



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 – Guide to Enactment**

First session (hybrid)
Rome, 13-15 November 2023

UNIDROIT 2023
Study LXXXIII A – W.G.1 – Doc. 3
English only
December 2023

SUMMARY REPORT
OF THE FIRST SESSION
(13 – 15 November 2023)

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1. The first session of the UNIDROIT Working Group on the Guide to Enactment to the Model Law on Warehouse Receipts (“the Working Group”) took place in a hybrid format between 13 and 15 November 2023. The Working Group was attended by 20 participants, comprising Working Group members, including representatives of international governmental and non-governmental organisations as well as the private sector, and members of the UNIDROIT Secretariat (list of participants available in Annexe I).

Item 1: Opening of the session by the Chair

2. *The Chair* welcomed the attendees to the first meeting of the Working Group and thanked them for participating. *The Secretary-General* joined *the Chair* in welcoming the participants both in person as well as those attending online, and he thanked the Working Groups of both UNIDROIT and UNCITRAL for the progress made regarding the Model Law as well as the Guide to Enactment.

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

3. *The Chair* introduced the annotated draft agenda and the organisation of the session. *The Working Group* adopted the draft agenda ([Study LXXXIII A – W.G.1 – Doc. 1](#), available in Annexe II) and agreed with the organisation of the session as proposed.

Item 3: Update on the intersessional work and developments since the sixth Working Group session of the UNIDROIT Working Group on a Model Law on Warehouse Receipts

4. *A representative of the Secretariat* informed the Working Group regarding the discussion of the draft Model Law text by delegates and observers of UNCITRAL Working Group I in September 2023, which had commended the draft. No major changes were made to it, yet they had not reached consensus on two main issues regarding the Model Law, namely whether it should follow a medium-neutral or functional equivalence approach towards electronic warehouse receipts (EWRs) and whether provisions on dual warehouse receipts should be included in the Model Law. These questions would be reconsidered at the next meeting of UNCITRAL Working Group I in February 2024. Furthermore, the Secretariat reported on the work by the UNIDROIT Working Group on developing the draft Guide to Enactment, which had started following approval of the draft Model Law by the UNIDROIT Governing Council in May 2023.

Item 4: Consideration of the Draft Guide to Enactment for the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts ([Study LXXXIII A – W.G.1 – Doc. 2](#))

5. *The Chair* drew the Working Group’s attention to Item 4 on the agenda and introduced Doc. 2, which contained the complete draft Guide to Enactment to the draft Model Law on Warehouse Receipts (“the Guide”). The Chair then invited the Working Group to discuss the current structure of the Guide.

6. One participant noted generally that, as the Guide was to be adopted by UNCITRAL, some changes in the choice of language and style would need to be made for the document to be in line with the standard UNCITRAL approach.

7. It was further noted that the Guide dealt with explanations regarding EWRs in various passages. Several participants suggested to shorten the explanations on EWRs as well as to deal with this issue in a single section.

8. It was also suggested not to overly focus on practical matters and examples, as the Guide was primarily addressing legislators.

9. *The Working Group agreed that, as a consequence of the outstanding decision of the UNCITRAL Working Group as to whether to follow a functional equivalence or medium neutrality approach, throughout the Guide, the term "paper" should be put in brackets and the words "[non-electronic]" should be added in brackets each time the document referred to paper receipts.*

(a) Part I: Purpose of this Guide

10. *The Chair* opened the floor for discussion on Part I of the Guide.

11. A participant noted that in line with UNCITRAL's practice, the information on the history of the project would be added. *Apart from such addition needing to be added, the Working Group agreed with Part I of the draft Guide.*

(b) Part II: Introduction to the Model Law

12. *The Chair* then drew the participants' attention to Part II of the Guide.

13. The Working Group first discussed section A, "Background". A participant pointed out that some information that was now covered by the Guide, particularly in paragraphs 7, 13 and 14, might become outdated in the future. Therefore, this information should not be included in the Guide and should instead be included in the UNCITRAL website where it could be more easily updated. *The Working Group agreed to delete paragraphs 7, 13 and 14.*

14. The participants referred to paragraphs 6 and 10, and made suggestions to change the wording. Specifically regarding paragraph 6, one participant referred to the words "evidence of ownership rights" and emphasised the need to make sure that there was no inconsistency between the Guide and the Model Law. Several participants agreed. An extensive discussion followed, entailing various suggestions by participants to reformulate section A of the introduction and to alter its structure. One participant referred to the Guide addressing legislators primarily and thus suggested removing the paragraph dealing with the historical background of warehouse receipts. *The Working Group agreed to reformulate paragraphs 6 and 10.*

15. It was suggested to move current paragraphs 8 and 9 after paragraph 12. *The Working Group agreed accordingly.*

16. A participant pointed out that use of the term "capital adequacy" in paragraph 11 in this context was not common. *The Working Group agreed to delete such term in paragraph 11.*

17. Regarding section B, "Purpose of the Model Law", several participants agreed that references to the goal of hunger reduction should be kept generic and that there should be no reference to specific regions, percentages or time periods. *The Working Group agreed to delete such references in paragraph 18.*

18. *The Working Group further agreed to delete the words "reduce barriers to" in paragraph 17 and instead add "aid the formation of regional".*

19. *The Chair* then opened the floor for discussion on section C on the "Scope" of the Model Law. Regarding paragraph 20, one participant suggested deleting the last sentence of paragraph 20. Moreover, it was proposed to delete the reference in paragraph 20 to specific industries. Several participants expressed support. Further, a participant pointed out that in paragraph 22, the reference to field warehousing agreements was not exact. He suggested including one paragraph explaining

how the Model Law applies to non-negotiable receipts. He further suggested referring to paper and electronic receipts and not referencing technology-neutral provisions. *Regarding section C, the Working Group agreed to delete the last sentence of paragraph 20 as well as the last three sentences of paragraph 21, while noting that the last three sentences of paragraph 21 might be included again in the Guide, depending on the decision of the UNCITRAL Working Group regarding the decision for a functional equivalence or a medium-neutral approach.*

