

The Carriage of Goods by Sea

During its ninth session, in April and May 1976, the U.N. Commission on International Trade Law completed work on a draft Convention on the Carriage of Goods by Sea. The draft Convention is intended to replace the 1924 Brussels Convention for the unification of Certain Rules relating to Bills of Lading ("The Hague Rules") which for more than fifty years has provided the basis of the international régime governing sea shipment of goods under bills of lading. The draft Convention will be before the current (31st) session of the U.N. General Assembly, which is expected to convene a diplomatic conference in 1977 or 1978 on the subject. Although not a member of UNCITRAL, Canada has taken an active interest in recent developments concerning the draft Convention. Canada is not a party to the Brussels Convention, but the Carriage of Goods by Water Act provides for the application of The Hague Rules in connection with cargoes shipped from Canadian ports.

Dissatisfaction with The Hague Rules has come from two main sources, the traditional maritime shipowning states and the developing countries. The concern of the maritime nations has been to modernize the rules of liability to meet present conditions and to deal with various legal problems - time bar, agency, carrier defences - that have arisen. The third world states, whose interests are mainly those of shippers or cargo owners, believe that traditional maritime law impairs their balance of payments position by being weighted in favour of the carrier. The latter view was expressed in detail in the forum provided by the U.N. Conference on Trade and Development. UNCTAD's Working Group on International Legislation on Shipping in 1971 requested UNCITRAL to examine the subject with the aim of removing uncertainties and ambiguities and of establishing a balanced allocation of risks between the cargo owner and the carrier, with appropriate provisions concerning the burden of proof. UNCITRAL accepted this task and established its own working group on the subject which by early 1975 at its eighth session had agreed upon a draft text. Comments of governments and of UNCTAD were invited and were reviewed by UNCITRAL at its 1976 session when work on the draft convention was completed.

In formulating Canadian comments in response to the U.N. invitation, the several concerned departments and agencies of the federal government consulted with the Canadian Maritime Law Association. The CMLA, which had also been consulted by the Comité Maritime International, prepared its views in consultation with the Canadian Transport Commission. In general terms, Canadian views were aligned more toward