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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

Observations of the United States National Association of Stevedores (NAS) 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 following comments on the UNIDROIT Preliminary Draft Convention on the Liability of International Terminal Operators are submitted on behalf of the 62 privately owned stevedoring/marine terminal operators, and their subsidiary and related companies, who are members of the National Association of Stevedores. NAS member companies own and/or operate marine terminal facilities on all four of the nation's seacoasts, the states of Alaska and Hawaii, and the Commonwealth of Puerto Rico.

Our primary objection to the UNIDROIT draft convention is that it ignores the current legal and business relationships of parties to international water borne cargo. First, with the exception of agreements between American terminal operators and some American exporters, in special circumstances, there is no contract between the marine terminal operator and the shipper of cargoes. In most instances, both export and import, the contract of carriage is between the carrier and the shipper. The carrier's obligations to the shipper are set forth in the carrier's bill of lading which is governed by the Carriage of Goods by Sea Act (COGSA). During the loading and unloading of the vessel, the American stevedore/marine terminal operator's liability toward the cargo and the shipper are as agent for, or independent contractor to, the carrier. During that period, the liability of the stevedore/marine operator is governed by the bill of lading and COGSA. Before and/or after that period, the terminal operator under American law is merely a bailee of the cargo, and the rights and liabilities of the U.S. terminal operator and the shipper/consignee are determined by state law. In all states, save Louisiana, the applicable law is the Uniform Commercial Code (Warehousemen, Sec. 7-101 et seq.) as adopted by each state. In no case is the terminal operator an insurer of the goods in his care as Article 3 of the draft convention would provide. Section 7-204 of the Uniform Commercial Code sets forth the liability of the warehouseman and permits the limitation of the warehouseman's liability.

Article 4 of the draft convention is plainly unworkable. As to exports, the terminal operator or the carrier issues a dock receipt to the shipper of freight forwarded when the cargo arrives on the pier. There is no way that the accuracy of the description of the goods can be made at that time especially if the goods are in a sealed container. As to imports, it is the carrier's duty to notify the consignee when the vessel arrives and is discharged. The carrier also notifies the terminal operator regarding release of the cargo. In all American ports the relationship of the terminal operator to cargo interests is stated in published terminal tariffs filed with Federal Marine Commission.

Articles 5, 6 and 7 are at variance with the provisions of the Uniform Commercial Code which is the governing law now in 49 states on the rights and responsibilities of warehousemen, which includes marine terminal operators.

It appears to us that the draft convention could not work in the United States because of the applicability of the laws of the several states to marine terminal operations which are not subject to the Carriage of Goods by Sea Act. Unlike Europe, where the draft convention originated, the national (federal) law of the United States does not apply to much of the matter addressed by the draft convention. Obviously, the Congress could enact legislation to pre-empt state law in this area, but except for COGSA, the Harter Act and the Shipping Act of 1916 it has not done so. We believe that the present state of U.S. law is more than adequate, and we can find no reason why it should be changed. If the proponents of the draft convention believe that the laws of some other countries need changing, then the best solution would seem to be to enact their own legislation, as the matters addressed by the draft convention are essentially local in nature and should not be the subject of an international convention."