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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

STUDY GROUP ON THE WAREHOUSING CONTRACT

R E P O R T

of the Secretariat of UNIDROIT
on the third session of the Group
held in Rome from 19 to 21 October 1981

Rome, January 1982

1. The third session of UNIDROIT's Study Group on the warehousing contract was held in Rome at the headquarters of the Institute from 19 to 21 October 1981 under the chairmanship of Professor Kurt GRÖNFORS (Sweden), member of the Governing Council of UNIDROIT.

2. The session was opened at 10.15 a.m. by the President of UNIDROIT, Mr. Mario MATTEUCCI, who extended a warm welcome to the participants, a list of whom is reproduced in ANNEX I hereto.

3. The Group adopted the agenda set out in ANNEX II.

Item 2 on the agenda - Consideration of the preliminary draft Convention on the liability of international terminal operators (Study XLIV - Doc. 8) in the light of the observations of Governments and international Organisations (Study XLIV - Doc. 9, Adds. 1 and 2 and Doc. 10)

4. The Chairman recalled that at its 58th session, held in Rome in September 1979, the Governing Council of the Institute had instructed the Secretariat to transmit to States and to the interested international Organisations the preliminary draft Convention on the liability of international terminal operators which had been prepared by the Group at its first two sessions. The Secretariat had received observations from 15 Governments and from four international Organisations which had, with few exceptions, shown considerable interest in the draft Convention. The Chairman proposed that the Group undertake a detailed examination of the observations made on the various articles of the draft⁽¹⁾ but he suggested that before this it might be useful to proceed to a short general debate which would indicate any developments which had taken place since the second session of the Group, held as long ago as January 1979.

5. In the course of this discussion it was stated that the CMI had already decided to elaborate standard conditions governing operations performed by international terminal operators (hereafter referred to as "ITOs") on the understanding that such conditions would be fully compatible with the provisions of the draft Convention, which should itself concentrate on the most important matters and not deal with points of detail. Misgivings had, it was true, been expressed in some quarters at the Assembly of the CMI, but generally speaking the view had prevailed that the preparation of standard

(1) For the revised version of the draft adopted by the Group at the end of the session, see ANNEX III.

conditions was worthwhile and that work should begin after the Study Group had considered the observations of Governments and international Organisations on the draft Convention received by the Secretariat of UNIDROIT. The Group was informed that IAPH also was in principle in favour of filling in the gaps in the regulation of international transport operations with which the draft was concerned. It would be prepared to follow the work on the elaboration of standard conditions to be undertaken by the CMI and others although it had to be admitted that strong hesitations had been expressed within IAPH, especially by stevedoring companies, regarding any form of interference in their activities.

6. It was stressed by some members of the Group that work on the draft Convention should not be suspended pending the elaboration of general conditions, and one member in particular warned against leaving too much to such conditions. He feared that the tendency in some States for courts to exercise an ever-increasing control over general conditions could lead to some of their provisions at least being held invalid, which would not be the case with rules contained in an international Convention, whether or not of mandatory application. For this reason he favoured enlarging the content of the future Convention which would, in addition, bring about a greater degree of uniformity.

7. On the question of the need for, and desirability of, a Convention dealing with the liability of ITOs, the Group was informed that FIATA still viewed the initiative with a considerable degree of scepticism. In its opinion, the operations of the ITO were to be seen principally in the context of multimodal transport. In this connection the representative of FIATA suggested that a number of difficulties arose from a comparison of the provisions of the draft ITO Convention with those of the United Nations Convention on International Multimodal Transport of Goods of May 1980 (hereafter referred to as "the Geneva Convention of 1980"), a Convention which was itself unacceptable until such time as the Hamburg Rules entered into force. In particular, two problems were of concern to FIATA. The first of these was how the ITO could distinguish between those cases where he was acting as an ITO and those where he was performing operations simply as a warehouseman. The second related to the issuance of a document by the ITO. Either he would himself be a combined transport operator in which case he would issue a combined transport document which could be in opposition with the warehousing document or else he would simply be a link in the transport chain and it was difficult to see how he could have a right of retention over goods which he must deliver on presentation of a combined transport document.

8. The representative of OCTI announced that the attitude of his Organisation to the draft ITO Convention was by and large positive although it was true that its provisions were of less relevance to carriage by rail than perhaps to other modes of transport as goods were never subject to safekeeping by a person other than the railway during carriage by rail. It did however seem worthwhile to attempt to unify national law in connection with the safekeeping of goods before and after transport operations. As to the specific points raised by the representative of FIATA, he pointed out in the first place that the possibility of there being more than one document already existed for when a combined transport operation included carriage by rail there would, in addition to the combined transport document itself, also be a railway consignment note. As to the right of retention this likewise already existed in many countries, and was not therefore a novelty introduced by the draft Convention.

9. The representative of IRU stated that the draft Convention was of limited interest to his Organisation but its Legal Committee favoured the preparation of such an instrument so as to achieve the result that a road carrier who had delivered goods in transit for safekeeping to a third party and who might be liable under Article 12 of the CMR Convention, would find himself under a liability regime no more severe than that of the third party responsible for the safekeeping of the goods. He recalled however that, as was the case with FIATA, the interests of some members of IRU were conflicting and that there was a feeling that the future Convention would be of interest principally to shipowners.

10. With one exception, the members of the Group reaffirmed their view that it would be worthwhile to proceed with the preparation of a Convention in this field. The dissenting member stated that consultations conducted by the authorities in her country had led them not so much to oppose the working out of a Convention on the liability of ITOs as to question the need for such an instrument. In the first place it seemed that national laws were so disparate in this field as to raise doubts as to the practicability of a Convention and it appeared from the consultations that the proposed Convention would probably be of assistance primarily to small customers as larger enterprises generally speaking concluded satisfactory arrangements with the terminals. Fears had also been voiced that the designation of authorised ITOs might confer some special seal of approval on certain operators which would not be commensurate with the responsibilities shouldered by them. Some concern had in addition been expressed with regard to the suggested distinction between international and domestic operations, while there was a widespread belief that the new division of risk which would be created by the Convention would be less economic from the insurance angle. In conclusion therefore, her preference would lie in the direction of harmonised guidelines or standard conditions

to be applied on a voluntary basis but she could support continuance of discussions on the preparation of a Convention provided the possibility contained in Article 17 of voluntary as opposed to mandatory application of the Convention was left open.