20. Several participants pointed out that throughout the whole section, some formulations were not entirely accurate or might be understood as suggestions towards a specific system or format of warehouse receipts. *The Working Group also agreed to selectively reformulate section C as suggested.*

21. Another participant noted that in paragraph 21, the sentences after “In general” could be deleted as they did not apply in the current draft of the Model Law anymore. *The Working Group agreed to delete these sentences.*

22. The discussion then turned towards the explanation of the structure of the Model Law in section D of the introduction. The Working Group discussed whether the wording and structure of paragraphs 27 and 28 should be changed. It was noted that the explanation that the Model Law embraced both single and dual warehouse receipts might not be necessary. One participant also pointed out that the last sentence was not needed, as there was an explanation of the content of the Guide in an earlier paragraph. *The Working Group agreed to delete this explanation from the Guide as well as the last sentence of paragraph 27.*

23. *The Working Group also agreed to delete paragraph 28, except the explanation of the functioning of a system based on dual warehouse receipts, which was moved to paragraph 27.*

24. It was then suggested to delete the entire section E, “Types of warehouse receipt systems: the single and the dual format” and incorporate its contents into paragraph 30. *The Working Group agreed.*

25. In section F, “Electronic warehouse receipts”, it was suggested to delete most of the section, since it was mainly explaining the functioning of token-based EWRs and these were not as broadly used in practice as the introduction implied. A participant noted that paragraph 37 should rather be included in Part III of the Guide. Further, the Working Group discussed inconsistencies regarding the explanations in paragraph 32. Also, it was discussed whether paragraphs 46 through 51 should be addressed in the Guide at all. After further discussion, the participants agreed that the explanations on EWRs ought to be completely redrafted. There was further consent on keeping only those explanations that directly referred to the Model Law provisions. *The Working Group agreed to delete section E of the introduction and to move some of its contents to other chapters.*

26. One participant suggested further explaining in the Guide the use of central registries and distributed ledger models, as well as explaining different options. After a short discussion, *the Working Group agreed to add some paragraphs to the Guide explaining these models, but in the respective section of Part IV, and to defer this work to a later stage, as the section of Part IV on EWRs would eventually be entirely redrafted.*

27. *The Chair* then drew the attention of the Working Group to section G, “Financing practices involving warehouse receipts”. Some editorial changes were discussed by the participants, as well as the inclusion of an explanation of the role of secondary market transactions that typically entailed financing of the agricultural sector by government-owned financial institutions in paragraph 54. *The Working Group agreed to these changes and to add the described explanation.*

28. Furthermore, some participants discussed supply chain finance-related phenomena and recognised that this matter was not yet fully explained in the Guide. A participant questioned whether this ought to be explained in the Guide, noting that the finance practices would not relate to any particular provision of the Model Law. Several participants agreed that further explanation might be necessary as in some cases, warehouse operators themselves were part of the warehouse receipt-based finance system. It was further noted that, if this was the case, the definition of warehouse operator in the Model Law might be too narrow. *The Working Group agreed to consider whether further explanations in the rest of the Guide would be necessary.*

29. An extensive discussion emerged regarding streamlining and reformulating section G, particularly paragraphs 52, 53 and 56. Several participants agreed that in paragraphs 56 and 62, the term "securitization" should be more accurately explained. Some participants also noted that the section should be worded more neutrally. For example, the term "collateral manager" might not be used with the same meaning in every jurisdiction. Another participant suggested that the section lacked references to the actual practices of banks. *The Working Group agreed to reformulate these paragraphs, particularly adding a more detailed explanation of financing practices in paragraph 56, and to make editorial changes throughout the section.*

30. One participant suggested deleting paragraphs 58 and 59, as they referred to certain continents and cities, or at least deleting these references; further, it was suggested that the whole section should be streamlined. Another participant noted that the terminology in paragraph 53 was uncommon ("haircut finance", "inventory finance"). *The Working Group agreed to delete references of a geographical nature throughout the section.*

31. A number of participants proposed to delete paragraph 67 as it was too general to be of much practical use. *The Working Group thus agreed.*

32. The question was raised of whether the current formulation of section G seemed to aim to convince the legislator to adopt the Model Law and should be revised to rather help the legislator enact the Model Law. However, participants found the explanation provided in section G useful.

33. *The Working Group generally agreed to keep section G, subject to the above agreed revisions.*

34. The *Chair* then drew the attention of the Working Group to section H, "Conflict of laws issues". *The Working Group agreed to change the title of this section to "Private international law issues".*

35. Furthermore, it was noted by several participants that paragraph 78 ought to be revised. The participants pointed out particularly that the form of the warehouse should not have an effect on the applicable law. Further, the reference in paragraph 77 to article 85 of the UNCITRAL Model Law on Secured Transactions (MLST) was addressed, since article 85 MLST referred to the "asset", which in this context would be the tangible receipt. The participants discussed that an EWR was not such an asset and that the reference thus might be confusing. Another participant objected to this interpretation and noted that section H was not designed to solve problems regarding conflict of laws issues, but only to draw the legislators' attention to such problems. *The Working Group agreed to add to paragraph 77 the following sentence: "Warehouse receipts may be used to create security rights in goods, or may themselves be the object of security rights."*

36. After a comprehensive discussion in which numerous proposals to rephrase the explanations regarding EWRs were addressed, *the Working Group agreed to merge paragraphs 77 and 78 and to reformulate the content with a focus on potential connecting factors in the context of EWRs.*

(c) Part III: Article-by-Article Commentary

37. *The Chair* then drew the attention of the Working Group to Part III of the Guide.

