

provision dealing with the interpretation of the Uniform Rules was desirable, but that the formulation contained in article 3 of the Hamburg Rules and article 7 of the Convention on the Limitation Period in the International Sale of Goods (New York, 1974)⁹ should be followed. In support of this approach, the view was expressed that in Uniform Rules such as those under consideration the reference to "general principles" in article 15 (2) of the preliminary draft Convention was not appropriate. An observation was also made that article 15 of the preliminary draft Convention separated the interpretation of the Uniform Rules from the application of the Rules, which was not desirable.

IV. Other business and future work

95. The Working Group requested that the secretariat, taking into account the discussion at the present session, should prepare for the next session draft provisions of Uniform Rules for operators of transport terminals, accompanied by a study referred to in para. 27.

96. A statement was made by the observer from the United Nations Conference on Trade and Development (UNCTAD) that in response to resolution 144 (VI) adopted by the UNCTAD Conference at its sixth session in Belgrade in June, 1983, the UNCTAD secretariat would prepare a study on the rights and duties of container terminal operators and users. The study would be submitted to the twelfth session of the UNCTAD Committee on Shipping scheduled for 1986. The observer noted that the mandate of UNCTAD was narrower than that of UNCITRAL in its scope of

⁹A/CONF.63/15. See *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods* (United Nations publication, Sales No. E.74.V.8).

application, since the mandate of UNCTAD was limited to studies on rights and duties of container terminal operators and users. He stated that UNCTAD would contribute to the work of the Commission so that all possible duplication of work would be avoided. The observer stated that the UNCTAD study would also take into account the discussions of the Working Group, as well as the preparatory work undertaken by UNIDROIT with regard to the liability of OTTs. However, he expressed the wish that UNCTAD be given an opportunity to comment upon the outcome of the work of the Working Group before finalization by the Commission.

97. The Working Group welcomed the co-operation offered by UNCTAD as another indication of the increasing co-ordination developing between UNCTAD and UNCITRAL. In view of the expected rapid progress of this project within the Working Group, the Secretary of the Commission also welcomed the agreement of the UNCTAD secretariat to provide the UNCITRAL secretariat with the results of its study as it progressed. He referred to the customary practice of the Commission to seek the comments of Governments and interested international organizations before a legal text was adopted by the Commission, and stated that, accordingly, the Commission would welcome the views of UNCTAD as an influential and important body in the field of shipping, in particular in the field of international multimodal transport.

98. The Working Group, taking into account circumstances relating to the availability of conference services, as well as already scheduled meetings of other organs dealing with topics in the field of international transport which would be attended by some representatives of member States and observers of the Working Group, decided to recommend to the Commission that the next session of the Working Group be held in New York in January 1986.

B. Working papers submitted to the Working Group

1. Liability of operators of transport terminals: issues for discussion by the Working Group: note by the secretariat (A/CN.9/WG.II/WP.52)

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I. Mandate of the Working Group

1. The Commission, at its seventeenth session, had before it a report of the Secretary-General titled "Liability of operators of transport terminals" (A/CN.9/252). The report discussed some of the major issues which arose from the preliminary draft Convention on the Liability of Operators of Transport Terminals prepared by the International Institute for the Unification of Private Law (UNIDROIT) and which might merit consideration in the formulation by the Commission of Uniform Rules on this topic. The text of the preliminary draft Convention was annexed to the report.

2. After considering the report and the preliminary draft Convention, the Commission decided to assign to its Working Group on International Contract Practices the task of formulating Uniform Legal Rules on the liability of operators of transport terminals (hereinafter referred to as OTTs). It further decided that the mandate of the Working Group should be to base its work on document A/CN.9/252 and on the UNIDROIT preliminary draft Convention and the Explanatory Report thereon¹ prepared by UNIDROIT, and that the Working Group should also consider issues not dealt with in the UNIDROIT preliminary draft Convention, as well as any other issues which it considered to be relevant.² The text of the Explanatory Report is being issued as an addendum to this note.