11. Finally, a representative of the insurance interests stated that while the insurance industry shared the fear that the implementation of the draft Convention might lead to an increase in the cost of premiums, the matter called for further study and was most certainly of interest to insurers.

12. On a proposal by the Chairman, the Group then turned its attention to the draft articles prepared by it at its second session and in view of the fundamental importance attached to Article 17 it was agreed to begin with that provision.

Article 17 (now Article 18)

13. The Group noted that the observations of Governments in connection with this article mirrored to a certain extent the differences of opinion which had emerged among its members at its previous sessions. On the one hand, the view was expressed that Article 17 should be deleted. It was recalled in particular that the purpose of the future Convention was to cover those gaps in the transport chain left by the existing international Conventions relating to carriage of goods. All of those Conventions were mandatory in character and could be distinguished easily from those concerned with the international sale of goods where there was not the same difference between the roles of seller and buyer which were indeed interchangeable. If it were borne in mind that most damage during international transport operations occurred while the goods were in the hands of an intermediary it would seem even stranger to allow for the Convention under preparation by the Group to be of a non-mandatory character. The ever-greater specialisation in the safekeeping and handling of goods meant that there was often no choice for a customer between competing ITOs in the same port so that it was necessary to ensure that at least the most important provisions of the future Convention would be of mandatory application in order to protect the carrier's right of recourse against the ITO and to allow a claim on the cargo side against the ITO by the customer. Finally, as to the argument that Governments would be reluctant to impose rules on operators concerned with the provision of ancillary services in relation to the international transport of goods, it was suggested that States were at present preoccupied with the protection of their transport and trade industries and that if a choice had to be made they would more probably opt in favour of the interests of the latter than of those of operators acting as intermediaries.

14. On the other hand, it was argued that a Convention without a provision similar to Article 17 would stand little chance of success, with the result that there would be no unification at all, as opposed to the limited amount offered by the Convention in its present form which, it was furthermore claimed, was not so restricted as might appear. On the one hand, States which wished to make the future Convention fully mandatory would not avail themselves of the reservation clause contained in Article 17, while if a State did ratify subject to that reservation clause, then those operators who chose voluntarily to submit themselves to the rules of the Convention would be bound by all its provisions and would, in accordance with Article 11, be unable to derogate from them except by increasing their responsibilities. In the opinion of the participants supporting the retention of Article 17, the draft Convention could best be described as semi-mandatory as it went far beyond the modest aim of providing harmonised guidelines. They further emphasized the fact that insistence on a fully mandatory Convention would, apart from giving rise to what might prove to be the insurmountable opposition of the operators concerned, create technical difficulties in that it would be necessary to delimit much more precisely the scope of application of the draft, which in some respects might not be possible. Finally, they recalled the ultimate success of the TCM draft, which had started life as a draft Convention of semi-mandatory application and which was now the basis of almost all the most important combined transport general conditions.

15. The partisans of Article 17 admitted however that in its present form the article was open to, and had indeed been the subject of, serious criticism. The two main objections were, on the one hand, that it introduced a form of state licensing and administrative control into an area hitherto relatively untrammelled by such restrictions and on the other that operators in States which adopted the Article 17 system would, if they applied the provisions of the Convention, be entitled to receive the special seal of approval of "authorised ITO" while no such badge would distinguish ITOs in those States which applied the Convention on a mandatory basis.

16. It was suggested that some of the objections to the system contemplated by Article 17 were based on misunderstandings but it was recognised that it would be necessary to dispel the fears raised by any idea of state authorisation and in consequence it was decided to delete paragraphs 3 and 4 of Article 17 containing references to the special logotype which only authorised ITOs might use. Paragraph 1 of Article 17 was then substantially modified in the sense that the State will "guarantee effect to the rules on the liability of international terminal operators contained in this Convention only in respect of those operators who expressly or impliedly undertake to apply those rules".

17. The intention of the Group in adopting this new formula was primarily to indicate that the intervention of the State takes place at the judicial level and that its obligation is in effect to ensure that courts will apply the future Convention to those ITOs who voluntarily undertake to accept its provisions. There was lengthy discussion within the Group before the formula "expressly or impliedly" was adopted. In this connection, it was pointed out that an operator's actually calling himself an "ITO" would perhaps be the most common case of his expressly undertaking to apply the provisions of the Convention but there could be other situations, as for example where the operator's general conditions made a specific reference to the Convention or where the parties agreed in the course of business dealings that the Convention should apply. If, however, an ITO who had regularly applied the provisions of the Convention were to decide from one day to the next not to do so and failed to inform his customers thereof then, in the opinion of some members of the Group, he would remain bound to apply the provisions of the Convention as his original undertaking to do so could be interpreted as continuing on an implied basis until notice to the contrary was given to those concerned. It was admitted that there might be a few cases where it would not be clear whether the operator had accepted the status of ITO under the Convention but this was inherent in a system which rejected the concept of state authorisation. What was above all important was to ensure that an operator who undertook to apply the rules of the Convention would in all cases be bound by them and that if he purported to do so without performing the obligations incumbent upon him he would be treated by the courts as having actually assumed that undertaking with all the consequences involved therein.

18. As regards paragraph 2 of Article 17, it was agreed to leave States which avail themselves of the reservation clause the faculty of recognising operators who apply the rules of the Convention as "International Terminal Operators (ITOs)" without imposing an obligation on them, as did the former text of the provision.

Article 1

19. The Group noted that a number of proposals had been made by Governments and by international Organisations for the purpose of clarifying the definition of "international terminal operator (ITO)". In the first place it was suggested that notwithstanding the presence of Article 13 (now Article 14), it was not sufficiently clear that an ITO who was acting as a carrier should not be able to invoke the provisions of the ITO Convention as opposed to those of the relevant international transport Convention or of the applicable national law in an attempt to avail himself of the less severe liability regime which might be contained in the draft Convention. In these circumstances it was agreed to modify the beginning of the definition to read: "International terminal operator (ITO)" means any person acting in a capacity other than that of a carrier".

