Future of West Africa's liner conferences

Benjamin Owusu-Mensah

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THE FUTURE OF WEST AFRICA'S LINER CONFERENCES WITH
THE COMING INTO FORCE OF THE UNCTAD CODE OF CONDUCT
(WITH REFERENCE TO UKWAL & COWAC)

by

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Ghana

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A paper submitted to the Faculty of the World Maritime University
in partial satisfaction of the requirements of the
GENERAL MARITIME ADMINISTRATION COURSE.

The contents of this paper reflect my own personal views and are
not necessarily endorsed by the UNIVERSITY.

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TO MY DEAR WIFE ADELAIDE AND BELOVED CHILDREN JACLYN AND DEREK.
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INTRODUCTION

The United Nations Conference on Trade and Development's (UNCTAD) Code of Conduct for Liner Conferences came into force on the 6th October 1983 and to see to its implementation, West African countries, like other nations, have set up National Bodies and Legislations. One aspect of the implementation scheme has been the setting up of Freight Booking Centres by most countries for the "a priori" control of their allocated 40% share of their trade, a move which came under severe criticism by the Lines from developed countries, who are members of the Conferences operating to West Africa, notably the United Kingdom - West Africa Joint Service (UKWAL) and the Continent - West Africa Conference (COWAC).

West Africa Shipping Lines, like most lines in the third World see this move as the only way to make sure that their share is carried on their National fleet, and despite the opposition from the European Lines, their Governments are going ahead to see to it that the "a priori" control scheme becomes effective.

Before the advent of the Code, in most of the Conferences which Shipping Lines from West Africa participate, a lion's share of the cargo went to European Lines. For example in the UKWAL which has a membership of eight
Lines, (two from UK, five from West Africa, one cross trade) the two Lines from UK had 50% of the Conference Pool cargo (See Table 3.2), about 80% of the total cargo carried by the Conference to West Africa were destined for Nigeria, but her National Line, the Nigeria National Shipping Line (NNSL) a member of the Conference had only 31.5% of the Pool Cargo.

It is therefore the objective of this paper to find out whether the West Africa members of the Conferences operating to the sub-region can use the various schemes which their Governments are setting up and backed by the UNCTAD Code to change the operation of the Conferences to their advantage, and if they can, what the future of these Conferences will be.

Chapter One of this paper will discuss the main features of the UNCTAD Code of Conduct for Liner Conference while Chapter Two takes on the general overview of Liner Shipping in West Africa. In Chapter Three light will be thrown on the various measures being taken by West African countries to implement the UNCTAD Code. Special attention will be paid to measures taken by Ghana and Ivory Coast. In Chapter Four, light will be thrown on Liner Shipping in Ghana making special reference to how the code affects liner shipping in Ghana as a whole, and her National Line, Black Star Line in particular. Chapter Five is devoted to
a discussion on what is happening in UKWAL and COWAC with the coming into force of the code, especially regarding Membership and also member Lines' percentage share of Pool cargo. Chapter Six is for assessment and conclusion.
CHAPTER ONE

1.1 DEFINITIONS

The following definitions are given in Part One, Chapter 1 of the "United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences", and the discussions in this paper will be restricted to these definitions.

1.1.1 LINER CONFERENCE OR CONFERENCE

This is defined as a group of two or more vessel operating carriers which provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions with respect to the provisions of liner services.

1.1.2 NATIONAL SHIPPING LINE

A national shipping line of any given country is a vessel operating carrier which has its head office of management and its effective control in that country and is recognised as such by an appropriate authority of that country or under the law of that country.
Lines belonging to and operated by a joint venture involving two or more countries and in whose equity the national interests, public and/or private, of those countries have a substantial share and whose head office of management and whose effective control is in one of those countries can be recognised as a national line by the appropriate authorities of these countries.

1.1.3 THIRD COUNTRY SHIPPING LINE (CROSS TRADER)

A vessel-operating carrier in its operations between two countries of which it is not a national shipping line.

1.1.4 SHIPPERS ORGANISATION

An association or equivalent body which promotes, represents and protects the interest of shippers, and if those authorities so desire, is recognised in that capacity by the appropriate authority or authorities of the country whose shippers it represents.

