laws Issues (Study LXXXIII – W.G.5 – Doc. 5)

4. Organisation of future work

5. Any other business

6. Closing of the session

## ANNOTATIONS

### Item No. 1 Opening of the session by the Chair

1. The fifth Working Group session of the Model Law on Warehouse Receipts project will take place on **5-7 December 2022**.

2. The meeting will be held at the seat of UNIDROIT at Via Panisperna, 28 – Rome (Italy). Participants are encouraged to consider attending in-person, while remote participation via Zoom will be possible.

### Item No. 2 Adoption of the agenda and organisation of the session

3. In order to accommodate the different time zones of participants, the fifth session will be held each day between **11:00 – 17:00 CET**.

4. It is proposed that discussions on each of the three days be held as follows:

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|---|---|---|
| 1st Discussion | **11:00** – 12:45 | 105 minutes |
| Lunch | 12:45 – 14:00 | 75 minutes |
| 2nd Discussion | 14:00 – 15:30 | 90 minutes |
| Coffee break | 15:30 – 15:45 | 15 minutes |
| 3rd Discussion | 15:45 – **17:00** | 75 minutes |

### Item No. 4 Organisation of future work

5. The sixth session of the Working Group is scheduled for 1-3 March 2023.