II. Method of work

3. The Working Group may wish to consider its method of work for carrying out the task assigned to it by the Commission. During deliberations at the seventeenth session of the Commission, a suggestion was made that the Working Group should begin its work by considering approaches to be adopted with respect to issues arising in connection with the liability of OTTs and then proceed to the drafting of the Uniform Rules. The Commission was generally agreed that the method of work of the Working Group should be determined by the Working Group itself.³

4. The Working Group might find it advantageous first to engage in a comprehensive consideration of all of the issues arising in connection with the liability of operators of transport terminals, based on document A/CN.9/252 and the UNIDROIT preliminary draft Convention and Explanatory Report, prior to proceeding with drafting the Uniform Rules. Such an approach could enable the Working Group to adopt a common basis as regards the principles, policies and directions upon which the Uniform Rules are to be based. Moreover, where issues are connected with each other, in that the solution of one issue will influence the position taken with regard to another issue, a comprehensive consideration of all issues prior to drafting should help in drafting the provisions of the Uniform Rules to which such issues are relevant since the views regarding such issues will have been ascertained at least on a tentative basis. As suggested in document A/CN.9/252 (para. 47), the Working Group may wish to defer its decision on the ultimate form the Uniform Rules should take until after it has drafted a text of the Uniform Rules.

5. The present note provides a list of issues which might serve as a basis for the deliberations of the Working Group. These issues have been derived from document A/CN.9/252 and from the UNIDROIT preliminary draft Convention and Explanatory Report, as well as from views which were expressed at the seventeenth session of the Commission.⁴ The list of issues dealt with in this note need not, of course, be considered as exhaustive. To assist the Working Group, the present note also contains annotations to the portions of document A/CN.9/252, the preliminary draft Convention and the Explanatory Report relevant to each issue.

III. Issues possibly to be addressed by Uniform Rules

A. *Scope of application of Uniform Rules*

1. *Relationship of Uniform Rules to international transport*

Issue 1

Should the application of the Uniform Rules be limited so as to apply only to operations of OTTs in respect of goods in international transport?

¹UNIDROIT document, Study XLIV—Doc. 24.

²Report of the United Nations Commission on International Trade Law on the work of its seventeenth session, *Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 17 (A/39/17)*, para. 113.

³*Ibid.*, para. 108.

⁴*Ibid.*, paras. 109 and 110.

Annotation

A/CN.9/252, paras. 5-8.

Preliminary draft Convention, articles 1 (1) and 2 (b).

Explanatory Report: paras. 9-11, 15, 23-26, 32 and 33.

Remarks

At the sixteenth session of the Commission, a suggestion was made that the application of the Uniform Rules should not be limited to operations of OTTs in respect of goods in international transport, but that the Rules should also apply to operations in respect of goods not involved in transport.⁵ The Commission requested the secretariat to consider this issue in the study which was to be submitted to the seventeenth session;⁶ the issue is therefore discussed in document A/CN.9/252, as indicated in the above annotation.

Issue 2

If the application of the Uniform Rules is to be limited to operations of OTTs in respect of goods in international transport, should the application of the Rules depend upon the existence in fact of a link with international transport (hereinafter referred to as the "objective approach") or upon the actual or constructive knowledge of the OTT of the existence of such a link (hereinafter referred to as the "subjective approach")?

Annotation

A/CN.9/252, paras. 6, 7, 9 and 10.

Preliminary draft Convention, articles 1 (1) and 2 (b).

Explanatory Report, para. 33.

Remarks

If the Uniform Rules are to apply merely if there exists in fact a link with international transport, the OTT may face certain difficulties as discussed in paras. 6 and 7 of document A/CN.9/252 and para. 33 of the Explanatory Report.

Issue 3

If the Uniform Rules are to apply merely due to the existence in fact of a link with international transport (i.e. the objective approach), should the nature of this link be defined, and if so, how?

Annotation

A/CN.9/252: paras. 9 and 10.

Preliminary draft Convention and Explanatory Report, as noted under issue 2, above.