Chapter I, Scope and general provisions

Article 1, Scope of application

38. *The Chair* opened the floor for discussion of the commentary on article 1. It was noted that in paragraph 80, the second sentence should more strongly take common law jurisdictions into account as they relied more on contracts and not statutory law, so the term “introducing” should be added. *The Working Group agreed to delete the words following “aimed to assist [...]” through the end of paragraph 80.*

39. One participant suggested moving the discussion regarding the definition of EWRs from paragraph 37 to this article. It was pointed out that the UNCITRAL Working Group would most likely revise and change this wording at a later point in time. *The Working Group agreed to add a paragraph regarding EWRs falling under the scope of the Model Law.*

40. Subsequently, the Working Group discussed adding clarification about the irrelevance of omitting the information laid out in article 9 to the qualification of a warehouse receipt as such. One participant generally suggested adding a table explaining the effect of non-compliance with the provisions in article 1, paragraph 2, article 9 and article 10 on the applicability of the Model Law to a document, the validity of a warehouse receipt and the liability of the warehouse operator. It was further suggested to point out that a document or electronic record might have some legal effect although it did not fulfill the requirements of article 1, paragraph 2 and thus did not fall within the scope of the Model Law. *The Working Group agreed to these suggestions and that a more detailed explanation of this problem in the Guide, particularly in the form of a table, would be desirable.*

41. One participant noted that in paragraph 84, there was a further reference to “collateral manager”. It was noted that there was no need for a practical example but rather for an explanation of how the Model Law applied to such practices.

Article 2, Definitions

42. The discussion then moved on to the commentary on article 6, particularly the explanations on non-negotiable warehouse receipts. One participant suggested clarifying the explanations in paragraph 90. Another participant suggested adapting the commentary in paragraph 90 to the recent definition of non-negotiable warehouse receipt adopted by the UNCITRAL Working Group. It was discussed that the wording “issued in favor of a named person only” referred to the absence of the words “to the order of” or an equivalent, and it was suggested to explain this further in the Guide. One participant noted that the use of the phrase “to a named person” without the word “only” might be ambiguous, particularly seen from a common law perspective. The Working Group discussed the matter extensively, considering both common law and civil law perspectives and noting that in the context of the Model Law, there was no presumption of negotiability. *The Working Group agreed to include a further explanation of the phrase “issued in favor of a named person only” in the Guide.*

43. It was suggested that the phrase “In most cases” in the last sentence of paragraph 92 be deleted, as the statement necessarily applied to all warehouse receipts by virtue of article 8. *The Working Group agreed to this suggestion.*

44. Referring to the definition of “warehouse operator” in paragraph 93, it was suggested to include the words “mostly” before “work on a gratuitous basis”. A participant noted that sometimes storage services were just part of a service package in which a party did not explicitly pay the

operator for the storage but mainly for other provided services, such as logistics. The Working Group engaged in a discussion about whether such persons should be covered by the Model Law. *The Working Group agreed to delete the last sentence of the paragraph regarding the definition of a warehouse operator.*

45. A participant suggested clarifying that an operator might be a person whose sole business was providing storage to third parties, or a person for whom providing storage for third parties was only one of many businesses or services. *The Working Group agreed to include this differentiation in the Guide.*

Article 3, Form of warehouse receipts

46. The Working Group turned to the commentary on article 3. A participant suggested highlighting the reference to “medium neutrality”, considering the outstanding decision as to whether such an approach or that of functional equivalence should be followed.

Article 4, Party Autonomy

47. *The Chair* introduced the two options offered by the Model Law in article 4. It was suggested to delete the references to the possibility for enacting States to choose between the two options, as the intention was that only one of these options would be included in the final text of the Model Law. *The Working Group agreed to delete the reference.*

48. One participant suggested deleting the last sentence of paragraph 97. *The Working Group agreed to delete the sentence “Enacting States are invited to choose which provisions may not be derogated from.”*

Article 5, Interpretation

49. The discussion then turned towards the commentary of article 5. The participants discussed deleting the references to the MLST as cross-references to other Model Laws might not be helpful and were not common in UNCITRAL documents. *The Working Group agreed to delete the references to the MLST in the commentary on article 5.*

Chapter II, Issue and contents of a warehouse receipt; alteration and replacement

Article 6, Obligation to issue a warehouse receipt

50. *The Chair* then invited the Working Group to discuss the commentary on article 6. It was suggested that the reference to “the depositor requesting that a warehouse receipt be issued” should be further explained, as the operator could be obliged by regulation to issue the warehouse receipt, and that it was the depositor’s choice to have a warehouse receipt issued and that the receipt was issued in addition to the storage agreement. One participant objected that this sentence could undermine the decision made in the Model Law to make the issuance of a warehouse receipt a matter of the discretion of the depositor. However, *the Working Group agreed to reformulate the commentary on article 6 and to specifically point out that the warehouse operator typically issued a warehouse receipt according to the storage agreement but also might be obliged to issue a warehouse receipt through regulation.*

51. It was further proposed by several participants to explain the phrase “after taking possession of the goods” in relation to “goods in transit” in the Guide. A participant noted that “taking possession” did not only cover situations in which physical possession was taken but also covered situations in which the warehouse operator itself did not take actual possession of the goods, e.g. in cases of goods in transit. Another participant suggested that, instead, it should be pointed out that

the latter situation could be better described by “the goods are being held on behalf of the warehouse operator, as in the case of goods in transit.” *The Working Group agreed to include an explanation in the latter form.*

Article 6 bis, Electronic Warehouse Receipt

52. It was suggested to defer the discussion of this article, as it would be revised by the UNCITRAL Working Group. *The Working Group thus agreed.*