20. The Group rejected a suggestion that the future Convention should also apply to gratuitous safekeeping of goods. It was recalled in particular that payment would often not be required while goods were undergoing customs or sanitary controls in government - owned warehouses. It was however decided to replace the word "payment" by "remuneration" so as to avoid giving the impression that the future Convention would apply only if the customer paid a sum of money for the services rendered by the ITO.

21. In view of the amendment of the provision referred to at the end of paragraph 19 of this report, the Group did not consider it either necessary or advisable to delete the word "during" in the phrase "before, during, or after international carriage". Some doubts were however expressed as to whether the words indicated sufficiently clearly the intention of the drafters which was to distinguish, on the one hand, international from purely domestic operations and, on the other, safekeeping of goods as a link in the transport chain from long-term warehousing stricto sensu, which it was not intended to cover. The objection was in particular raised that goods might be stored in a terminal without it being known ab initio what was their destination. At what time therefore should the operator's liability cease to be that of a simple warehouseman and become that of an ITO? One member suggested that what was vital in individual cases was the knowledge of the ITO for otherwise he would not know whether he had to take out insurance to cover his liability under the Convention. He proposed replacing the expression "before, during or after international carriage" by the words "in connection with international carriage" and adding a second sentence to the following effect: "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".

22. The majority of the members of the Group were however of the opinion that it could be extremely difficult in practice to prove knowledge in such cases and the proposal was withdrawn. A second possibility considered by it was the deletion of the words "or by actually taking in charge such goods" and the introduction of a provision to the effect that the operator would be an ITO for the purposes of the future Convention only in those cases where a special agreement was concluded to that effect. This suggestion was likewise rejected, the view being taken that it would deprive the Convention of much of its importance by removing from its scope of application one of the commonest situations in practice.

23. A number of members of the Group indeed believed that the provision was, generally speaking, satisfactory as it stood. Few difficulties would be encountered where the goods were taken in charge by the ITO after international carriage and in those cases where pick-up and delivery operations intervene between the arrival of goods, for example at an airport, and their reaching a terminal a short distance away, there seemed to be no objection to regarding the Convention as applicable even though the pick-up and delivery operations, for which the ITO might himself be prepared to accept liability, did not themselves constitute international carriage. Moreover, in many cases the question of whether a transport was or was not international could be determined by reference to the underlying carriage documents or to the instructions given to the ITO by the person from whom he received the goods. In addition, it was noted that the words at the end of the provision "with a view to their being handed over to any person entitled to take delivery of them" already carried the implication that the ITO would be aware to some degree at least of the original intention of the person from whom he received the goods. The future Convention would moreover apply where, for example, goods which it had originally been intended to send abroad suffered damage in the terminal prior to their being sold domestically.

24. The Group noted a proposal to include the word "prior" before "agreement" so as to avoid the suggestion that actual taking in charge did not constitute an agreement. There was however a general feeling that this was a question of theoretical rather than practical importance and it was decided not to adopt the proposal. Similarly, the Group rejected a proposal considerably to expand the provision containing the definition of the ITO so as to state specifically that it applied to cases dealt with in Article 2, paragraph 2, which provision, in the opinion of the member of the Group putting forward the proposal, was concerned more with substantive scope of application than with the period of liability which was dealt with in Article 2, paragraph 1.

25. In these circumstances, the Group decided to retain the existing definition of ITO as paragraph 1 of Article 1, subject only to the addition referred to above in paragraph 19 of this report, and to the substitution of the word "remuneration" for "payment". The view was however advanced by one member of the Group that if it were finally decided to adopt a fully mandatory Convention, that is to say one containing Article 11 (now Article 12) but no Article 17 (now Article 18) then it might be wise to consider attempting to delimit more strictly the scope of application of the Convention and possibly to restrict it to operations related to carriage by certain modes of transport only. The Group was unable to agree to the construction put upon Article 6 (now Article 7) of the draft Convention that in adopting the limitation amount

specified in Article 18, paragraph 1 of the Geneva Convention of 1980 (see below, paragraph 47 of this report), it had already impliedly excluded terminal operations in respect of those cases referred to in Article 18, paragraph 3 of the Geneva Convention, that is to say where the international multimodal transport does not, according to the contract, include carriage of goods by sea or by inland waterway.

26. In connection with paragraph 2 of Article 1, one member of the Group in particular drew attention to the fact that the word "customer" was used on only a very few occasions in the draft Convention and he proposed the deletion of the definition of the term on the ground that it was superfluous. It was however recalled that the definition of "customer" approved at the second session of the Group had the advantage of making a reference to the contract concluded with the ITO, which was not mentioned in Article 1, paragraph 1. Some members, therefore, preferred to retain a definition of the term "customer", even if it were not strictly necessary and although the situation differed from that regarding the definitions of "shipper" in the Hamburg Rules and "consignor" in the Geneva Convention of 1980, both of which imposed liability in connection with dangerous goods. However a number of members of the Group expressed dissatisfaction with the extremely complicated definition in Article 1 which was taken over from the corresponding definitions of "shipper" in the Hamburg Rules and of "consignor" in the Geneva Convention of 1980 and it was accordingly decided to adopt a shorter formula to the effect that: " "customer" means the other party to the contract concluded by the ITO".

27. The Group adopted a new definition of "goods", which follows the simplified formula of Article 1, paragraph 7 of the Geneva Convention of 1980 rather than that to be found in Article 1, paragraph 5 of the Hamburg Rules.

28. With regard to the definition of "international carriage" the Group rejected a proposal that it be amended to mean "any carriage under a contract according to which the goods must cross at least one frontier" which would have had the effect of extending the scope of application of the future Convention to cover cases where goods crossed and recrossed a national frontier in the course of their carriage from a place of departure to a place of destination in the same State. The Group did however consider that the Convention should apply in cases where the goods were to be transported internationally under a series of national contracts of carriage and it was consequently decided to delete the words "according to the contract of carriage".

29. Finally in connection with Article 1, the Group noted that a proposal had been made to introduce a definition of "terminal", which term was used twice in Article 4 (now Article 5). It was however generally felt that it would be preferable, rather than to introduce another definition which would almost certainly be extremely difficult to draft, to find a substitute formula for the word "terminal" in Article 4.