1.1.5 APPROPRIATE AUTHORITY

Either government or a body designated by a government or by national legislation to perform any of the functions ascribed to such authority by the provisions of the code.
1.2 THE MAIN SUBSTANTIVE PROVISIONS OF THE CODE

Before discussing the main aspects of the code, a quick glance at the main substantive provisions of the code will be useful. These are abstracted below:

- Article 1 establishes, subject to stated criteria, the right to membership of Conferences of national and third flag shipping lines.
- Article 2 sets out, with the proviso: "Unless otherwise mutually agreed", the principle of equal shares in any pooling or other similar arrangement for Liners in importing and exporting countries, with "a significant share" indicatively given as 20% to third flag lines where such exist.
- Article 7 notes that loyalty arrangements with shippers are authorised by that they should be based on the contract system or any other system which is also lawful.
- Article 9 provides that tariffs and related conditions and/or regulations should be made available at reasonable cost to shippers and other parties concerned.
- Article 10 provides for annual reporting by Conferences of their activities.
- Article 11 establishes that consultations be held between shippers and conferences.
- Article 12 sets out criteria for freight rates determination, with a proviso that other criteria be agreed
- Article 14 provides for notice of freight rate increases and reference to international mandatory conciliation, for disputes which may not have been resolved through consultation.

The code also provides (article 23-46) for the settlement of disputes. Basically it establishes a system of what is called "International Mandatory Conciliation", a compromise reached between most developing countries desiring a system of mandatory arbitration, and most developed countries not wishing to have any mandatory dispute settlement machinery at all. (This mandatory conciliation will be discussed later).

The principal aim of the code, therefore, is to facilitate by sanction, not unilaterally by conference lines but by consultative processes under international law the following:

- easier access of new fleets, particularly of developing countries to conference services affecting their own and third flag liner trades
- reasonable constraint over the disposition of freight charges
- agreement on principles for trade participation among exporting, importing and third states (the so called
40:40:20 principle)
- establishment of dispute settlement machinery invokeable unilaterally by either party.

1.3 SCOPE OF THE CODE

The very title of the convention specifies a code of conduct for Liner Conferences. Further Resolution No. 2 on Non-Conference Lines, adopted concurrently with the code on 6th April 1974, restates that the convention is applicable to Liner Conferences and their external relations.

Thus the scope of the code would broadly appear to be as follows:

- It would apply to what are now called "self-regulated conferences", that is, Conferences which do not serve U.S type regulated liner trades, since conferences which are publicly regulated comprehensively, inwardly and outwards inconsistently with the provisions of the code would fall outside the scope of the code. Some one-third of all conferences serve U.S liner trade which are regulated inwards and outwards by statute law and regulation. The code would thus "prima facie", only apply to the remaining two thirds of the world's conference.
- It would not apply, on the basis of what has been said
above, to inter-governmental sponsored bi-lateral agreements that are unequivocally kept outside the scope of the usual type of conference service.

Questions are often raised as to whether the code applies to conference services only, or to what is generally described as the "total liner trade" of a particular country. By title, the code applies to liner conferences and this can be supported by the fact that under Participation in Trade (Article 2), reference is made to membership of a Conference in trades covered by a conference. In determining shares of trade, reference is made to participation in the trade carried by a conference; to a conference carrying the foreign trade between two countries; the traffic generated by the foreign trade carried by a conference; to trade carried by a conference; and to trade between countries covered by conference. Reference is also made to shipping lines fulfilling their conference obligations. Also it is seen that Resolution 2 refers to non-conference shipping lines, and the code is considered applicable to liner conferences and their external relations. Non-conference lines competing with conference lines are also distinguished. There is therefore no doubt about the fact that the code applies to Liner Conferences only.

It can therefore be deduced that the following fall outside the scope of the Code.
1. Open Conferences, i.e., Conferences serving the U.S trade
2. Cargoes not carried by Conference
3. Bilateral Agreements

1.4 IMPORTANT PARTS OF THE CODE

Having considered the scope of the code, its principal aim and its main provisions, attention will now be focussed on the important parts relevant to this paper. These include Membership, Participation in Trade, Consultation Machinery, dispensation and machinery for settlement of disputes.

1.4.1 MEMBERSHIP

Article 1 of Chapter 2, paragraphs 1-6 cater for the criteria for membership of conferences. It is provided that any shipping line shall have the right to be a full member of a conference which serves the foreign trade of its country, provided it conforms to the entry requirements laid down by the conference as mentioned in paragraph 2 of Article 1. Also shipping lines which are not national lines in any trade of a conference shall have the right to become full members of that conference, subject to the provisions regarding the share of trade as set out in Article 2, dealing with third country shipping
However as stated in paragraph 3, in considering an application for membership by a third country shipping line, in addition to the provisions of Article 1, paragraph 2 mentioned above, the following criteria would be taken into account:

- The existing volume of trade on the route served by the conference and the prospects of its growth
- The adequacy of shipping space for the existing and prospective volume of trade on the route served by the conference
- The probable effect of admission of the shipping line to the conference on the efficiency and quality of the conference service
- The current participation of the shipping line in trade on the same route outside the framework of another conference
- The current participation of the shipping line on the same route within the framework of another conference.