⁵Report of the United Nations Commission on International Trade Law on the work of its sixteenth session, *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17 (A/38/17)*, para. 113.

⁶*Ibid.*, para. 115.

Remarks

The following are possible formulations of such a link:

(a) The Uniform Rules are to apply to operations of an OTT which are related to carriage in which the place of departure and the place of destination are situated in two different States.

(b) The Uniform Rules are to apply to operations of an OTT in respect of goods carried in international transport, which are performed between the time when the goods are taken over from the shipper by a carrier, a multimodal transport operator or a freight forwarder in one State and the time when the goods are delivered to a consignee in another State.

(c) The Uniform Rules are to apply to operations of an OTT in respect of goods carried in international transport which are performed during a period of time beginning when a carrier, a multimodal transport operator or a freight forwarder first becomes liable for the goods under an international transport document or under legal rules applicable to international transport. The period of time ends upon the occurrence of either of the following events, whichever is later: (1) the goods are made available to the consignee or (2) the liability of the carrier, multimodal transport operator or freight forwarder for the goods ceases to be governed by an international transport document or by legal rules applicable to international transport.

Formulation (a), above, is the formulation adopted in the preliminary draft Convention (article 2 (b)). As noted in document A/CN.9/252 (para. 10), such a formulation could give rise to questions in particular cases as to whether the Rules are applicable.

It may be noted that under formulation (b), above, the Uniform Rules would apply in a case, for example, where goods which are ultimately to be transported internationally are picked up from the shipper and deposited with an OTT in the same State by a carrier who is not acting under a contract for international carriage. If it were determined that the Uniform Rules should not apply to the operation of the OTT in that and similar cases, the application of the Rules might be made to commence at the time indicated in formulation (c), above. Under formulation (c), the operations of the OTT in the foregoing example would be governed by the Uniform Rules if the OTT were acting for a carrier who became liable for the goods under an international transport document or an international transport convention when the goods were delivered to the OTT. Moreover, it may be noted that under formulation (b), above, in a case where at the end of international transport a carrier delivers the goods to an OTT acting for the carrier, the Uniform Rules might govern the operations of the OTT even after the goods are made available to the consignee and the consignee fails to collect them. To exclude such a case from the application of the Uniform Rules, the period of application of the Uniform Rules might be made to terminate as indicated in formulation (c), above (see A/CN.9/252, footnotes 11 and 12).

Issue 4

If the application of the Uniform Rules is to depend upon the actual or constructive knowledge of the OTT of a link with international transport (i.e. the subjective approach), how should such an approach be formulated?

Annotation

A/CN.9/252, para. 7.

Preliminary draft Convention and Explanatory Report, as noted under issue 2, above.

Remarks

A possible formulation of the subjective approach may be that the Uniform Rules are to apply if the OTT knew or ought to have known that the goods were to be, were being or had been transported internationally. The OTT could acquire such knowledge if, for example, the customer were to give notice to that effect to the OTT. It may be desirable to join this formulation with formulation (b) or (c) of the objective approach, discussed under issue 3, above. This would ensure that the Uniform Rules would not apply to operations of an OTT which were too remote in time to the international transport.

2. *Types of operators and operations to be governed by Uniform Rules*

Issue 5

Should the Uniform Rules apply only when the safe-keeping of the goods is performed as a primary operation, or should they also apply when (a) the safe-keeping of the goods is performed not as a primary operation but only ancillary to handling operations, and (b) when only handling operations are performed?

Issue 6

If the Uniform Rules are to apply to handling operations, to which handling operations should they apply?

Annotation

A/CN.9/252, paras. 11 to 16.

Preliminary draft Convention, articles 1 (1) and 3.

Explanatory Report, paras. 12, 14, 16, 21-23, 27, 34-39.

Issue 7

If the Uniform Rules are to cover handling operations, should the OTT be liable for loss of or damage to the goods which arises as a result of such handling operations but which does not occur until after the goods have been handed over?

Annotation

Preliminary draft Convention, article 3.