30. In this context it was recalled that some States had drawn attention to the lack of a provision regarding the territorial scope of application of the draft Convention and consequently the Committee adopted as a new Article 2 the following provision: "This Convention shall apply whenever the operations for which the ITO is responsible under Article 3 ⁽²⁾ are performed on the territory of a Contracting State".⁽³⁾

Article 2 (now Article 3)

31. The principal point raised in connection with this article related to the possible deletion of paragraph 2. In the opinion of some participants it was extremely difficult to delimit the precise scope of the operations additional to safekeeping which the ITO might undertake to perform or whose performance he might undertake to procure and such uncertainty would be even less acceptable if the future Convention were to be fully mandatory in character, in which case it might be preferable to leave the ITO's liability in respect of such services to be regulated by his general conditions and by national law. On the other hand, it was pointed out that in the present economic climate the trend is to reduce the period of safekeeping to a minimum so that if the future Convention were to apply only to safekeeping its practical importance could be seriously diminished even before its entry into force.

32. Other participants considered that paragraph 2 was unnecessary as in their view the handling operations mentioned therein were already covered by the wording of paragraph 1, while yet others were of the opinion that even if this were the case it might be desirable to add the words "and handling" after "safekeeping" so as to make it clear that the ITO is liable in respect of such handling operations. With respect to this latter suggestion it was however pointed out that the notion of taking in charge, while perfectly compatible with the safekeeping of goods, did not perhaps fully fit in with the performance of handling operations.

33. In these circumstances, the Group agreed to retain Article 2 paragraph 1 unchanged, and paragraph 2 subject to certain amendments. In the first place it was decided to follow the proposal contained in a number of governmental observations and to delete the reference to "other similar services"

(2) Formerly Article 2.

(3) See below, paragraph 41 of this report, for the amendments to the former Article 4 which introduced this language and removed all references to the terminal.

which was seen as ambiguous and confusing. Moreover, in an attempt to meet the objection that paragraph 2 was concerned with the substantive scope of application of the Convention whereas paragraph 1 related only to the period of responsibility, the Group amended the language of paragraph 2 so as to speak of the ITO's also being responsible for the goods "during the additional operations of loading, stowage or discharging". In the opinion of the Group as a whole this language would, when read in conjunction with the new Article 6, paragraph 1, make it quite apparent that the ITO is liable simply for damage to or loss of the goods during the period for which he is responsible for them under Article 3 and not for the due performance of his obligations as such. Thus, for example, if faulty stowage of goods were to result in damage to goods after they had left the charge of the ITO, he would not be liable for such damage under the Convention, irrespective of what his position might be under the applicable law. Moreover, the introduction of the words "additional services" as a qualification of "loading, stowage or discharging" was seen as meeting the objection of one Government that the draft did not make it sufficiently clear that it would only apply where there was an obligation of safekeeping of the goods. These additional services, it was further stressed, relate simply to the handling of the goods and not to such services as checking or distribution.

34. Finally in connection with this article, the Group noted the concern expressed by one of its members as to whether it was sufficiently clear that purely domestic operations for which the ITO would have been responsible under the former Article 2 had they been international in character did not fall within the scope of application of the future Convention. While concurring fully on the substance of the question, and admitting that the text was not perhaps as clear as it might be on this point, the Group nevertheless considered that time did not permit it to embark upon a redraft of the relevant provisions. The most that could be done for the present was therefore to reflect the correct interpretation, as indicated by the member who had raised the matter, in the explanatory report on the preliminary draft Convention, pending the next stage of work at which the necessary amendments could be made.

Article 3 (now Article 4)

35. One of the members of the Group stated that in her opinion this was the single most important article of the draft Convention. It was a far from uncommon situation for a carrier to hand over goods to an ITO and for no document attesting their taking in charge to be issued until some three or four months later, if at all, and then with no indications regarding the state of the goods. In her view therefore it was imperative that the future Convention should provide for issuance of a document by the ITO for how else could

a maritime carrier who had duly handed over the goods to a terminal operator protect himself against a claim by his customer or a consignee who was not present when the goods were handed over to the ITO establish a claim against him? She proposed therefore that the ITO be obliged to issue a document in all cases and not simply at the request of the customer, at least in cases where the goods had reached their destination, and that if the ITO refused to do so then there should be a presumption that he had taken the goods in charge as evidenced by the customer.

36. Opposition was however voiced to this suggestion. On the one hand one participant insisted that since the future Convention was concerned not with warehousing as such but rather with terminal operations constituting a link in the transport chain it would be inappropriate for the ITO to issue a document when there already existed a combined transport document against which the goods would have to be handed over. Other participants however were not opposed to the introduction in principle of an ITO document, provided that its issue was not obligatory. After all, it was suggested, one of the primary purposes of making provision for such a document was that it might be an incentive to ITOs to apply the Convention insofar as it could be of a negotiable character. As to the suggested sanction in the event of the ITO's failing to issue a document on request, a number of members pointed out that there must be some evidence that the goods had at least been handed over to the ITO, beyond a simple assestion to that effect and it was here, they insisted, that the parallel with transport law Conventions providing for a presumption that goods had been received were in good condition unless the carrier indicated the contrary, broke down.

37. In these circumstances, the Group decided that although there might well be a case for issuing a compulsory warehousing receipt in the context of long-term warehousing, there did not seem to be such a justification in respect of terminal operations related to international carriage. On the question of the availability of a sanction in the event of the ITO's refusing to issue a document, it was felt that provided that evidence could be adduced that the goods had been handed over, courts would be likely to be sympathetic to claims by customers. It was therefore decided to retain Article 3 (now Article 4) in the form agreed by the Group at its second session as there seemed to be little purpose in considering in detail the contents of a document whose issuance was not mandatory.

Article 4 (now Article 5)

38. The discussion on this article centred around the words in square brackets in paragraph 1 "but also for all other claims against the customer". A number of States and Organisations had in their written observations proposed the deletion of that phrase which in effect conferred a general lien on the ITO.