The present position in most self regulated conference is that membership is tightly controlled by the conferences. The usual reasons given for rejection are over tonnaging of the trade or alleged incapacity of the applicant line to adhere to conference schedules and obligations. Under the code, a conference refusing
membership is required to give the grounds in writing and to take into account the views of shippers, and of appropriate authorities if they so request (Paragraphs 4-6 of Article 1).

1.4.2 PARTICIPATION IN TRADE

This is perhaps the most important aspect of the code judging from the fact that cargo is the lifeblood of shipping activities. Invariably, almost all disputes in conferences since the coming into force of the code has been on this topic.

Article 2 starts by saying that any shipping line admitted to membership of a conference shall have sailing and loading rights in the trade covered by the conference. Paragraph 3 goes on to say that for the purpose of determining the share of trade which member lines shall have the right to acquire, the national lines of each coming irrespective of the number of lines shall be regarded as a group of shipping lines for that country. It is in Paragraph 4 where the cargo principle is laid out. It states that when determining a share within a pool of individual member lines and/or groups of national shipping lines, the following principles regarding their rights to participate in the trade carried by the conference shall be observed, unless otherwise mutually agreed:

- The group of national lines of each of two countries
the foreign trade between which is carried by the conference shall have Equal Rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference.

- Third country shipping lines, if any, shall have the right to acquire a Significant Part, such as 20% in freight and volume of traffic generated by the trade.

Provision is made for a situation where a country whose trade is carried by a conference and has no national line. In this situation, the country's cargo shall be distributed among the individual member lines participating in the trade in proportion to their respective share.

Paragraphs 6-17 deal with other aspects of cargo sharing. It is stated that the provisions of Article 2, paragraphs 1-16 inclusive concern all goods regardless of their origin, their destination, or the use for which they are intended, with the exception of military equipment for national defence purposes.

It is worth noting here that, the so called 40:40:20 principle is not a rigid quantitative formula which will be forcibly thrust on nations. The percentages reflected in the code reflect purely indicatively, those trade participation principles that are considered as "prima facie" equitable between exporting, importing and third flag states, in the context of permitting competition.
from third flag states, unless agreed otherwise. This is seen in the provision for periodical re-adjustment of shares. (Article 2 paragraph 9).

1.4.3 CONSULTATION MACHINERY

Article 11 dealing with consultation machinery stipulates that there shall be consultations on matters of common interest between a conference, shippers' organisations, representatives of shippers, and where practicable shippers which may be designated for that purpose by the appropriate authority, if so desires. It also provided that such consultations shall take place whenever requested by any of the parties mentioned above. The following items are given as the matters which may be subject of consultation:

- changes in general tariff conditions and related regulations
- changes in the general level of tariff rates and rates of major commodities
- promotional and/or special freight rates
- imposition of, and related changes in, surcharges
- loyalty arrangements, their establishment or changes in their form and general condition
- changes in the tariff classification of ports
- procedure for the supply of necessary information by shippers concerning the expected volume and nature of their cargoes, and
presentation of cargo for shipment and the requirements regarding notice of cargo availability

As a principle, consultations are to begin not later than 30 days after receipt of the proposal for consultations unless different periods of time are provided in the code.

It is interesting to note that there is increasing widespread interest in the establishment of effective consultation machinery for shipowners and shippers to discuss common needs and interests. Unilateral action by conferences lead to misunderstanding, while the taking of decisions at a headquarters remote from the countries of export and import gives the impression that the interest of shippers imports and national interests are ignored. In shipping, where both the trader and the shipowner depend on each other so closely, consultation at all stages of decision making and on all matters is essential.

Since Shippers' Councils represent most countries at negotiations with conferences, it will be necessary to make a note on them at this point.

The main purpose of a Shippers' Council is to unite shippers and to give them the necessary bargaining strength to obtain adequate and efficient services at the minimum cost. There is another purpose in setting up
a Shippers' Council which is also important, that of providing shipowners, government agencies and Port Authorities with a means of communicating with Shippers and of obtaining an authoritative shipper viewpoint. The immediate function of a newly formed council will usually be to exert maximum pressure to reduce conference demands for freight increases. It must not, however, confine itself solely to the defensive role of reacting to conference demands but must be ready to take the initiative in collaboration with the shipping investigation unit (if it exists in a country) and other arms of government shipping policy in assessing the suitability of existing services, and in investigating the possibilities of more economical alternatives.