Explanatory Report, para. 39.

B. Issuance of document*Issue 8*

Should the Uniform Rules provide for a document to be issued by the OTT in respect of goods taken in charge by him? If so, should such a document be obligatory in all cases, or only upon the request of the customer?

Annotation

A/CN.9/252, paras. 17-19.

Preliminary draft Convention, article 4.

Explanatory Report, paras. 17, 40-43.

Remarks

If this issue is to be governed by conditions of contract or by national legal rules other than the Uniform Rules, it may be preferable for the Uniform Rules expressly so to state, rather than to remain silent as to the issue. Otherwise, the Uniform Rules might be erroneously interpreted in such a way as to exclude the right or obligation not dealt with, rather than to have it governed by conditions of contract or other rules of national law. These remarks apply equally to some other issues identified in this note which the Working Group might decide would be preferable to be dealt with by conditions of contract or other rules of national law rather than by the Uniform Rules.

Issue 9

If the Uniform Rules provide for the issuance of a document by the OTT, what should be the required contents of such a document?

Annotation

A/CN.9/252, para. 26.

Preliminary draft Convention, article 4 (1) and (2).

Explanatory Report, paras. 41-44.

Remarks

The Working Group may wish to consider whether some of the following types of information should be required to be provided in the document: location of the transport terminal; date of issuance of the document; date of taking in charge of the goods; whether the document is negotiable (see issue 13, below); the nature of the goods; the quantity and condition of the goods, in so far as they can be reasonably ascertained; a statement of the fees or expenses in respect of which the OTT claims rights of security in the goods (see issues 25 and 26, below). The Working Group may also wish to consider whether an authorized signature on behalf of the OTT should be required.

Issue 10

If the Uniform Rules provide for the issuance of a document by the OTT, should they also provide for the legal effect of such a document, and, if so, what should be the legal effect? (See also issue 14, below.)

Annotation

A/CN.9/252, para. 26.
 Preliminary draft Convention, article 4 (3).
 Explanatory Report, para. 45.

Issue 11

Should the Uniform Rules specify a time-limit within which the OTT would be required to issue such a document? If so, what time-limit should be specified?

Annotation

A/CN.9/252, para. 24.

Issue 12

Should the Uniform Rules provide sanctions for a failure by the OTT to issue a document which he is obligated to issue? If so, what should be the sanctions?

Annotation

A/CN.9/252, para. 25.
 Explanatory Report, para. 43.

Issue 13

Should the Uniform Rules provide for a negotiable document? If so, should an OTT be obligated to issue a document in negotiable form in all cases or only upon the request of the customer, or should such a document be issued only if both parties agree?

Annotation

A/CN.9/252, paras. 20-22.
 Preliminary draft Convention, article 4 (4).
 Explanatory Report, para. 46.

Issue 14

If the Uniform Rules provide for a negotiable document, should they also regulate the position and rights of transferees of such a document, and if so, how?

Annotation

A/CN.9/252, para. 23.
 Preliminary draft Convention, article 14.

Remarks

A possible approach to the position of a good-faith transferee of the document who relies on an inaccurate description of the goods in the document might be the approach adopted in the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) (hereinafter referred to as the Hamburg Rules), article 16 (3), which provides that proof that the goods are not as described in a bill of lading is not admissible if the bill has been transferred to a third party who in good faith has acted in reliance on the description of the goods.

With respect to a conflict between the rights of a person entitled to the goods under a transport document and the rights of a holder of a negotiable document issued by an OTT covering the same goods, the Working Group may wish to consider whether the likelihood of such a conflict arising in practice is sufficient to justify dealing with it in the Uniform Rules. It may also wish to consider whether a solution which subordinates the rights of the holder of the document issued by the OTT to those of a person entitled to the goods under a transport document (see, e.g. preliminary draft Convention, article 14) would impair the value of a negotiable document issued by the OTT.

*C. Standard of liability**Issue 15*

Should the Uniform Rules establish a single standard of liability to apply to all operations of OTTs governed by the rules? If so, what should the standard be?