It was in particular pointed out that it would be difficult for some States to accept a right of retention which was not restricted to claims relating to the goods actually retained and that too extensive a right of retention would considerably reduce the value of a negotiable document issued under the new Article 4, paragraph 4. Possible conflicts were also seen between the ITO's right of retention and his duty to surrender goods on production of a carriage document.

39. Some participants however argued in favour of the broad right of retention conferred by paragraph 1. The general lien was a concept known to their legal systems and its purpose was clear, namely that of allowing an operator to accumulate claims rather than to require him to call for payment each time goods pass through his terminal. Moreover, the conferring of a general lien on the ITO by the future Convention would have constituted one of the principal incentives to the profession to adopt it as well as constituting an important measure of unification.

40. The Group noted however that it did not seem possible to reach agreement on the matter and it decided to delete the words in square brackets in paragraph 1. It was however agreed that the future Convention should not be open to the a contrario interpretation that it did not permit a general lien. It was therefore decided to add a second sentence to paragraph 1 to the effect that "nothing in this Convention shall affect the validity under national law of any contractual arrangements extending the ITO's security in the goods".

41. Although some participants suggested that paragraphs 2 and 3 should be deleted on the ground that if a sufficient guarantee were to be forthcoming for goods actually retained by the ITO, then he would be obliged to relinquish them even though he had not received satisfaction in respect of earlier claims, not all participants agreed with this interpretation and it was agreed to maintain paragraph 2 unchanged. As mentioned above in paragraph 29 of this report, the Group decided to delete the references to the terminal in paragraphs 3 and 4 and to replace them by language taken over from the new Article 2, that is to say "the place where the operations for which the ITO is responsible under this Convention are performed".

Article 5 (now Article 6)

42. The Group decided to accept the proposal made in a number of written observations to delete the reference to liability for delay in Article 5 and in the following articles. It was indeed felt by the majority of the Group that it had been too hasty in taking over the rules governing liability for delay in the Hamburg Rules and in the Geneva Convention of 1980 since, unlike the carriage of goods, the services performed by ITOs are essentially static.

It did not therefore seem appropriate to retain the rules governing delay although it would be essential still to deal with one case, namely that where it could be assumed that the ITO's delay in handing over the goods was to be attributed to the fact that he no longer had them. In such situations it would be necessary to impose a time-limit after which the customer could treat the goods as lost. In this connection the Group retained in square brackets the period of 60 days mentioned in the Hamburg Rules as it could see no justification in this context for the period of 90 days established in Article 16, paragraph 3 of the Geneva Convention of 1980.

43. One participant considered that if the Group were dealing here with warehousing operations stricto sensu as well as with the safekeeping of goods as an integral part of carriage operations, it should be borne in mind that the problems associated with delay scarcely ever arose in connection with the former so that to formulate legal rules would be a theoretical exercise bearing no relation to reality. In reply, the Chairman insisted that the draft Convention was no longer concerned with the simple warehousing of goods so that the fears expressed in this regard were groundless.

44. One member of the Group expressed some hesitation at the decision to leave liability for delay to be determined in principle by national law. By so doing, the Group would expose an ITO who was responsible for loss or damage resulting from delay to large claims for consequential damage which would not be subject to limitation under the Convention. Others members however replied that such cases could be settled in the general conditions of the operators who could limit their liability to the cost of retrieving the goods, failing which they would be liable under paragraph 2 of the new Article 6.

45. One participant drew attention to the fact that the wording of paragraph 1 was defective in that a reference was made in the last line to "the occurrence" which, however, had not been mentioned before in the provision and the meaning of which was not readily apparent. It was explained that this deficiency derived from the fact that the provision was modelled on Article 5, paragraph 1 of the Hamburg Rules but that whereas the latter part of that provision had been taken over unchanged it had been necessary to modify the beginning with the result that the first reference to "the occurrence" had dropped out. In these circumstances the Group proceeded to a substantial redrafting of paragraph 1 and in particular amended it in fine to read: "to avoid the occurrence which caused the loss or damage, and its consequences". The comma after the word "damage" was added to make it quite clear that the verb "avoid" also governs the phrase "and its consequences" and the Group stressed that notwithstanding the changes in wording its intention was to establish a liability regime exactly the same as those to be found in the Hamburg Rules and in the Geneva Convention of 1980. To this end the Group also decided that although

it was premature to prepare a Preamble to the draft Convention, the Secretariat should nevertheless indicate that such a Preamble would include a provision corresponding to the basic principle (d) to be found in the Preamble to the Geneva Convention 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".

46. The Group was also seized of a proposal to delete paragraph 4 of the article, the content of which, it was suggested, might be dealt with in general conditions. It was in particular pointed out in this regard that, in the absence of a special agreement, the ITO would not be liable for securities, money or valuables and this presumably would be the case even if he were guilty of a wilful act or omission or of gross negligence. The Group as a whole considered that paragraph 4 should be maintained but to cover the last-mentioned objection a specific reference is now made in the new Article 9, paragraph 1 to the exclusion of liability provided for in the new Article 6, paragraph 3 (formerly Article 5, paragraph 4).

Article 6 (now Article 7)

47. In addition to deleting the reference to delay in this article, the Group also amended paragraph 1 so as to introduce the per kilo limitation of 2.75 units of account contained in Article 18, paragraph 1 of the Geneva Convention of 1980 as opposed to the lower limit of 2.5 units which it had originally taken over from Article 6 of the Hamburg Rules. While recognising the force of some criticisms made in the written observations of States that the limitation amount was too low, the Group considered that for the time being it could do no more than follow the precedent set by the most recent transport law Convention in this regard, as in any event no final decision on the precise limitation amounts would be taken until the Diplomatic Conference, at which it was hoped that the future instrument would be adopted, had seen the shape and content of the Convention as a whole.

48. The Group also stood by its decision not to include a limitation per package which could be justified, and in the opinion of some members even then with the greatest of difficulty, only if the scope of application of the future Convention were to be limited to terminal operations associated exclusively or partially with carriage of goods by sea. The Group reserved for the future the question of whether a limit of liability per event might not be introduced to cover those cases of excessive damage, caused for example by fire or explosion, where a simple limitation by kilogramme might still result in a limitation figure that it would not be possible to insure.

