



UNIDROIT 1983
Study XLIV - Doc. 21
(Original: English)

U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

Observations of the International Association of Ports and Harbours (IAPH)
on the preliminary draft Convention on the liability of international
terminal operators and the explanatory report thereto (Study XLIV - Doc. 14)

Rome, April 1983

The draft Convention regulates the liability for both warehousing where "safe-keeping" is the main purpose, and cargo handling, where the loading and unloading of the ships, rather than safe-keeping, is the main concern. From the beginning, the working group dealt solely with the warehousing contract, and it is still called "Study Group on the Warehousing Contract". The scope of the Convention was, however, extended to cover cargo handling. We quote from the working group's report (March 1979), UNIDROIT 1979 Study XLIV - Doc. 8, page 14:-

"14. The regulation of international warehousing operations is, therefore, the main objective of the draft Convention but the Group recognised at the same time that modern terminal operators often undertake a number of services associated with the handling of goods, such as loading, stowage and unloading and while there was little support for the idea of extending the scope of the instrument to cover the performance of such operations in all cases, and thus to regulate what might be termed the "contrat de transit", it was nevertheless agreed that to the extent that the operator who undertakes the safe-keeping of goods also undertakes to perform or to procure the performance of such operations, he should be liable in the same way and on the same basis as he would be in the performance of his obligation to ensure the safe-keeping of the goods."

I would suggest that certain difficulties seem to arise from this extension. A warehouse is in most cases a building that is locked and kept under observation. There would seem to be very few objections to having the draft Convention adopted on that point. It would be all right to have the reversed burden of proof applied to the keeper of the warehouse since, of course, it is incumbent on him to check carefully the goods which he takes into his custody. The ability of a stevedoring company or terminal operator to fulfil the regulations in the draft Convention varies very much, however, due to widely differing physical conditions in which they have to operate.

A "terminal" is difficult or impossible to define satisfactorily. It could be a container harbour fenced in and watched (like a warehouse), where all incoming and outgoing goods are checked and noted at the gate. It could be a quayside shed to which not only customs officials but also forwarding agents and other people in the business have access. Finally, it could be - for less valuable goods - a storage yard in the open air, not fenced in or watched at all. The liability for goods could become very unclear in such circumstances, and we tend to the opinion that a stevedoring company cannot accept a reversed burden of proof for goods it has no real possibility of watching and protecting. In the light of this situation, it would seem that the draft Convention ought to be in some way restricted to a warehouse situation, or other arrangements made.

Another problem which might complicate the situation is the fact that a warehouse contract is, in general, agreed between the keeper of the warehouse and the owner of the goods. A stevedoring contract, however, is agreed between the stevedoring company (the terminal operator) and the shipping company on the unloading and/or loading of a ship. The implications of involving these differing parties in their various situations under the same Convention need to be considered.

In your report, you have informed us that the working group has, as far as possible, followed the stipulations in the Hamburg Rules in order to produce uniform regulations. The Hamburg Rules are, however, not yet in force. Moreover, it is said to be very doubtful whether a sufficient number of States will ratify that Convention. We also understand that a Convention on the Liability of Terminal Operators is not supposed to be open for ratification before the Hamburg Rules are in force.

ANNEX

SUMMARY

of answers from members of the Board of Directors on the UNIDROIT draft Convention on the Liability of International Terminal Operators (January 1983)

Answers from

1. Port of Melbourne Authority, Australia
2. Port of Vancouver, Canada
3. Port of Hamburg, West Germany
4. Federal Association of German Seaport Operators, West Germany
5. Port Authority of New York and New Jersey, US
6. Clyde Port Authority Great Britain
7. Cyprus Ports Authority, Cyprus

Main views

Refers to comments to previous survey 1980.

Views on definitions and on reversed burden of proof which is contrary to the culpa-clause in Canada. In agreement with the purpose of the Convention.

Refers to views and comments from the Federal Association of German Seaports Operators.

Points out the very different situation for the "safekeeping of goods" in a warehouse, in a quayside shed or in open air storage yards. This problem has to be studied further. No need for a Convention which anyhow will not be worldwide.

No Convention before the Hamburg rules and the Multimodal Transport Convention are adopted. 8 pages with very essential comments and views.

Refers to comments by Grainer & Tesoriero, a terminal company, which stresses the wide differences between the liability for warehousing and the liability for stevedoring activities.

Refers to comments 1980. No enthusiasm for the draft Convention; no reversed burden of proof.

Uniform rules of great importance; in favour of the draft Convention.

8. Marine Department,
Hong-Kong
The Port Authority does not undertake cargo handling.
9. Port of Stockholm,
Sweden
Refers to terminal rules for Swedish stevedoring companies.
10. Port of Helsingborg,
Sweden
Uniform international rules of great importance due to the fact that strong customers try to use their own conditions.
11. Port Authority of
Thailand
Has good rules in the bye-law. No need for a Convention.
12. Port of Copenhagen,
Denmark
Interesting views from stevedoring association and shipowners association on the problems with the difference between warehousing and goodshandling liability; anyhow wait for the Hamburg rules.
13. The Maritime Services
Board of N S W Sydney,
Australia
Comments from two terminal operators:
The draft convention leads to higher costs and delay for checking of containers with the background of reversed burden of proof.
14. National Ports
Authority, Cameroun
Replace the lien in Art. 5 with a guarantee from the customer.
15. Port of Antwerp,
Belgium
No need for an international Convention, anyhow wait for the Hamburg rules and Multimodal Transport Convention, which are not yet in force.