1.4.4 DISPENSATION

Paragraph 2 of Article 8 says, in Ports where conference services are arranged subject to the availability of a specified minimum of cargo, but either the shipping line does not call, despite due notice by shippers, or the shipping line does not reply with an agreed time to the notice given by shippers, shippers shall automatically have the right, without prejudicing their loyalty status to use any available vessel for the carriage of their cargo.

This portion of the code, in my opinion, serves two useful purposes, apart from its original message. In the
first place, it buttresses the fact that the code is for liner conferences, and secondly it answers the fears of most European lines who are worried about the setting up of freight Booking Bureau by countries in the third world. This second point will be discussed in detail in Chapter 3.

1.4.5 MACHINERY FOR SETTLEMENT OF DISPUTES

A fundamental need of developing countries was to have provisions in the code for a viable dispute machinery to which either party could resort covering the whole range of disputes which can arise in conference operations. Most existing conferences have no such provisions, at least, in regards to such matters as membership, loyalty agreement, trade participation or freight.

Initially, the majority of developing countries wanted a system of mandatory arbitration and eventually the present system of mandatory conciliation put forward by the developed countries as a compromise solution was accepted, as the alternative would have been no provisions at all, which only the developed countries wanted.

Perhaps the single item in the code to which much attention is paid, is the provisions and machinery for settlement of disputes. Articles 23-46 divided into three parts, general provisions, international mandatory conciliation, and institutional machinery discuss into detail this issue.
Under International Mandatory conciliation, the appropriate authorities of a contracting party shall if they so request, participate in the conciliation proceedings in support of a party being a national of that contracting party, or in support of a party having a dispute arising in the context of the foreign trade of that contracting party. The appropriate authority may alternatively act as an observer in such conciliation proceedings. The proceedings are to take place in a place unanimously agreed to by the parties, or failing such agreement, in the place decided upon by the conciliators. Paragraph 2 of Article 29 demands that in determining the place of conciliation proceedings, the parties and the conciliators shall take into account, inter alia, countries which are closely connected with the dispute, bearing in mind the country of the shipping line concerned and, especially when the dispute is related to cargo, the country where the cargo originates.

1.5 THE VIEWS OF NATIONS ON THE CODE

The code is a manifestation of the world wide endeavour of developing countries to obtain a better share of the world's wealth. Focusing on international liner shipping the code reflects a power struggle between a large number of developing countries and a relatively smaller number of traditional maritime countries. It also reflects the continuing debate between those who advocate commercial control of international trade and those who prefer
government management and regulation. The final language of the code represents a political compromise among the diverse views of many nations.

1.5.1 THE GROUP OF 77 VIEW

The Group of 77, the developing countries that were the initiators and are among the chief proponents of the code, see the code as a means of eliminating discrimination in the ocean conference system. For them the code grants national carriers virtually automatic entry into conferences and effective control over the way conferences operate in their trades. In effect, the code is a means to redistribute liner trade control to the numerically (but not commercially) superior developing countries. These countries generally favour rigid application of the code's conference organisation mandatory cargo sharing and consultation procedures.

1.5.2 THE EUROPEAN VIEW

The ten-member European community has officially adopted a regulation that establishes specific conditions under which community member states are to accede to the code. In essence, the regulation accepts the provisions of the code for trade between the community and developing countries but opts for continuation of the "Status quo" for trade between the community and developed countries which accept the code, with reciprocity agreements among
developing countries to allow cross trading in each others developing country trades.

The Scandinavian countries along with the United Kingdom, the Netherlands and Greece have expressed concern that the code may serve as a vehicle to eliminate independent (non-conference) cross traders. Such elimination is a possibility under a rigid application of the code to adjust the conference portion of the trade rather than to all liner trade. Their implementing legislation is expected to seek to prevent elimination of non-conference cross-traders in code trades.

1.5.3 OTHER COUNTRY VIEWPOINTS

Many of the communist nations of Eastern Europe, China and Cuba have acceded to the code with reservations that exempt the bilateral trade agreements under which most of their liner shipper is conducted. Several South American nations have done likewise.

There is opposition to the code among some developing countries, particularly those with a strong free market orientation and those with well developed merchant marines heavily engaged in cross trading (such as Israel, Hong Kong and Singapore).

