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Observations of the United Nations Economic Commission for Latin America
on the preliminary draft Convention on the liability of international
terminal operators and the explanatory report thereto (Study XLIV - Doc. 14)

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"The second paragraph of Article 3 permits ITOs to assume responsibility for the performance of functions other than the safekeeping of goods. While ITOs should be allowed to assume responsibility for functions which are related to the safekeeping of goods, it is not clear whether the Study Group has limited the capacity of ITOs in this matter to the "operations of loading, stowage or discharge", or if these functions are merely representative of the types of services which ITOs may contractually assume. For example, since paragraph 1 of Article I indicates that ITOs are responsible for the safekeeping of goods before international transport operations, thereby permitting them to perform various functions to facilitate such operations, it would appear that the packing of goods should be included. Further, the importance of not limiting the functions ITOs may assume is highlighted in paragraph 42 of the Explanatory Report where it is noted that "more and more comprehensive services are provided by modern terminal operators."

As warehousemen, whether short or long term, have traditionally issued negotiable receipts at the request of their customers, it would appear that to ensure broad applicability and usefulness of the future convention careful consideration should be given to providing ITOs with similar authority. Moreover, since this convention seeks to define the responsibilities and liability limits for terminal operators providing services to international carriage operations, the Study Group might wish to evaluate the advantages of defining the elements for negotiable receipts issued by ITOs. If defined, international commercial transactions could be facilitated by ensuring the broad acceptability of ITO negotiable receipts.

While the draft convention outlines the ITO's responsibilities with reference to the safekeeping of goods entrusted to his possession, a jural opposite or corresponding provision would seem to be required to define the obligation of customers to inform ITOs of any special storage or handling requirements for goods, especially those of a dangerous nature. Without this information, ITOs would neither know of nor have reasonable grounds to ascertain the special storage or handling needs of the goods which they are required to safekeep. In recognition of this situation, international transport conventions, such as the Hamburg Rules at Articles 12 and 13, have included appropriate provisions.

The first paragraph of Article 18 permits an adopting State to determine whether the convention will be applied in a mandatory or semi-mandatory manner within its borders. While this provision is innovative, it would appear to require careful study and explanation to prospective adopting States to ensure that the convention might enter into force in a minimum period of time. As examples, it would appear important to determine if the guarantee of an adopting State creates a need for state control of ITOs to ensure that its guarantee is not abused and whether such state control is advisable. Further, should the convention provide general guidelines to ensure international uniformity of court decisions which seek to determine when a terminal operator has impliedly undertaken the obligations of an ITO, thereby bringing him within the scope of the convention?".