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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

Observations of the Secretariat of the United Nations Conference on
Trade and Development (UNCTAD) on the preliminary draft Convention on
the liability of international terminal operators and the explanatory
report thereto (Study XLIV - Doc. 14)

Rome, March 1983

The UNCTAD Secretariat would like to take this opportunity to express its appreciation to the UNIDROIT Study Group for the valuable work it has done on a preliminary draft Convention on the Liability of International Terminal Operators. It is also pleased to note the recent amendments effected to the draft text, many of which were in conformity with the observations made by the UNCTAD Secretariat to an earlier draft version circulated to governments and interested international organizations by the Council of UNIDROIT in 1980.

In undertaking its future work on this subject, UNIDROIT may perhaps wish to give further consideration to paragraph 4 of article 4 concerning the negotiable character of a document issued by an ITO. In this connexion, further consideration of this issue could profitably be directed to assessing to what extent the risk of the occurrence of maritime fraud would be increased in the event that two negotiable documents, namely the ITO document for receipt of the goods in storage and the ocean bill of lading for the transport of the goods, might exist simultaneously covering the same goods. The concurrent existence of two negotiable instruments covering the same goods may well be considered to increase the risk that the goods could be sold twice on receipt of the two documents separately. In this respect, UNIDROIT might well wish to investigate other means of preserving commercial flexibility while at the same time enhancing the security of cargo interests.

The UNCTAD Secretariat would like to extend its best wishes to UNIDROIT for its future work in this area and to reiterate its earlier proposal that we stand ready to assist any further consideration of this topic at the intergovernmental level. In this respect, this issue intimately relates to the work of UNCTAD on the carriage of goods by sea, as well as multimodal transport and was raised by various delegations during UNCTAD intergovernmental meetings on those subjects. Furthermore, the need for the improvement of the existing situation concerning the liability of terminal operators has recently been raised informally with the Secretariat by many developing countries. It is therefore suggested that any further work on the subject by UNIDROIT should continue to be conducted in consultation with UNCTAD in view of the relevance of the subject to the mandate of our organization.