1.5.4 UNITED STATES VIEW

Based on its traditional free-market principles, and on
the numerous conflicts between existing U.S laws and the code, the U.S government position has been to oppose the code. Most U.S carriers agree that bilateral liner agreements tailored to the requirements of each trade are a preferable course of government action to ratification of the code. It is observed that the United States oppose the code on several grounds, more particular because:

(a) Its membership provisions encourage the continuation of the closed conference system
(b) The provisions for pooling the conference cargo, also those providing for the allocation of a percentage "such as 20 percent" for the third flag carriers in combination with the establishment of equal rights for the directly trading countries, i.e the supposed 40:40:20 formular would in the long run tend to increase costs and reduce the quality of service in a trade
(c) The provisions which stipulates for 15 month rate stability is damaging in view of that the period is unreasonably long
(d) To the view of the U.S Administration, national lines are given, by the code, undue power since article 3 provides for a veto power in their favour, by stipulating that "a decision cannot be taken in respect of matters defined in a conference agreement relating to the trade between two countries without the consent of the national shipping lines of those two countries"
Regarding this latter point, it could usefully be recalled that the U.S has a history of legislative rules, which to the opinion of the U.S government were necessary for an adequate protection of U.S interests, against decisions taken by foreign based conferences. It might be that, the American opposition to the code derives less from any detailed points of different approach to particular problems like those referred to above and more from general government policy philosophy. The government of the United States of America has adopted and followed a de-regulating philosophy in the economy, insisting in that the free-enterprise system should be allowed to work without any distortions which the government interventions might creat. Such had been the philosophy behind the Shipping Act of 1984 which curtailed significantly the regulatory powers of the Federal Maritime Commission (FMC).

1.5.5 RESERVATIONS TO THE CODE

The Vienna Convention on the Law of Treaties (1905) which is in force, describes a reservation as a "Unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to the State". It further provides that a State may formulate a reservation unless it is incompatible with the object and purpose of the treaty. An objection by another
Contracting Party to a reservation does not preclude the entry into force of the treaty as between objecting and reserving state unless a contrary intention is definitely expressed by the objecting state; tacit consent being presumed from failure to object to a reservation.

As seen in 1.5.4, some countries have made reservations to the code. Several of them wish to continue to adhere to bilateral agreements whilst one country has stated that it does not consider itself bound by paragraph 4 of Article 2. The question which remains is who would decide on the validity of Reservations. This is a question which contracting parties would have to decide, as the Code is silent on Reservations. Let us look closely at those very Articles to which Reservations have been addressed, on Membership and on articles 2, 3 and 14 (6) and (9). I append below some of the elasticities which I believe are built into the texts of the various articles:

Article 2 (Trade Participation)
Paragraph 4: "Unless otherwise mutually agreed"
Paragraph 9: "Trade sharing agreements shall be reviewed periodically ...."  
Paragraph 19: "The application of the Article .... shall be completed within a transition period ..... Taking into account the specific situation in each of the trades concerned
Article 3: (Decision-making Procedures)

These shall be based on equality of all full member Conference Lines: ensuring that voting rules do not hinder the proper work of the Conference and service of the trade and shall define matters on which decisions will be made by unanimity. Decisions cannot, however, be taken regarding matters defined in Conference agreements relating to trade between two countries without the consent of national shipping lines of those two countries.

Article 14: (General Freight Rate Increases)

Paragraph 6: A general freight rate increase may be implemented by a conference .......

Paragraph 9: (a) "Conferences should institute any general freight increase ...." 
(b) "Unless otherwise agreed during consultations, minimum period of time between dates when one general freight increase becomes effective and date of notice for next increase ...... Shall not be less than 10 months".

In the view of some observers, the language of these texts contains inbuilt elasticities, or to be precise, "reservations" - which would permit parties:

(a) to agree measures other than those primarily
addressed in the provisions; or
(b) to review the agreed provisions periodically; or
(c) to act subject to specific situation prevailing in individual conference trades; or
(d) not to act so as to hinder the work of conferences and services; or
(e) act with discretion if they decide to act at all.

Against such background we will discuss briefly the EEC Reservations.

**EEC RESERVATIONS**

The structure of the EEC Regulation on the Code is drawn such that the text of the Reservations is annexed to it. The various individual Reservations purport to extend the term "national shipping line", as defined in the code to include, in the case of EEC member states, any line established in an EEC member state; disapply article 2 on Trade Participation, Article 3 on Decision Making Procedures, and article 14 (a) on General Freight Rate Increases, in intra-EEC Conference trades and reciprocally to intra-EEC-OECD trades where OECD countries may also be Contracting Parties to the Code, allowing however shipping lines of developing countries to apply for participation as third country carriers in those trades.