Article 7, Representations by the depositor

53. *The Chair* introduced the commentary on article 7 for discussion. A participant pointed out that the current wording of paragraph 105 might be misleading, as it implied that only the owner of the goods had the authority to deposit the goods. Also, after paragraph 106, it was suggested that there should be another paragraph explaining the shift of risk to the depositor as provided by the article. *The Working Group agreed to further explain in the Guide that, in the context of subparagraph (a), the depositor might be a person other than the owner of the goods.*

54. *The Working Group decided to include an explanation of the liability in the case of misrepresentation of authority.*

55. *The Working Group also decided to delete the sentence “If so, the operator may accept such goods and note the existence of those claims on the receipt.”*

56. *The Working Group decided to include a clarification of the relationship between article 7(b), and article 9, paragraph 1(g).*

57. It was proposed to change the wording of paragraph 105 to delete any possible reference to a duty to conduct due diligence, as no such duty was imposed. Furthermore, it was proposed that paragraph 106 be changed so as not to create the impression that the Model Law created a potentially additional duty of the operator to conduct due diligence. A participant proposed adding a sentence clarifying that the article did not impose a duty on the operator to verify the representations made by the depositor. A discussion followed about providing an example for an application of this article (a potential contractual liability of the depositor towards the warehouse operator). *The Working Group agreed to include a paragraph in the commentary on article 7 to clarify that article 7 did not impose a due diligence obligation on the warehouse operator and to provide further explanation, particularly regarding the delivery obligation of the operator.*

Article 8, Incorporation of storage agreement in the warehouse receipt

58. *The Chair* opened the floor for discussion on the commentary of article 8. The participants noted that paragraph 108 offered only practical advice and might not be helpful for legislators, and that it should therefore be deleted. *The Working Group agreed on deleting paragraph 108, but to keep the cross-reference to article 9, paragraph 1(l).*

Article 9, Information to be included in a warehouse receipt

59. *The Chair* opened the floor for discussion on the commentary on article 9. One participant noted that paragraphs 110 and 111 should be changed to clarify that a lack of such information included in the receipt might reduce its efficiency but did not affect its validity. Hence, “mandatory” in paragraph 111 should be deleted and the first sentence of paragraph 110 be changed accordingly. The participants further discussed the phrase “so long as it satisfies the ‘essential elements’ of a warehouse receipt in article 1 of the MLWR.” It was suggested to further explain the distinction between “essential information” as referred to in article 1, the information provided for in article 9

and the additional information in article 10, as well as the respective differences in liability for incomplete and incorrect information. Several participants referred to the discussion that repeatedly occurred in the meeting regarding the different “layers” of information that ought to be provided in the warehouse receipt according to the Model Law. *The Working Group agreed to add an explanation of the legal consequences of omitting information laid out in article 9.*

60. Another participant suggested deleting the following sentence in paragraph 110: “The unique identification number may include any combination of numbers that provide a unique identification.” *The Working Group agreed to delete this sentence.*

61. A further proposal was made to add additional information regarding liability under law other than common law at the end of paragraph 111. *The Working Group agreed to add a short explanation in this regard.*

62. It was suggested to add a clarification that the Model Law encouraged the inclusion of as much of the information as possible, in order to promote good practices. *The Working Group agreed to add this sentence to the commentary.*

Article 10, Additional information that may be included in a warehouse receipt

63. *The Chair* drew the Working Group’s attention to the commentary on article 10. *The Working Group agreed on deleting references to “mandatory” information and referring to “additional information” instead.*

64. Similar to the decision made regarding article 9, *the Working Group agreed to add an explanation of the legal consequences of omitting information laid out in article 10, including the liability of the operator.*

65. A participant further suggested explicitly pointing out in the Guide that an operator was not obliged to include additional information as laid out in article 10, but that if it did include such information, the information ought to be correct. Following this, a discussion emerged about the nature of article 10, particularly the permissive aim of the article compared to article 9. *The Working Group agreed to add the suggested information to the commentary of article 10.*

Article 11, Goods in sealed packages and similar situations

66. Further, it was suggested to delete from paragraph 117 the phrase “which makes their description impractical or commercially unreasonable.” *The Working Group agreed accordingly.*

Article 12, Alteration of a warehouse receipt

67. *The Chair* then invited the Working Group to discuss the commentary on article 12. A participant highlighted that paragraph 120 explained article 12, paragraph 2, while paragraphs 121 and 122 explained rather technological phenomena. The latter did not fit under this article and should instead be bracketed and included as commentary on article 10, paragraph 4, if the UNCITRAL Working Group eventually decided to include this paragraph in the Model Law. Another participant noted that some of the information provided in paragraph 121 was indeed relevant in the context of article 12. Regarding paragraph 122, it was noted that the Guide should distinguish between amendments to core (non-dynamic) information and inherently dynamic information (e.g., the quality of the goods), particularly with reference to article 10, paragraph 4. *The Working Group agreed to reformulate paragraph 121 and to move paragraph 122 to the commentary on article 10, paragraph 4.*

68. The discussion then shifted back to paragraph 120. A participant pointed out that paragraph 120 actually explained article 12, paragraph 2. *The Working Group agreed to restructure the commentary on Article 12 accordingly.*

Article 13, Loss or destruction of a warehouse receipt

69. *The Chair* invited discussion on the commentary on article 13. It was proposed to revise paragraph 125. A participant noted the need to add to the commentary on article 13, paragraph 3 (paragraph 126) the possibility of a fast-track procedure for replacement of a warehouse receipt instead of only referring to court procedures. *The Working Group agreed to discuss this matter further during the next UNCITRAL Working Group meeting.*

