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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

STUDY GROUP ON THE WAREHOUSING CONTRACT

Working papers considered by the Study Group
during its third session held in Rome from 19 to 21 October 1981

Rome, November 1981

Secretariat proposal for Article 17

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, declare by notification addressed to that it will guarantee effect to the rules on the liability of international terminal operators contained in this Convention in respect of any operator who expressly or impliedly by calling himself an ITO undertakes to apply those rules.
2. Any State may recognise operators who apply the rules of this Convention as "international terminal operators".

Rome, 19 October 1981 (afternoon)

Proposal for Article 1, paragraph 1, by Dr. Richter-Hannes

"ITO" means any person who undertakes the safekeeping of goods before or after international carriage /either by prior agreement or by an agreement of an actual taking in charge of such goods/ from a shipper, carrier, forwarder or any other person and with a view to their being handed over to any person entitled to take delivery of them either in order to carry the goods or to their final delivery after their carriage.

The above definition applies also

(a) if goods are to be safekept during a carriage in cases of trans-shipment or similar operations and

(b) if the ITO in addition to the safekeeping of goods has undertaken to perform or to procure the performance of services such as loading, stowage, discharging or other similar services./

Rome, 19 October 1981 (afternoon)

Revised text of Article 1

For the purposes of the application of this Convention:

1. "International terminal operator (ITO)" means any person acting in a capacity other than that of a carrier, / who undertakes against remuneration the safekeeping of goods before, during or after international carriage, either by agreement or by actually taking in charge such goods from a shipper, carrier, forwarder or any other person, with a view to their being handed over to any person entitled to take delivery of them. (1)

(1) The view was expressed by some participants that it might be necessary to tighten up the criteria for the delimitation of the application of the future Convention, in particular if were to be of a fully mandatory character. To this end, three possible approaches were suggested which are reflected in the following alternative texts of paragraph 1:

Alternative I

1. "International terminal operator (ITO)" means any person acting in a capacity other than that of a carrier, who undertakes against remuneration the safekeeping of goods before, during or after international carriage, either by receiving the goods from a person having performed an international / sea / carriage or from a person instructing him to deliver the goods for subsequent international / sea / carriage.

Alternative II (based on the prerequisite of the ITO's knowledge of the international carriage)

1. "International terminal operator (ITO)" means any person / acting in a capacity other than that of a carrier, / who undertakes against remuneration the safekeeping of goods in connection with international carriage, either by agreement or by actually taking in charge such goods from a shipper, carrier, forwarder or any other person, with a view to their being handed over to any person entitled to take delivery of them.

The contract of safekeeping is deemed to be connected with international carriage if, at the time when the contract was entered into, the ITO knew or ought to have known that the safekeeping was to take place before, during or after international carriage.

Alternative 1

2. "Customer" means any person, including a consignee, carrier, forwarder or receiving agent, by whom / or in whose name or on whose behalf /, a contract for the safekeeping of goods has been concluded with an ITO, or any person by whom /, or in whose name or on whose behalf / the goods have actually been delivered to the ITO for the purposes of safekeeping.

Alternative 2

2. "Customer" means the other party to the contract concluded by the ITO.

3. "Goods" includes any container, pallet or similar article of transport or packaging, if supplied by the consignor.

Alternative 1

4. "International carriage" means any carriage in which the place of departure and the place of destination are situated in two different States.

Alternative 2

4. "International carriage" means any carriage under a contract according to which the goods must cross at least one frontier.

(continuation of note (1))

Alternative III (based on the concept of the underlying transport document)

1. "International terminal operator (ITO)" means any person / acting in a capacity other than that of a carrier, / who undertakes against remuneration the safekeeping of goods before, during or after international carriage evidenced by an underlying international transport document or documents, either by agreement or by actually taking in charge such goods from a shipper, carrier, forwarder or any other person, with a view to their being handed over to any person entitled to take delivery of them.

Rome, 20 October 1981 (morning)

Articles 2, 2 bis, 3 and 4

Article 2

1. The ITO shall be responsible for the safekeeping of goods from the time he has taken them in charge until their handing over to the person entitled to take delivery of them.

/2. The ITO shall also be responsible for loss of, or damage to, goods caused during such additional operations of loading, stowing or discharging as he has undertaken to perform or the performance of which he has procured. /

Article 2 bis

This Convention shall apply whenever the operations for which the ITO is responsible under Article 2 are performed on the territory of a Contracting State.

Article 3

/ Unchanged /

Article 4

1. The ITO shall have a right of retention over the goods he has taken in charge, for costs and claims relating to such goods, fees and warehousing rent included. However, nothing in this Convention shall affect the validity under national law of any contractual arrangements /relating to/ /extending/ the ITO's right of retention.