Annotation

A/CN.9/252, paras. 27-29.
 Preliminary draft Convention, article 6 (1).
 Explanatory Report, paras. 13, 53, 54, 56 and 57.

*D. Liability for delay**Issue 16*

Should the Uniform Rules deal with the liability of the OTT for delay in handing over the goods?

Annotation

A/CN.9/252, paras. 30-32.
 Preliminary draft Convention, article 6 (2).
 Explanatory Report, para. 55.

*E. Limit of liability**Issue 17*

Should the Uniform Rules provide a per-package limit of liability as an alternative to a per-kilogram limit?

Annotation

A/CN.9/252, para. 39.
 Explanatory Report, para. 58.

Remarks

The Hamburg Rules (article 6 (1)) and the United Nations Convention on International Multimodal Transport of Goods (article 18 (1)) provide that the higher of the per-package or the per-kilogram amount shall constitute the limit of liability. See, however, para. 39 of document A/CN.9/252.

Issue 18

Should the liability of an OTT for loss of or damage to the goods be limited to a certain amount, and if so, to what amount?

Annotation

A/CN.9/252, paras. 33 and 34.
Preliminary draft Convention, article 7 (1) and (2).
Explanatory Report, paras. 58 and 59.

Remarks

Under the preliminary draft Convention, the liability of the OTT is limited to 2.75 units of account per kilogram (article 7 (1)).

Issue 19

Should the Uniform Rules provide, in addition to a per-kilogram or per-package limit of liability, a total limit of liability for each event?

Annotation

A/CN.9/252, para. 38.
Explanatory Report, para. 59.

Issue 20

If the Uniform Rules provide a total limit of liability for each event, should they also provide a means of apportioning the available recovery among various claimants in the event the total amount of damages exceeds the limit?

Annotation

A/CN.9/252, para. 38.

Issue 21

Should the Uniform Rules enable the parties to agree to a higher limit of liability than the limit contained in the Rules?

Annotation

A/CN.9/252, para. 35.
Preliminary draft Convention, article 7 (3).
Explanatory Report, para. 60.

Issue 22

Should the Uniform Rules enable the limit of liability to be broken in certain circumstances, and if so, in which circumstances?

Annotation

A/CN.9/252, paras. 36 and 37.
Preliminary draft Convention, article 9.
Explanatory Report, paras. 13, 62 to 65.

*F. Limitation or prescription period**Issue 23*

Should the Uniform Rules establish a limitation or prescription period for bringing an action against an OTT under the Rules? If so, how long should the period be and how should it be computed?

Annotation

A/CN.9/252, para. 40.
Preliminary draft Convention, article 11.
Explanatory Report, paras. 13 and 70.

Remarks

The Working Group may wish to take note of the problem discussed in para. 40 of A/CN.9/252, i.e. that a two-year period applicable to an action against an OTT, computed from the time when the goods are handed over or may be treated as lost (as in the preliminary draft Convention, article 11 (1) and (2)) could in some cases bar a recourse action by a carrier or a multimodal transport operator. This problem might be dealt with by providing that a recourse action against an OTT by an entity which has received the goods from the OTT and against which a claim has been made for loss of or damage to the goods may be instituted even after the expiration of the limitation period ordinarily applicable to the OTT if it is instituted within a specified period of time after the entity has received notice of the claim against him, after he has settled such a claim, or after he has been held liable for such loss or damage. If the Working Group adopts this approach in principle, it may wish to consider upon which of the three events just noted the specified period of time should begin to run (compare preliminary draft Convention, article 11 (5); Convention on the Limitation Period in the International Sale of Goods (New York, 1974) (hereinafter referred to as the Prescription Convention), article 18 (3)).

Issue 24

Should the Uniform Rules contain detailed provisions relating to the interruption, suspension, extension or cessation of the limitation period?

Annotation

A/CN.9/252, para. 41.
Explanatory Report, paras. 71 and 72.