70. Regarding article 13, paragraph 1, it was observed that the concept of replacement might not apply to EWRs and that paragraph 125 might not be entirely clear in this regard. *The Working Group agreed that suggestions should be sent to the Secretariat with proposals for a new version of paragraph 125 but that the current wording of the commentary should be kept for the time being.*

Article 14, Change of medium of a warehouse receipt

71. *The Chair* drew the Working Group's attention to the commentary on article 14. The participants discussed whether paragraph 129 of the Guide should use the term "paper", as it was still undecided whether the UNCITRAL Working Group would opt for a medium neutral or a functional equivalence approach. *The Working Group decided to bracket the term "paper" and add the term "non-electronic" in brackets each time the term "paper" was used.*

Chapter III, Transfers and other dealings in negotiable warehouse receipts

72. *The Chair* invited the Working Group to discuss the commentary on Chapter III of the Model Law. The participants first discussed whether article 15 applied to non-negotiable receipts. It was pointed out that the title of Chapter III referred only to negotiable warehouse receipts. One participant noted that the assignment of rights under non-negotiable warehouse receipts was governed by other law. *The Working Group decided to include a clarification that the Chapter did not apply to the assignment of rights under non-negotiable warehouse receipts before the commentary on article 15 and to delete the explanation of why this was the case within the commentary of article 15 (paragraph 130).*

73. *The Working Group further agreed to delete the section headings in Chapters II and III and to refer the respective matter to the UNCITRAL Working Group for respective changes in the Model Law.*

Article 15, Transfer of a negotiable warehouse receipt

74. *The Chair* invited discussion on the commentary on article 15. A participant suggested changing the phrase "issued or endorsed to the order of a named person" in the last sentence of paragraph 130 to "to a named person only". It was noted that, in practice, most warehouse receipts were negotiable. The participants then discussed the adaptation of the commentary in paragraphs 130 and 132 regarding non-negotiable warehouse receipts, and they addressed a multitude of drafting proposals with the aim of aligning the commentary on article 15 with the definitions of a non-negotiable warehouse receipt in article 2 and the respective commentary in the Guide. *The Working Group agreed to delete the contents of paragraph 130 after the words "under article 2".*

75. One participant then continued the discussion by referring to the following sentence in paragraph 132: "By extrapolation from the definition of a non-negotiable warehouse receipt in article 2, paragraph 5, a warehouse receipt that is endorsed to a named person only will have the effect of

preventing further transfers of the warehouse receipt.” It was suggested to delete or rephrase this sentence. *The Working Group decided to reformulate the sentence according to the definition of non-negotiable warehouse receipt in article 2 and the wording used in the other parts of the Guide.*

76. Subsequently, a discussion emerged about whether it was possible for a warehouse receipt that was issued negotiable to become non-negotiable and vice versa. Some participants noted that this should be possible but that this was ultimately a policy discussion. A participant pointed out that in cases where a warehouse operator issued a non-negotiable receipt, such a change to negotiable receipt should not be possible. In the opposite situation, the conversion of a negotiable receipt to a non-negotiable receipt, the interests of the warehouse operator were not negatively affected. It was suggested to include respective explanations in the Guide. Furthermore, a participant noted that such a conversion could be difficult in the case of EWRs. Another participant pointed out that in the case of conversion of a non-negotiable receipt to a negotiable receipt, the interests of the operator were not negatively affected, as it still was paid and it did not make a difference who paid the operator. *The Working Group agreed to add an explanation in the commentary on article 15 that a negotiable warehouse receipt could be converted into a non-negotiable one by endorsing it to a named person only, i.e. without the words “to the order” or equivalent.*

Article 15 bis, General reliability standard for electronic warehouse receipts

77. *The Chair* invited the Working Group to discuss the commentary on article 15 bis. It was noted that this provision would be further discussed at the next UNCITRAL Working Group meeting.

78. Subsequently, the Working Group discussed the content of the last sentence of paragraph 135. One participant elaborated on the list provided for in article 15 bis. It was suggested to further explain the reference to ex-ante mechanisms in paragraph 135 of the Guide as well as in footnote 30 in the Model Law. It was noted that the same elements in article 15 bis (a) could be used for ex-ante and ex-post assessments. *The Working Group agreed to redraft the reference to agreements between parties.*

79. It was stressed that the notion of control in article 3 of the Model Law was not the concept of control that was used in the MLST. *The Working Group agreed not to explain the distinction between the notions of control in the Model Law and the MLST in the Guide.*

Article 16, Rights of a transferee generally

80. The Working Group then turned to the commentary on article 16. The participants noted that there should be further explanation of the last sentence of paragraph 137 and that it should be made clear that this last sentence applied only to non-protected holders of a warehouse receipt. *The Working Group agreed to add a further explanation in the Guide that the last sentence of paragraph 137 applied only to non-protected holders.*

Article 17, Protected holder of a negotiable warehouse receipt

81. *The Chair* introduced the commentary of article 17. A participant referred to paragraph 141 and pointed out that the respective commentary on the terms “good faith” and “no knowledge” might not be sufficiently clear. Another participant agreed with this observation and suggested two possibilities for addressing this insufficiency. One possibility would be to let the Working Group define the concept. The opposite approach would be to state that the meaning of good faith was left to the laws of the enacting State. However, it was noted that the concept of good faith varied considerably between different jurisdictions. *The Working Group agreed to follow the elaborations in the commentary to the MLST, respectively the Legislative Guide to Secured Transactions, chapter 5 paragraph 74 (f), which referred to the domestic law of the enacting States. The Working Group agreed to also refer to the UNCITRAL Working Group on this matter and to let it decide whether the*

notion of good faith should be defined in the Model Law or be left to the law of the enacting States. The Working Group agreed further to add additional explanations on the concept of good faith.

