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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

STUDY GROUP ON THE WAREHOUSING CONTRACT

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## Methodology

It would be beneficial for the inter-American system which has, at least up to the present time, preferred to utilize the method of regulation of conflict rules, to examine the methodology adopted by UNIDROIT leading towards adoption of uniform rules of private law. In this way, gaining knowledge of UNIDROIT's experience towards perfecting this method, the problems encountered and the solutions arrived at, would aid in the contemplation of the possibilities of adopting such system within the region.

## Regional Focus on the Topic

1. Given the obvious relation of the present topic of study, the warehousing contract, and in particular, the liability of international terminal operators, to the international transport of goods, it is of interest to the inter-American system, as the topic of international transport by sea and land is included on the draft agenda for the Third Inter-American Conference on Private International Law (CIDIP-III), with the possibility of a preliminary meeting of experts. Furthermore, looking to the existing regional conventions on international transport, such as:

- a) The Convention on Private International Law (Bustamante Code), 1928;
- b) Treaty on International Commercial Law, Montevideo, 1889;
- c) Treaty on the Law of International Commercial Navigation, Montevideo, 1940;
- d) Treaty on International Terrestrial Commercial Law, Montevideo, 1940;
- e) International Transport by Road, Decision 56 of the Cartagena Agreement Commission, 1973;
- f) Convention on Waterborne Transport (Latin American Free Trade Association, LAFTA now ALADI), 1966;
- g) The Convention on International Transport by Land (LAFTA), 1977,

it may be noted that the liability of warehousemen is not specifically treated in any of these agreements.

2. In the light of the foregoing state of codification in the region, it might be well to determine whether the topic of liability of terminal operators is general in nature and would, therefore, be of interest to the regional system, and that consequently the work that is currently being carried out by UNIDROIT should be taken into consideration in any future work of codification in the inter-American system. Furthermore, a determination should be made as to the precise relationship between this topic and the overall topic of international transport.

3. If, indeed, the topic is general in nature, and taking into consideration that the existing codification within the regional system consists of norms on international transport as well as on regulation of international traffic, the question may be posed as to whether codification of this particular topic could be carried out regardless of whether an overall system of international transport is established in the region. In other words, may this topic be treated separately from norms on transport and may such norms be independent or must they necessarily be in harmony with other rules on international transport ?

4. Another point to be considered is that at this stage within the system most rules on international transport fall into the category of conflict rules, the only uniform rules being found in Decision 56 of the Cartagena Agreement, and these deal only with general conditions of transport, the basic documentation required, and the liability of the carrier. Similarly, the LAFTA (now ALADI) conventions may be described as regional integration agreements and, therefore, tend towards regulation of the participation of member states in economic arrangements. In view of this situation, would it be possible to establish a system of uniform rules on the topic of liability of warehousemen without a system of uniform laws on international transport in general ?

5. In view of the fact that the topic under consideration deals with a subject, the terminal operator or warehouseman, whose liability had not previously been specifically determined, may such liability be regulated independently, that is, without at the same time taking into consideration the interrelationship with the shipper and the carrier, and furthermore, would such imposition of liability result in relieving to any degree the carrier of liability ?