Remarks

The Working Group may wish to consider whether the Uniform Rules should contain detailed provisions dealing with when judicial or arbitral proceedings for claims and counterclaims which cause the limitation period to cease to run are deemed to have been commenced, the effect on the running of the limitation period of an ending of such proceedings without a binding decision on the merits, the circumstances under which a new limitation period is to commence, and the extension of the limitation period in cases in which

proceedings cannot be brought for reasons beyond the control of the claimant (see Prescription Convention, articles 13 through 21).

G. *Rights of security in goods*

Issue 25

Should the Uniform Rules grant the OTT rights of security in the goods for his costs and claims relating to the goods? If so, what should be the nature of such rights?

Annotation

A/CN.9/252, paras. 42-44.

Preliminary draft Convention, article 5.

Explanatory Report, paragraphs 13, 48-52.

Remarks

To secure sums due to the OTT in respect of the goods, the Uniform Rules might grant to the OTT the right to retain the goods until such sums are paid. They might also grant him the right to sell the goods in order to satisfy the debt. (See preliminary draft Convention, article 5.)

The working group may wish to note that such rights could impede the flow of goods, and it may wish to consider additional approaches to minimize this effect. Under one such approach, the OTT could be given the right to retain and sell goods for the purpose of securing not only sums due to the OTT in respect of the same goods, but also other sums due to the OTT (e.g. in respect of goods previously deposited with the OTT). This would enable the OTT to release to a regular customer goods in respect of which sums are owed to the OTT, since such sums could be secured by goods deposited later with the OTT. Under a second approach, the party entitled to receive the goods could be enabled to procure their release by obtaining a guarantee or by depositing with a third party a sum sufficient to secure the sum claimed by the OTT (see preliminary draft Convention, article 5 (2)). Under a third approach, the OTT could be given a non-possessory right of security in the goods to which the goods would remain subject, even if possession of the goods were transferred, until the debt secured by the right of security was discharged. However, non-possessory rights of security are not recognized in all legal systems; moreover, they would require a legal framework regulating their existence and operation (e.g. rules regulating the rights of transferees of the goods, rules establishing priorities among various claimants in respect of the goods, and rules concerning public notice). Therefore, it might be desirable to accord to the OTT a non-possessory right of security only if such a right is otherwise recognized by the law in the State where the operations of the OTT are carried out (see preliminary draft Convention, article 5 (1)).

Even if the Uniform Rules were to grant to the OTT a right of retention or sale of goods, whether to secure

sums due to the OTT in respect of such goods or to secure other sums due, it might be useful to provide that questions relating to such rights not dealt with in the Uniform Rules are to be governed by national legal rules other than the Uniform Rules.

Issue 26

If the Uniform Rules grant the OTT rights of security in the goods, should they also deal with the effects of such rights on rights of a person who is entitled to the goods but who is not the customer of the OTT? If so, how should this issue be treated?

Annotation

A/CN.9/252, paras. 43 and 44.

H. *Issues not dealt with in preliminary draft Convention*

Issue 27

Should the Uniform Rules deal with the questions of jurisdiction over judicial claims and the place of arbitration of claims against OTTs?

Annotation

Explanatory Report, para. 69.

Remarks

If the Working Group decides that the Uniform Rules should contain rules regarding jurisdiction over judicial claims and the place of arbitration of claims against an OTT, the Rules might specify one or more of the following places as places in which such judicial or arbitral claims may be brought: the principal place of business of the OTT; the place where the contract with the OTT was made, if the OTT has a place of business there; the place where the operations of the OTT were carried out; or any other place set forth in the contract with the OTT. The Working Group might also wish to consider including a provision comparable to articles 21 (5) and 22 (6) of the Hamburg Rules, whereby after a claim under a contract for carriage by sea has arisen, the parties may by agreement designate the place where the claimant may institute judicial or arbitral proceedings.