Article 18, Rights of a protected holder of a negotiable warehouse receipt

82. The Chair then invited a discussion of the commentary on article 18. It was suggested to include in paragraph 144 a further explanation of why the Model Law offered two options. *The Working Group agreed to add an explanation in the Guide regarding the reason for presenting two options for the wording of this provision.*

83. One participant referred to paragraph 145 that stated the following: “This is superior to the rights acquired by a non-protected holder, who only acquires such rights over the receipt and the goods that the transferor was able to convey.” He suggested reformulating the sentence in a way that was more neutral to the differing approaches of jurisdictions. *The Working Group agreed to reformulate paragraph 145 in more jurisdiction-neutral language.*

84. Regarding paragraphs 148 and 149, it was noted that the phrase “ownership and benefit” could be replaced with the word “rights”. One participant explained that this would also be beneficial given the two drafting options, since the wording would then not have to be changed, regardless of which option was chosen by the UNCITRAL Working Group. *The Working Group agreed to replace the words “ownership and benefit” with the word “rights” in paragraphs 148 and 149, and to refer the discussion of a respective alteration of the wording of article 18, paragraphs 3 and 4, of the Model Law to the UNCITRAL Working Group.*

85. *The Working Group also agreed to replace “encumbrance, such as a right of retention of title, security or other equivalent” with “encumbrance such as security rights” and to further reformulate paragraph 148.*

Article 19, Third-party effectiveness of a security right

86. In the Working Group’s discussion regarding the commentary on article 19, it was noted that the words “subject to control of the secured creditor” might be ambiguous and could be understood in different ways, as the notion of control differed between the MLST and the UNCITRAL Model Law on Electronic Transferable Records (MLETR). It was pointed out that “control” in paragraph 153 was used as defined by the Model Law on Warehouse Receipts itself. *The Working Group agreed to keep the current wording of the commentary to article 19.*

Article 20, Representations by a transferor of a negotiable warehouse receipt

87. *The Chair opened the discussion of the commentary on article 20. The Working Group agreed with the draft commentary without suggesting any changes.*

Article 21, Limited representations by intermediaries

88. *The Chair opened the discussion of the commentary on article 21 and pointed out that there were currently two drafting options. One participant pointed out that the word “intermediary” might be understood differently in different jurisdictions. The Working Group agreed to include a further explanation of the term “intermediary” in the context of article 21.*

89. *After some discussion, the Working Group agreed to add an explanation of the aim of article 21, which was to limit the application of article 20.*

90. A participant noted that it was unclear whether the text in brackets in the Model Law was an option for the Working Group to decide upon, or whether these options were offered to the enacting

States. The Guide seemed to imply that these were options that the enacting State could choose from, which was not what the UNCITRAL Working Group had intended. *The Working Group agreed not to explain this in the Guide as these were options that the UNCITRAL Working Group needed to decide between and thus to delete the words "Two options are provided regarding the intermediary's representations upon transfer of the warehouse receipt. The first option is that" and "The second option is that" from the Guide.*

Chapter IV, Rights and obligations of the warehouse operator

91. *The Chair* then drew the attention of the Working Group to Chapter IV of the Model Law. A participant suggested deleting the last two paragraphs (paragraphs 159 and 160) of the introduction to Chapter IV, as the article they referred to was deleted during the last UNCITRAL Working Group meeting. *The Working Group agreed to delete these paragraphs.*

92. *The Working Group further agreed to replace the wording "increasing value of warehouse receipts" with "enhancing confidence in warehouse receipts" in paragraph 158.*

Article 24, Duty to keep goods separate

93. Regarding the commentary on article 24, a participant noted that the wording of the Guide differentiated between "blending" and "commingling". It was pointed out that there was no substantial difference between these terms. *The Working Group agreed to reformulate the sentence referring to blending and commingling of the goods.*

Article 25, Lien of the warehouse operator

94. The floor was then opened for discussion of the commentary on article 25 by *the Chair*. One participant suggested clarifying in paragraph 169 that there was no need for registration or perfection of the lien for the described effects to occur. After the Group elaborated on the nature of the lien, the relationship of possession of goods and the lien on the goods, it was stressed that the legal nature of the lien was specified by the enacting State. *The Working Group agreed to delete paragraph 169 and to defer further work on the commentary to this article after the UNCITRAL Working Group decided on the final wording of the article.*

95. *The Working Group agreed to further clarify the options of the enacting State with a view to the enactment of provisions regarding the enforcement of the lien.*

Article 26, Obligation of warehouse operator to deliver

96. The Working Group was then introduced to the commentary of article 26 by *the Chair*. One participant reported that the wording of this article had been changed by the UNCITRAL Working Group, allowing for partial delivery to third persons as well. Yet, this approach had not been included in the revised text of the Model Law. He suggested changing the commentary in the Guide correspondingly. *The Working Group agreed to change the wording of the commentary of article 26 accordingly.*

Article 27, Partial delivery

97. Continuing with the commentary on article 27, one participant explained that delivery of very small quantities of goods might be cumbersome for warehouse operators and that there could be minimum quantities for partial deliveries provided for in the regulations. *The Working Group agreed to add an explanation of this situation in the Guide.*

Article 28, Split warehouse receipt

98. As discussed in the context of the commentary of article 27, *the Working Group decided to add a clarification that a minimum quantity to be delivered should be kept in mind when splitting warehouse receipts.*

Article 29, Excuses from delivery obligation

99. *The Chair* next drew the attention of the Working Group to the commentary on article 29. A participant suggested clarifying that the warehouse operator was generally liable for the destruction or loss of the goods, with domestic law determining which exemptions from that liability would apply. Another participant noted that the example given in the current text might not have significant practical relevance and should be replaced with another example drawing on the wording of article 79 of the United Nations Convention on Contracts for the International Sale of Goods (CISG). *The Working Group agreed to reformulate the respective explanations (paragraph 182), particularly to add clarification on the liability of the warehouse operator for the destruction or loss of the goods.*