At UNCTAD V at Manila (June 1979) some countries inquired
whether the interests of developing countries in intra-EEC-OECD liner trades under the EEC Regulations would be governed by the Regulation or the 1974 Code. If the answer was yes, they felt the Regulation would then give lesser protection in intra-EEC-OECD trades to developing country lines and/or shippers than they would otherwise enjoy under the 1974 code. Socialist countries also ask whether their fleet would be excluded from intra-EEC-OECD trades under the Regulation. The EEC representative stated that developing countries' rights would be governed in intra-EEC-OECD trades by the Code "Subject to the Regulation", and they need fear no discrimination. The Socialist countries were told that they could compete in the same way as the other developed countries for participation in intra-EEC-OECD trades.

The question of the Reservations surfaced again at the Ninth Session of the UNCTAD Committee on Shipping in September 1980 when the Socialist countries of Eastern Europe questioned the validity of the EEC Regulation in terms of "universality" which the General Assembly in its Resolution 3035 (XXVII) had desired for the Code. The EEC spokesman replied that the Regulation was "realistic" in that while the community wished to acknowledge "positively and practicably" the aspirations of developing countries in liner conference shipping, it had at the same time to maintain a commercial approach in intra-EEC-OECD liner trades.
Be all this as it may, the question of reservation presses. There is a sense of tremendous relief in many circles that the EEC, having frozen possible implementation of the code for some years while they debated what its members should do, has finally come up with what it itself considers to be a positive move forward.
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CHAPTER TWO

2.1 LEGISLATIONS AND IMPLEMENTATION PRACTICES
ADOPTED BY SOME COUNTRIES IN THE THIRD WORLD

Both codist and non-codist countries in the third world have been working on appropriate legislations and implementation schemes to help their national fleet carry a substantial portion of their trade. While some countries have managed to pass legislations to back their schemes some are still discussing the issues involved.

Before we take a look at the scheme implemented in Ivory Coast and Ghana (yet to be approved by Government) we will see what is being done in some countries in the third world.

2.1.1 BANGLADESH

The Government has instituted a legislation which reserves 40% of both imports and exports to national flag vessels. This is not yet implemented but every effort is being made to get it going.

EGYPT

In Egypt, all Government cargoes plus 30% of all imports and exports are reserved for Egyptian flag ships. To support this, state cargo allocation agency gives priority
to the state line and second preference is given to major Egyptian private lines.

**INDIA**

All Government cargoes are reserved to the national flag vessels. There is further legislation reserving 40% of all export cargoes to the national fleet.

**INDONESIA**

A decree of April 1982 reserves a wide interpretation of cargoes to Indonesian vessels. However, despite this protectionist measure, Indonesia claims to carry only 10% of her International Seaborne trade.

**PHILIPPINES**

There was an original decree which reserved all government cargoes to national flag vessels but subsequent decree (January 1982) reserves 40% of all liner trade to Philippine vessels and further 40% to the trade partner. Legislation on government cargo (which accounts for majority share of trade) is already in force.

**SRI LANKA**

There has been a recent decision that all government cargoes must be carried by the state shipping line. All
export cargo is allocated by the Ceylon Freight Bureau since 1971. Preference is given to the State line, and then Freight Line (LGM).

CAMEROON

In Cameroon, all cargoes are reserved to CAMSHIP, the state shipping line, unless trading partner has 40:40:20 agreement dividing the whole trade. In practice, CAMSHIP takes all best cargoes and probably a 60% share. Non-Conference lines are completely excluded in the absence of bilateral agreements.

TANZANIA

Here, legislation has been passed to set up the Tanzanian Freight Bureau with powers to control all imports and exports.

2.1.2 THE IVORY COAST SYSTEM

Ivory Coast has been one of the pioneers of the full implementation of UNCTAD's 40:40:20 cargo sharing formula, and has thereby succeeded in carrying almost 40% of its trade with Europe since 1979. Backed up by two official supervisory and administrative bodies in Abidjan, the Ivorian national line, SITRAM, has led West Africa in its development of a fleet specifically geared to carry its own national trade share. With
equal relevance for breakbulk as well as container traffic, the unique Ivorian Implementation of the code provides a taste of trends to come in liner shipping.

The Ivorian approach to implementing 40:40:20 has not only been extremely rigid and well defined in terms of its aims but also very comprehensive in the control and monitoring of all cargo coming to and going from that country. Not a single ship, container or breakbulk arriving in or departing from the Ivory Coast's ports can avoid the scrutiny of the Ivorian bodies created to control the carriage of the country's trade. Indeed, the implementation of the code goes beyond controlling the Ivory Coast's 40% of the trade, and even comprises the allocation of these percentages pertaining to the fleets of all foreign trade partners.