49. Finally, in connection with this article, the Group rejected a proposal to delete paragraph 3 as it was only in the CMR Convention among the international transport Conventions, and there for very special reasons, that no possibility exists for the carrier to increase the limits of liability laid down by the Convention. To the argument that paragraph 3 effectively deprived the operator of the benefit of the limitation laid down by paragraph 1, it was replied that recourse to variations in the limitation amounts was already a weapon employed in competition by operators in large ports and that it was far from certain that they would be prepared to forgo it.

Article 7 (now Article 8)

50. The Group expressed agreement with the observation of one Government that as worded this provision seemed to enlarge the scope of the limitation provisions not only to non-contractual claims but also to claims resulting from acts or omissions absolutely outside the scope of the Convention, for instance to claims for damages resulting from the ITO's failure to perform an undertaken obligation to arrange for further transportation. In consequence the words "loss or damage to the goods covered by the contract for the safekeeping of goods" have been replaced by the expression "loss of or damage to goods caused by any act or omission within the scope of the ITO's obligations provided for in Article 3". The Group also deleted the reference to delay in delivery in paragraph 1.

Article 8 (now Article 9)

51. As mentioned above in paragraph 46 of this report, the Group amended the beginning of paragraph 1 so as to cover the case of loss or damage being the result of the wilful misconduct or gross negligence of the ITO in the event of there being no special agreement in the situation contemplated by the new Article 6, paragraph 3.

52. The main discussion however centred around the presence of the word "personal" in square brackets in paragraph 1. In the opinion of some members this was the last remaining incentive to ITOs voluntarily to accept the provisions of the prospective Convention. By permitting the establishment of virtually unbreakable limits of liability such a formula would facilitate the calculation of realistic insurance premiums and would at the same time state expressly what was implicit in the corresponding provisions of the Hamburg Rules and of the Geneva Convention of 1980. Moreover it would halt the tendency of courts in some countries to break the limits applicable under international Conventions whenever possible. There would be no purpose in any limitation system if the ITO were to be held liable for the wilful misconduct of his servants.

53. Other members of the Group considered that the addition of the word "personal" would bring about a change in the system as conceived by the Hamburg Rules and by the Geneva Convention of 1980. It was not by chance that it had not been included in Article 8, paragraph 1 of the Hamburg Rules or in Article 21, paragraph 1 of the Geneva Convention where the intention had precisely been to lay down breakable limits. On the other hand however, these members of the Group considered that the case of theft of goods by a servant would not result in the breacking of the limitation, either because the servant would not be regarded as acting within the scope of his employment in such a situation, or because the court would only hold the ITO liable if the fault had been committed by a sufficiently senior official or if there were gross negligence in the organisation of the terminal.

54. In these circumstances the Group decided by way of compromise to retain the word "personal" in square brackets so as to permit full debate on the matter during the next stage of the work. If it were ultimately decided to include similar language in the final text however, then it was agreed that it would be necessary to overcome the purely technical difficulties inherent in applying the word "personal" to a company.

Article 9 (now Article 10)

55. Apart from some minor drafting changes to the French text, the principal amendment to paragraph 1 was the deletion of the words "by the customer" in line 1 in view of the more restrictive definition of the term "customer" adopted in Article 1, paragraph 2 (see above, paragraph 26 of this report).

56. A proposal to replace in paragraph 2 the period of 15 consecutive days, which had been taken over from Article 19 of the Hamburg Rules, by one of six days, as in Article 24, paragraph 2 of the Geneva Convention of 1980, was rejected on the ground that the shorter six day period was necessary there as the multimodal transport operator might have himself to pass on notice to his sub-contractors.

57. The Group deleted paragraph 5 of the article on the ground that it was concerned with the problem of delay and also paragraph 6, which had already been placed in square brackets at its last session, as it was not deemed to be sufficiently precise to serve any useful purpose. In these circumstances it seemed best to leave the question of who is authorised to receive notice on behalf of the ITO to national law.

Article 10 (now Article 11)

58. While noting a number of proposals made by Governments for the amendment of the provisions of this article, the Group considered that insofar as it followed Article 20 of the Hamburg Rules it should not be amended at this stage of the work. The Group also confirmed the view adopted at its second session that the question of the introduction of provisions relating to interruption and suspension of the limitation period, even one referring simply to the applicable law as governing the matter, should be left aside without prejudice to reverting to the subject in the final stages of the drafting of the future instrument.

59. The Group also noted as a point worthy of consideration at a later stage the objection that it would be strange if an ITO in a State availing itself of the provisions of Article 17 could thereby voluntarily subject himself to rules governing prescription which might be in conflict with corresponding mandatory provisions of domestic legislation.

Article 11 (now Article 12)

60. The Group rejected a suggestion that paragraph 2 of this article was unnecessary in the light of paragraph 3 of the new Article 7 as it was observed that whereas the latter provision was concerned only with the increasing of the amount of the limitation figures, that under consideration would for example permit the ITO to accept a more onerous liability regime or to extend the time during which notice of loss or damage might be given under paragraphs 1 or 2 of the new Article 10. The Group considered it unnecessary to introduce a provision along the lines of Article 23, paragraph 3 of the Hamburg Rules whereby the ITO would be obliged to make a statement that the safekeeping of the goods is subject to the provisions of the Convention.

Article 12 (now Article 13)

61. Subject to the increase from 37.5 to 41.25 monetary units per kilogramme of gross weight of the goods of the limitation amount laid down in paragraph 2 of this article so as to ensure conformity with the corresponding provision in Article 31, paragraph 2 of the Geneva Convention of 1980, the Group retained this article without amendment.

Article 13 (now Article 14)

62. One participant called for clarification as to whether the term "any international Convention relating to the international carriage of goods" was intended to cover the multimodal transport contract which was, after all, a sui generis contract and, in addition, he suggested that if the intention of the provision were to avoid carriers claiming that they were subject to the less rigorous regime established by the draft Convention, then it might be advisable also to mention national laws relating to the carriage of goods alongside international Conventions in the article. In reply it was suggested that the language of the article was wide enough to cover the Geneva Convention of 1980 on International Multimodal Transport of Goods while as regards the problem of a possible conflict between the provisions of the future ITO Convention on the one hand and provisions of national law relating to the carriage of goods on the other, this should not arise in view of the addition of the words "acting in a capacity other than that of a carrier" in the definition of the ITO in Article 1, paragraph 1.

