

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.