OIC AND SISA

On December 25, 1975 the Ivory Coast Shippers' Council or the Office Ivorien de Chargeurs (OIC) was set up to oversee the full implementation of the code. The OIC has since become an invaluable element in the implementation of the 40:40:20, as well as the general maritime policy adopted by the Ivory Coast. Another aspect of Ivory Coast's bid to put the 40:40:20 concept into reality on its main trade route, i.e. that to Europe, is SISA (SITRAM International Shipping Agencies), which was
formed in 1977. Although SISA was created primarily as a Liner Agency concern, its role has been enlarged by the Ivorian government to encompass the control and allocation of cargo sharing among all national lines participating in the trade between Ivory Coast and Europe in order words to control under the supervision of the OIC, all loading and cargo booking to and from the country.

Between them, SITRAM, SISA and OIC had by the end of 1979, all but achieved the successful implementation of 40:40:20 on the Ivory Coast main trade route (See Table 2.1).

An important wing of the OIC has been the Freight Committee. The OIC describes this division as having a threefold mandate upon the following lines:

- to evolve the measure and mechanism destined to the regulation of the maritime trade of the Ivory Coast
- to secure full and profitable employment for the national merchant fleet
- to assist the rationalisation of traffic between Ivory Coast and trading partners

Basically the above mandate involves the implementation and full adoption of the 40:40:20 cargo sharing principle embodied in the Liner Conferences' code of conduct.
### TABLE 2.1

**TEU HANDLING FIGURES BY THE MAIN OPERATORS CALLING AT THE PORT OF ABIDJAN FOR 1979.**

**STATISTICS SUPPLIED BY PORT OF ABIDJAN**

<table>
<thead>
<tr>
<th>LINE</th>
<th>TEU IMPORT</th>
<th>TEU EXPORT</th>
<th>TEU TOTAL</th>
<th>TONNES IMPORT</th>
<th>TONNES EXPORT</th>
<th>TONNES TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>SNCOV</td>
<td>8,183</td>
<td>10,318</td>
<td>18,501</td>
<td>82,722</td>
<td>119,812</td>
<td>202,534</td>
</tr>
<tr>
<td>SITRAM°</td>
<td>6,157</td>
<td>6,711</td>
<td>12,868</td>
<td>70,498</td>
<td>100,011</td>
<td>170,509</td>
</tr>
<tr>
<td>WOERMAN°</td>
<td>1,221</td>
<td>2,110</td>
<td>3,321</td>
<td>17,627</td>
<td>27,192</td>
<td>39,258</td>
</tr>
<tr>
<td>EAC</td>
<td>1,024</td>
<td>1,231</td>
<td>2,255</td>
<td>11,649</td>
<td>17,609</td>
<td>39,258</td>
</tr>
<tr>
<td>SIVOMAR°</td>
<td>1,031</td>
<td>823</td>
<td>1,854</td>
<td>10,952</td>
<td>8,978</td>
<td>19,930</td>
</tr>
<tr>
<td>LLOYD TRIESTNO</td>
<td>2,481</td>
<td>3,622</td>
<td>6,008</td>
<td>26,338</td>
<td>33,268</td>
<td>59,606</td>
</tr>
</tbody>
</table>

*SITRAM and SIVOMAR, the two national lines of Ivory Coast carried 35.5%.*

**SOURCE:** CONTAINERISATION INTERNATIONAL: MAY 1980

In allocation of cargo on a given route SISA follows a basic outline of priority for cargo carriage for each line involved. For example on the trade between Ivory Coast and France, cargo priority appears in the following order:

1. Ivorian flag
2. French flag/Conference Line
3. French flag/Non-Conference line
4. Cross trader/Conference Line
5. Cross trader/Non-Conference Line

Referring to this priority listing for cargo allocation SISA openly admits that outsiders and cross traders have the last priority of all (unless like EAL, the outside line can come to agreement for sharing its national cargo under governmental auspices).

All in all, the general view gained from the look at the Ivory Coast’s implementation of the UNCTAD code is that it is awe-inspiring in its comprehensive and absolute control of the maritime trade of the country. Many would say it is far too tightly controlled, and that if such an organisation were to become common to all developing countries, then pure commercially-based shipping competition cannot be pursued with much success in the future.

On the other hand, many would argue that the Ivory Coast has effectively rationalised the whole trade to ensure regular service to shippers and full ships to shipowners, while at the same time giving the Ivory Coast its share of the trade.