Article 14 (now Article 15)

63. The Group considered this provision, which was increasingly to be found in international private law Conventions, to be a useful one and rejected a proposal for its deletion.

Articles 15 and 18 to 22 (now Articles 16 and 19 to 23)

64. No observations were made on these articles.

Article 16 (now Article 17)

65. There was a strong feeling in the Group that the number of ratifications necessary for the entry into force of the future Convention stipulated in this article was not sufficient. It was agreed to retain the figure of five but to place it in square brackets so as to indicate the need for increasing it at a later stage.

Additional articles

66. The Group considered proposals to add two further articles to the draft. The first of these related to dangerous goods and the possibility of introducing rules governing the liability of the customer or person handing over such goods to the ITO in the event of such goods causing damage.

It was however recalled that the draft under preparation was no more than a framework Convention and it was therefore decided to leave this question, for the time being at least, to national law and, where appropriate, to general conditions.

67. The other proposal concerned the introduction of a provision which would indicate those persons, other than those contractually bound to the ITO, who might bring an action against him under the future Convention. The Group recognised that this was an important and complex question but deemed it preferable to follow the precedents established by the transport law Conventions, especially the Hamburg Rules and the Geneva Convention of 1980, by not dealing specifically with the matter in the draft.

68. In accordance with the instructions of the Group, the Secretariat has prefaced each article of the preliminary draft Convention by a title, following as a rule the model of the Geneva Convention of 1980.

Item 3 on the Agenda - Other business

69. The Group proceeded to a brief exchange of views on the next stage of work to be contemplated in connection with the draft. In the first place, it was agreed that the time had now come to familiarise practitioners, especially ITOs themselves, customers, carriers and insurers with the draft Convention and with the standard conditions to be prepared under the auspices of the CMI. This could of course be done by giving wide exposure to them in legal journals but the extremely positive results obtained by UNIDROIT's initiative in arranging for the holding of symposia on its draft rules on leasing suggested that a similar formula might with advantage be followed in connection with the ITO draft. Stress was also laid by the Group on the need to associate the developing countries more closely with the future work and a suggestion was made that the first seminar or symposium might for example be staged in Asia where the draft had already aroused interest.

70. There was however some difference of opinion within the Group as to the schedule to be followed. On the one hand, some members considered that in view of the fact that there was no real urgency for a Convention on the liability of ITOs it would be preferable to await the entry into force of the Hamburg Rules and the Geneva Convention of 1980, at which time there might be more governmental interest in the ITO draft. Other members however considered that it would be preferable not to postpone further work until such developments took place as there was no guarantee that the Hamburg and Geneva Rules would enter into force in the near future. Moreover, they laid stress on the fact that there

had been an encouraging response to the draft from Governments, many of whose observations had drawn attention to the gaps in international transport operations which the draft sought to fill. In these circumstances every effort should be made as soon as possible to stimulate governmental interest in, and support for, the initiative.

71. The Group therefore agreed that once the necessary approval of the Governing Council of UNIDROIT had been given, the Secretariat should study the possibility of symposia being arranged so as to permit detailed consideration of the draft Convention. It was not impossible that these events might be co-sponsored by other Organisations, such as the CMI, and the reactions to the draft would allow a more realistic assessment to be made of the prospects of elaborating a successful Convention in this field.

72. The Group noted with satisfaction the interest already expressed in the draft Convention by UNCITRAL. It requested the Secretariat to pursue its consultations with that Organisation with a view to determining whether the final stage of working out the draft ITO Convention might not be conducted within the framework of UNCITRAL, which seemed the most appropriate body to undertake such a task given its long term goal of unification and harmonisation of transport law. It was however noted that UNCITRAL had at the present time a particularly heavy Work Programme and that it would not be realistic to suggest that it take up immediately the question of the liability of ITOs. In any event it would be necessary to await the reactions to the revised draft, and the holding of a fourth session of the Study Group which would permit a final review of the provisions of the draft Convention in the light of comments made on it at the symposia and elsewhere should not be excluded.

73. The Chairman noted that no other business was raised under Item 3 on the agenda and after warmly thanking all the participants for their cooperation, he declared the session closed at 12.30 p.m. on Wednesday, 21 October.

ANNEXE I
ANNEX I

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LIST OF PARTICIPANTS

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A G E N D A

1. Adoption of the provisional agenda.
2. Consideration of the preliminary draft Convention on the liability of international terminal operators (Study XLIV - Doc. 8) in the light of the observations of Governments and international Organizations (Study XLIV - Doc. 9 and Addenda 1 and 2 and Doc. 10).
3. Other business.

TEXT OF THE PRELIMINARY DRAFT CONVENTION ON THE LIABILITY
OF INTERNATIONAL TERMINAL OPERATORS (ITOs) ADOPTED BY THE
UNIDROIT STUDY GROUP ON THE WAREHOUSING CONTRACT AT ITS
THIRD SESSION, HELD IN ROME FROM 19 TO 21 OCTOBER 1981

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 1

DEFINITIONS

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

-
- (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 2

SCOPE OF APPLICATION

This Convention shall apply whenever the operations for which the ITO is responsible under Article 3 are performed on the territory of a Contracting State.

Article 3

PERIOD OF RESPONSABILITY

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 the goods during such additional operations of loading, stowage or discharging as he has undertaken to perform or the performance of which he has procured.

Article 4

ISSUANCE OF DOCUMENT

1. The ITO shall, at the request of the customer, issue a dated document acknowledging receipt of the goods and stating the date on which they were actually taken in charge.

2. Such a document shall indicate any inaccuracy or inadequacy of any particular concerning the description of the goods taken in charge as far as this can be ascertained by reasonable means of checking.

3. Such a document is prima facie evidence of the contract for the safekeeping of goods and the taking in charge of the goods as therein described.

4. The document issued by the ITO may, if the parties so agree, and the applicable national law so permits, contain an undertaking by the ITO to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.