Issue 28

Should the Uniform Rules obligate a carrier to notify an OTT of the loss of goods which were to be handed over to the carrier for subsequent transport and delivery to the consignee, or to notify an OTT of damage to goods handed over to the carrier for subsequent transport and delivery to the consignee, in order to protect the right of the consignee to recover for such loss or damage?

Remarks

An obligation of the carrier to protect the consignee by giving such notice to the OTT might be aimed at situations where, for example, the OTT hands over goods

to the carrier and the consignee later alleges that he did not receive the correct quantity of goods or that goods which he received were damaged, and the loss or damage might have been sustained while the goods were in the custody of the OTT. It may be noted, however, that under the preliminary draft Convention (article 10 (1)) the right of the consignee to recover for loss of or damage to the goods might not be defeated by a failure of the carrier to give such notice. In such a case, the handing over of goods to the carrier would be *prima facie* evidence of delivery of the goods as described in the document issued by the OTT or in good condition. If the OTT was acting for the carrier, the consignee could still claim against the carrier for the loss or damage. Even if the OTT was not acting for the carrier, the consignee could claim against the carrier, and this claim would be aided by the *prima facie* evidentiary effect of the handing over of the goods by the OTT that the goods were delivered as described in the document issued by the OTT or in good condition, plus the evidentiary effect of any bill of lading or other transport document issued by the carrier showing that the goods were received by him in the correct quantity or in good condition. Issuance by the carrier of a transport document showing that he received goods from the OTT in an insufficient quantity or in a damaged condition, or proof by the carrier in the claim against him that he

received the goods from the OTT in an insufficient quantity or in a damaged condition, could be used to overcome the *prima facie* evidentiary effect of the handing over of the goods by the OTT in a claim by the consignee against the OTT. Moreover, the Working Group may wish to consider whether the Uniform Rules are the proper place for imposing on the carrier an obligation to protect the right of the consignee to claim for loss of or damage to the goods.

Issue 29

Should the Uniform Rules deal with obligations of the customer towards the OTT, such as (a) an obligation to pay for the services performed by the OTT; (b) an obligation to inform the OTT as to any dangerous character of the goods and a corresponding right of the OTT not to accept the goods, or to deal with them in a way appropriate to their character; (c) an obligation to hold the OTT harmless from any consequences caused other than by dangerous goods, such as a liability to authorities for deficiencies in documentation?

Annotation

A/CN.9/252, para. 45.

Explanatory Report, para. 20.

2. Explanatory report to the preliminary draft Convention on the Liability of Operators of Transport Terminals, prepared by the secretariat of UNIDROIT: note by the secretariat (A/CN.9/WG.II/WP.52/Add.1)

(For reference only)

[The Explanatory report is reproduced in Yearbook XV, 1984, part two, IV, C, in connection with the text of the preliminary draft Convention, since it was made available in the form of a UNIDROIT document at the seventeenth session of the Commission (New York, 25 June-10 July 1984). The report is noted here for

reference since it was reproduced during the period covered by this Yearbook as UNCITRAL document A/CN.9/WG.II/WP.52/Add.1 for the eighth session of the Working Group on International Contract Practices (3-14 December 1984).]

3. Liability of operators of transport terminals: additional issues for discussion by the Working Group: note by the secretariat (A/CN.9/WG.II/WP.53)

Additional issue 1

Should the Uniform Rules provide that the defences and limits of liability provided for therein apply whether the action is founded in contract, tort or otherwise?

Hamburg Rules, article 7 (1).

Multimodal Convention, article 20 (1).

Additional issue 2

Should the Uniform Rules specify those categories of entities who are entitled to claim against the OTT?

Remarks

A provision such as that contained in article 8 (1) of the preliminary draft Convention, whereby the Rules would apply to actions founded in tort or otherwise, would hold open the possibility of actions being brought against the OTT by persons other than those in a contractual relationship with the OTT. However, the issue of who may claim against the OTT is not directly addressed by the preliminary draft Convention. In some legal systems, a claim against an OTT performing services in connection with maritime transport may be

Annotation

Preliminary draft Convention, article 8 (1).

Explanatory Report, para. 61.