2. The ITO shall not, however, be entitled to retain such goods if a sufficient guarantee for the sum claimed is provided or if an equivalent sum is deposited with a mutually accepted third party or with an official institution.

3. The ITO may, after giving adequate and timely notice, cause to be sold the goods retained by him up to the amount necessary to satisfy his claim. The conditions and procedures of the sale shall be governed by the law of the place where the operations for which the ITO is responsible under this Convention are performed.

4. The internal law of the place where the operations for which the ITO is responsible under this Convention are performed shall determine the effects which third party rights may have on the ITO's rights of retention and sale and on the proceeds of such sale.

Preamble and Articles 5 to 16

Preamble

THE STATES PARTIES TO THE PRESENT CONVENTION,

HAVING RECOGNISED the desirability of determining by agreement certain rules on the liability of international terminal operators,

HAVE DECIDED to conclude a Convention for this purpose and have thereto agreed as follows: (1)

Article 5

1. The ITO is liable for loss resulting from loss of or damage to the goods for which he is responsible under Article 2 of this Convention, unless he proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence which caused the loss or damage and its consequences.

2. If the ITO does not deliver the goods at the request of the customer within a period of / 60 / consecutive days following such request, the person entitled to make a claim for the loss of goods may treat them as lost.

3. The ITO is liable for securities, money or valuable articles only if a special agreement to that effect has been entered into in writing.

4. Where fault or neglect on the part of the ITO, his servants or agents combines with another cause to produce loss or damage the ITO is liable only to the extent that the loss or damage is attributable to such fault or neglect, provided that the ITO proves the amount of the loss or damage not attributable thereto.

(1) It will be necessary at a later date to expand the Preamble. In the meantime, the Group has decided to include a provision corresponding to the basic principle (d) to be found in the Preamble to the 1980 Convention on International Multimodal Transport of Goods to the effect that "the liability of the multimodal transport operator under this Convention should be based on the principle of presumed fault or neglect".

Article 6

1. The liability of the ITO for loss resulting from loss of or damage to goods according to the provisions of Article 5 is limited to an amount equivalent to 2.75 units of account per kilogramme of gross weight of the goods lost or damaged.

2. Unit of account means the unit of account mentioned in Article 12.

3. By agreement between the ITO and the customer, limits of liability exceeding those provided for in paragraph 1 may be fixed.

Article 7

1. The defences and limits of liability provided for in this Convention apply in any action against the ITO in respect of loss of or damage caused by any act or omission within the scope of the ITO's obligations provided for in Article 2, whether the action is founded in contract, in tort or otherwise.

2. If such an action is brought against a servant or agent of the ITO, such servant or agent, if he proves that he acted within the scope of his employment, is entitled to avail himself of the defences and limits of liability which the ITO is entitled to invoke under this Convention.

3. Except as provided in Article 8, the aggregate of the amounts recoverable from the ITO and from any person referred to in paragraph 2 of this article shall not exceed the limits of liability provided for in this Convention.

Article 8

1. The ITO is not entitled to the benefit of the exclusion or the limitation of liability provided for in Article 5, paragraph 4 and in Article 6 if it is proved that the loss or damage resulted from / an / / a personal / act or omission of the ITO done with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

2. Notwithstanding the provisions of paragraph 2 of Article 7, a servant or agent of the ITO is not entitled to the benefit of the limitation of liability provided for in Article 6 if it is proved that the loss or damage resulted from an act or omission of such servant or agent, done with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

Article 9

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing to the ITO not later than the working day after the day when the goods were handed over to the person entitled to take delivery of the goods, such handing over is prima facie evidence of the delivery by the ITO of the goods as described in the document issued by the ITO or, if no such document has been issued, in good condition.

2. Where the loss or damage is not apparent, the provisions of paragraph 1 of this article apply correspondingly if notice in writing is not given within 15 consecutive days after the day when the goods were handed over to the person entitled to take delivery of the goods.

3. If the state of the goods at the time they were handed over to the person entitled to take delivery of the goods has been the subject of a joint survey or inspection by the parties, notice in writing need not be given of loss or damage ascertained during such survey or inspection.

4. In the case of any actual or apprehended loss or damage the ITO and the person entitled to take delivery of the goods must give all reasonable facilities to each other for inspecting and tallying the goods.

Articles 10 to 15

(Unchanged)

/ Article 16

1. This Convention shall enter into force six months after the date of deposit of the / fifth / instrument of ratification, acceptance, approval or accession, with the Depositary Government.

2. For each State which becomes a Contracting State to this Convention after the deposit of the /Fifth/ instrument of ratification, acceptance, approval or accession, this Convention shall enter into force six months after the deposit of the appropriate instrument on behalf of that State. /

Rome, 21 October 1931 (morning)