5. Nothing in this Convention shall prevent the issuing of documents by any mechanical or electronic means, if not inconsistent with the law of the country where the document is issued.

Article 5

SECURITY RIGHTS IN THE GOODS

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 extending the ITO's security in the goods.

2. The ITO shall not be entitled to retain the goods he has taken in charge 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.

Article 6

BASIS OF LIABILITY

1. The ITO is liable for loss resulting from loss of or damage to the goods for which he is responsible under Article 3 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.

Article 7

LIMITS OF LIABILITY

1. The liability of the ITO for loss resulting from loss of or damage to goods according to the provisions of Article 6 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 13.

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

Article 8

NON-CONTRACTUAL LIABILITY

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 to goods caused by any act or omission within the scope of the ITO's obligations provided for in Article 3, 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 9, 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 9

LOSS OF THE RIGHT TO LIMIT LIABILITY

1. The ITO is not entitled to the benefit of the exclusion or the limitation of liability provided for in Article 6, paragraph 3 and in Article 7 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 8, a servant or agent of the ITO is not entitled to the benefit of the limitation of liability provided for in Article 7 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 10

NOTICE OF LOSS OR DAMAGE

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.

Article 11

LIMITATION OF ACTIONS

1. Any action under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.

2. The limitation period commences on the day on which the ITO has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.

3. The day on which the limitation period commences is not included in the period.

4. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.

5. An action for indemnity by a person held liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within the time allowed by the law of the State where proceedings are instituted. However, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against himself.

Article 12

CONTRACTUAL STIPULATIONS

1. Any stipulation in a contract for the safekeeping of goods concluded by an ITO or in any document evidencing such a contract is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part.

2. Notwithstanding the provisions of paragraph 1 of this article, an ITO may increase his responsibilities under this Convention.

Article 13

UNIT OF ACCOUNT OR MONETARY UNIT AND CONVERSION

1. The unit of account referred to in Article 7 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 7 are to be converted into the national currency of a State according to the value of such currency at the date of judgment or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right of a Contracting State which is not a member of the International Monetary Fund is to be calculated in a manner determined by that State.
2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of signature, or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as 41.25 monetary units per kilogramme of gross weight of the goods.
3. The monetary unit referred to in paragraph 2 of this article corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency is to be made according to the law of the State concerned.
4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 of this article are to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in Article 7 as is expressed there in units of account. Contracting States must communicate to the Depositary Government the manner of calculation pursuant to paragraph 1 of this article, or the result of the conversion mentioned in paragraph 3 of this article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in paragraph 2 of this article and whenever there is a change in the manner of such calculation or in the result of such conversion.

Article 14

OTHER CONVENTIONS

This Convention does not modify the rights or duties of a carrier which may arise under any international Convention relating to the international carriage of goods.

Article 15

INTERPRETATION OF THE CONVENTION

In the interpretation and application of the provisions of this Convention regard shall be had to its international character and to the need to promote uniformity.

/ Article 16

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Convention shall be open to signature / by all States / at from 19.. to 19..

2. This Convention shall be subject to ratification, acceptance or approval by the signatory States.

3. After 19.., this Convention shall be open indefinitely for accession by / all / States which are not signatory States.

4. Instruments, of ratification, acceptance, approval and accession shall be deposited with the Government of, which shall be the Depositary Government. /

/ Article 17

ENTRY INTO FORCE

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. /

Article 18

RESERVATIONS

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 only in respect of operators who expressly or impliedly undertake to apply those rules. The use of the name "International Terminal Operator (ITO)" shall constitute such an express undertaking.

2. Any State may recognise operators who apply the rules of this Convention as "International Terminal Operators (ITOs)".

/ Article 19

FEDERAL STATES

1. If a State has two or more territorial units in which different systems of law apply to matters respecting the safekeeping of goods, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies. /

/ Article 20

REVISION AND AMENDMENT

1. At the request of not less than one-third of the Contracting States to this Convention, the Depositary Government shall convene a Conference for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended. /

/ Article 21

REVISION OF THE LIMITATION AMOUNTS AND UNIT OF ACCOUNT
OR MONETARY UNIT

1. Notwithstanding the provisions of Article 20, a Conference only for the purpose of altering the amount specified in Article 7 and paragraph 2 of Article 13 of this Convention or of substituting either or both of the units defined in paragraphs 1 and 3 of Article 13 by other units shall be convened by the Depositary Government in accordance with paragraph 2 of this article. An alteration of the amounts shall be made only because of a significant change in their real value.

2. A revision Conference shall be convened by the Depositary Government when not less than one-fourth of the Contracting States so request.

3. Any decision by the Conference must be taken by a two-thirds majority of the participating States. The amendment shall be communicated by the Depositary Government to all the Contracting States for acceptance and to all the States signatories to the Convention for information.

4. Any amendment adopted shall enter into force on the first day of the month following one year after its acceptance by two-thirds of the Contracting States. Acceptance shall be effected by the deposit of a formal instrument to that effect, with the Depositary Government.

5. After the entry into force of an amendment, a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in its relations with Contracting States which have not, within six months after the adoption of the amendment, notified the Depositary Government that they are not bound by the amendment.

6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended. /

/ Article 22

DENUNCIATION

1. Any Contracting State may denounce this Convention by written notification to the Depositary Government.

2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification. /

/ Article 23

DEPOSITARY

1. The original of this Convention, in the languages, each version being equally authentic, shall be deposited with the Government of, which shall transmit certified copies thereof to each of the signatory and Contracting States, and to the International Institute for the Unification of Private Law.

2. The Depositary Government shall give notice to the signatory and Contracting States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance, approval, or accession;
- (c) any date on which this Convention enters into force in accordance with Article 17,
- (d) any declaration received in accordance with Article 18,
- (e) any declaration received in accordance with Article 19, paragraph 2, and the date on which the declaration takes effect;
- (f) any requests for the revision or amendment of this Convention and the convening of a Conference for such revision or amendment in accordance with Articles 20, paragraph 1 and 21, paragraph 2;
- (g) any denunciation received in accordance with Article 22, paragraph 1, and the date on which the denunciation takes effect. /

/ IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorised to that effect, have signed this Convention. /

/ DONE at, this day of one thousand nine hundred and /