100. *The Working Group also agreed to replace the current example provided in article 29, subparagraph (a) with an example based on article 79 of the CISG, which more accurately explained the operation of this subparagraph.*

101. Furthermore, the exact meaning of the term “overissuance” was discussed, as the commentary to article 29 in its current form could be misunderstood. Several participants pointed out that the concept of overissuance referred to the situation in which a warehouse receipt covered a greater amount of goods than the quantity available in the warehouse. The Group agreed that the current wording was incorrect and there should instead be another explanation of the situation in which an overissuance arises. *The Working Group agreed to add “where the aggregate quantity of goods covered by the warehouse receipts issued by the operator exceeds the total quantity available in the warehouse”.*

102. Subsequently, a discussion emerged about whether article 29(c) adequately addressed the situation in which there were competing claims of a protected holder and one or several non-protected holders of a warehouse receipt. *The Working Group agreed to refer that matter to the UNCITRAL Working Group.*

Article 30, Termination of storage by the warehouse operator

103. *The Chair* then invited the Working Group to discuss the commentary on article 30. Turning to the first paragraph of the commentary, *the Working Group agreed to reformulate the paragraph to increase clarity.*

104. The participants went on to discuss the formulation that the Model Law “sets out default rules to establish a starting position for negotiation” at the end of paragraph 185 and whether this needed clarification. *The Working Group decided to delete this sentence.*

105. Subsequently, it was pointed out that the reference to practice, in “which an open-ended duration tends to be the norm in most trades” might not hold true. *The Working Group agreed to delete this sentence.*

106. Continuing, the Working Group dealt with the commentary to article 30, paragraph 3. It was noted that in the Model Law, the text of article 30, paragraph 3, should end after “lawful manner” in the first sentence. *The Working Group agreed to refer that matter to the next UNCITRAL Working Group. It further agreed to rephrase and shorten paragraph 188 and delete paragraph 189 of the draft Guide.*

Chapter V, Pledge bonds

107. *The Chair then drew the attention of the Working Group to the commentary on Chapter V of the Model Law. The Group first discussed the content of the third sentence of paragraph 190. It was suggested to reformulate the sentence. The Working Group agreed to clarify that the secured creditor was not allowed by law to become the owner of collateral in the situations described in the commentary.*

Article 31, Issue and form of a pledge bond

108. *Subsequently, the Chair invited the Working Group to discuss the commentary on article 31. Regarding the Model Law text, it was noted that the definition of the holder of an electronic pledge bond did not reflect the changes that were made to the definition of a holder of an EWR in article 2, paragraphs 3(a) and (b) and that the former should be reformulated accordingly. The Working Group decided to refer such matter to the UNCITRAL Working Group.*

Article 32, Effect of a pledge bond

109. *The Chair opened the floor for discussion of the commentary to article 32. A participant questioned whether Chapter V reflected sufficiently from which point in time onwards a pledge bond had legal effect. It was suggested to include a clarification in the Model Law itself, stating that the pledge bond had legal effect once it was detached from the warehouse receipt or transferred separately from the receipt. The Working Group agreed to refer this matter to the UNCITRAL Working Group.*

110. *Regarding paragraph 200, a participant pointed out that the last sentence of this paragraph might not be entirely accurate. Another participant proposed to change the respective wording to “applicable laws of the enacting State”. The Working Group agreed to delete the words “as indicated by the enacting State. Under this system, the lender – typically a financial institution – holds the pledge bond until the sale of the goods, using the proceeds of sale to repay the loan”.*

Article 34, Rights and obligations of the warehouse operator

111. *The Working Group then turned to the commentary on article 34. A participant noted that the paragraph on the application of article 28 on split warehouse receipts lacked an explanation that splitting a warehouse receipt did not have a legal effect on the related pledge bond. Another participant elaborated that the purpose of article 34, paragraph 1, was to protect the holder of the pledge bond. It was suggested to clarify that a split of the warehouse receipt without presentation of the pledge bond would have no effect on the security right of the pledge bond holder, in either the warehouse receipt or the goods covered by it, or on the legal obligations of the warehouse operator pursuant to this article. The Working Group agreed to include the latter clarification in the paragraph dealing with the application of article 28 on split warehouse receipts.*

Chapter VI, Application of this Law

112. *The Working Group agreed to add a footnote at the beginning of the current Chapter VI explaining that it might need to be renumbered if the UNCITRAL Working Group eventually decided to adopt the new chapter on EWRs.*

Remarks on the new Chapter on EWRs of the Model Law added by the UNCITRAL Secretariat

113. *The Working Group agreed to defer discussion of the new Chapter VI, “Electronic warehouse receipts”, which had been added in the Model Law by the UNCITRAL Secretariat following the*

September meeting of UNCITRAL Working Group I, until after a final decision was made as to whether it would be part of the final text of the Model Law.

(d) Part IV: Complementary Legislation

114. *The Chair* then drew the Working Group's attention to Part IV of the Guide.

Section A. Introduction

115. Regarding paragraph 213, one participant suggested a reformulation clarifying that a complementary regulatory framework was not mandatory and deleting the reference to warehouse receipt systems. *The Working Group agreed to implement these suggestions in the Guide.*

116. A participant commented that this part should not refer to primary or secondary legislation and that paragraph 214 should be deleted. *The Working Group agreed to delete paragraph 214, except the first sentence.*

117. *The Working Group further agreed to delete paragraph 220 as there was no section on EWRs.*

Section B. Licensing and supervision of warehouses

118. The Working Group went on to discuss whether the explanations on licensing and supervision referred to the regulation of warehouse operators or warehouses themselves. *The Working Group agreed that it should refer to warehouse operators only and that the respective editorial changes were to be implemented throughout the entire section, particularly to the heading.*

119. Regarding the elaborations on infrastructure requirements, *the Working Group agreed to reduce the number of examples given.*

120. The discussion then shifted to the paragraph dealing with warehouse operator requirements. *The Chair* drew the attention of the Working Group to subparagraph (a), which was bracketed. A participant noted that this subparagraph might be too specific. *The Working Group agreed to reduce the number of examples given.*

121. Regarding the explanations on insurance, a participant suggested moving the essential content of the paragraph to the section on insurance so that every matter related to insurance was dealt with in that section. *The Working Group agreed with that suggestion.*

122. *The Working Group further agreed to change the wording of the paragraph dealing with the licensing period so that no specific duration was suggested.*

Section C. Insurance

123. *The Chair* invited the Working Group to discuss section C on insurance. To enhance clarity, *the Working Group agreed to add an introductory sentence to the section.*

124. The discussion turned towards previously insured merchandise, and some participants pointed out a few phrases they considered obsolete or potentially ambiguous. *The Working Group agreed to reformulate the paragraph, including a clarification that legislation might determine the extent of the warehouse operator's liability under its duty of care.*

D. Central Registry of Warehouse Receipts

125. *The Chair* then opened the floor for discussion of section D on central registries of warehouse receipts. A participant noted that the section did not necessarily refer to EWRs. Specifically, it was

pointed out that paragraph 253 included a statement that “This section refers to central registries in which EWRs are registered and not to those registers which are used to record warehouse receipts that exist in paper form”. It was suggested to delete this sentence. *The Working Group agreed to delete this sentence.*

126. *The Working Group agreed to add a clarification about the Model Law being model-neutral.*

127. *The Working Group also agreed to delete the words “storage fees” in paragraph 254.*

128. *The Chair drew the attention of the Working Group to paragraph 259, in which it would have to make a choice between the terms “register” and “audit trail”. The Working Group decided to use the term “audit trail”.*

E. Electronic Warehouse Receipts

129. *The Working Group decided to delete the entire section for later redrafting.*

Item 5: Organisation of future work

130. *The Chair drew the attention of the Working Group to Item 5 on the agenda for the organisation of future work.*

131. *An UNCITRAL representative referred to the next UNCITRAL Working Group meeting to take place in February 2024 and clarified that the Commission would decide whether to adopt the Model Law, whereas the General Assembly would recommend the adoption of the Model Law by the Member States. It was noted that the pre-session documents would be available on the UNCITRAL website four weeks in advance of the meeting.*

132. *The representative further explained that UNCITRAL would compile comments on the Model Law prior to the Commission and that it was expected that the Commission would adopt the Model Law in July 2024. The UNIDROIT Secretary-General explained that the UNIDROIT Governing Council would need to consider a revised version of the Model Law once it was available.*

133. *The Working Group was informed that there would be a next meeting of the Working Group for the Guide to Enactment to the Model Law on Warehouse Receipts to implement the changes made to the Model Law following the February UNCITRAL Working Group meeting in the Guide.*

Item 6: Any other business and closing of the session

134. *In the absence of any other business, the Chair and the Secretary-General thanked UNCITRAL and all experts and participants for their participation and invaluable contributions to the discussion. The Chair declared the session closed.*

ANNEXE 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 Yu GUO
Associate Professor
Director of the Maritime Law Research Centre
Beijing University

Mr Adam GROSS
Director
Darhei Noam Limited

Ms Dora NEO
Associate Professor
National University of Singapore

Mr Jean-François RIFFARD
Professor of Private Law
University Clermont Auvergne

Ms Teresa RODRIGUEZ DE LAS HERAS BALLELL
Associate Professor of Commercial Law
University Carlos III of Madrid

Mr Hiroo SONO
Professor of Law
University of Hokkaido

Mr Andrea TOSATO
Associate Professor of Commercial Law
University of Nottingham (United Kingdom)
Lecturer in Law, University of Pennsylvania (USA)

Mr Bruce WHITTAKER
Senior Fellow
University of Melbourne

INTERGOVERNMENTAL ORGANISATIONS

ORGANIZATION OF AMERICAN STATES (OAS)	Mr Jaime MORENO VALLE Senior Legal Officer Department of International Law
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)	Mr José Angelo ESTRELLA FARIA Principal Legal Officer and Head of the Legislative Branch International Trade Law Division Mr Luca CASTELLANI Legal Officer International Trade Law Division

INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS

INTERNATIONAL LAW INSTITUTE (ILI)	Mr Marek DUBOVEC Director of Law Reform Programs <u>Advisor to UNIDROIT Secretariat</u> Mr Thomas M. JOHNSON Research Attorney United States of America
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PRIVATE SECTOR REPRESENTATIVES

ASSOCIATION OF GENERAL WAREHOUSES	Ms Elsa AYALA Executive Director
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OTHER OBSERVERS

WAREHOUSE RECEIPT SYSTEM COUNCIL (WRSC)	Ms Jacqueline ODUNDO Head Legal & Compliance Kenya
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SECRETARIAT

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT)	Mr Ignacio TIRADO Secretary-General Ms Anna VENEZIANO Deputy Secretary-General Ms Philine WEHLING Legal Officer Ms Priscila ANDRADE Legal Officer
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ANNEXE II**AGENDA**

1. Opening of the session
2. Adoption of the agenda and organisation of the session
3. Update on the intersessional work and developments since the Sixth Working Group session
4. Consideration of the Draft Guide to Enactment for the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts (Study LXXXIII – W.G.1 – Doc. 2)
5. Organisation of future work
6. Any other business
7. Closing of the session