Whatever the final judgement upon the situation with regard to the Ivory Coast’s shipping policy, it can be said that the UNCTAD code has certainly benefited Ivorian shipping, and the application thereof (though
both unique and controversial) is workable and proved that in the right circumstances, it can be enforced.

1.3 GHANA

In October 1983, an UNCTAD Code Implementation Committee was set up in the country to draw up a scheme for the successful implementation of the code. The Committee composed of officials from Ghana Shippers' Council, Black Star Line (The National Shipping Line), Ministry of Transport and Communications, Ministry of Trade, representative of Private National Lines, Ghana National Procurement Agency, Bank of Ghana and State Insurance Corporation.

The main features of the Legislation drawn up by the Committee (legislation yet to be approved by Government) are:

(a) The setting up of a Freight Booking Centre, to see to the strict allocation of cargo on 40:40:20 basis

(b) Cocoa, which is the number one export of the country because of its sensitive nature is not to be in the pool but to be reserved solely for the National fleet (provided they call on the ports where the cocoa shipments are destined). However an official of the Freight Booking Centre is to be on the Cocoa Allocation Committee of the Cocoa Marketing Company
(c) All imports financed through the Central Bank are to be on FOB basis. This is to ensure the strict allocation of government sponsored cargo to national flag vessels. All exports to be on C & F basis.

(d) A waiver system is to be practised to enable cargo shipped on other vessels when national flag vessels are not available.

(e) The Shippers’ Council (Cargo Allocation Committee) is to open cargo booking offices in London, New York and Hamburg to see to the strict allocation of all cargo going to Ghana on the 40:40:20 formula.

(f) Every shipper must be registered with the Ghana Shippers’ Council through an authorised representative who will deal on his behalf, with all the problems relating to loading and discharging of maritime cargo belonging to him. The names and addresses of the said representative must be forwarded in writing to the Ghana Shippers’ Council in Accra.

(g) In the case of exportation, no goods will be embarked or loaded on a foreign ship in any port in Ghana unless the customs declaration in respect of the said goods is supported with a visa from the Ghana Shippers’ Council.

(h) In the case of importation, shippers must rigidly respect the 40:40:20 formula (40% to national ships, 40% to their commercial partners and 20% to the other third party lines) and specify in the contract for
transportation that carriage by sea shall be made in
the first place in ships owned by Ghanaian shipowners.
In that case a visa must be obtained from the Ghana
Shippers' Council prior to the loading of the cargo
on board foreign ships

(i) All shipping lines must forward the import/export
manifests to the Ghana Shippers' Council not later
than 3 days after the departure from or arrival of
a ship in a Ghanaian port

(j) Loading dispensation will be granted to any shipper
whose goods cannot be carried by the National Shipping
lines on account of insufficient space or unfavourable
technical conditions

(k) Exports and importers may, after having obtained the
visa from the Ghana Shippers' Council, load the
remainder of the whole Ghanaian cargo on board liner
Conference member ships, and outsider ships operating
the approved freight rates

(l) In the case of goods leaving or entering ports not
served by the National lines, dispensation will be
granted on loading. A dispensation which shall be
valid for 3 months will be issued in the following
cases:

- goods which are still not transferable by national
  ships
- goods leaving or entering ports not still covered
  or served by national ships
It is expected that, when implemented, this scheme will be strict and effective like the Ivorian system so as to make the sharing formula a reality.

2.1.4 NIGERIA

Perhaps the most disappointing aspect of the implementation of the code in West Africa has been the lack of enthusiasm on the part of Nigeria to implement the code. Nigeria is considered the backbone of Shipping in West Africa, her cargoes carried by Conferences to the sub-region. (See Table 2.2). Experts feel the code will benefit Nigeria more than any other country in the sub-region, and therefore find it difficult to understand why serious efforts have not been made to implement the code. Attempts were made by the civilian government in 1981 but soon after the military intervention in 1983 the exercise was abandoned.

The main objective of the "abandoned" legislation among others, was "to correct the existing imbalance in the shipping trade and implement the entire provision of the UNCTAD code on the 40:40:20 sharing formular." It was mentioned in the document that:

(a) The Nigerian national carriers shall have the carrying rights of at least 40% of the freight in revenue and volume of the total trade to and from Nigeria.
(b) The shipping line or group of shipping lines being recognised national lines of the cargo originating and countries which trade with Nigeria shall have the carrying rights of 40% of the freight in revenue and volume.

(c) All recognised third flag carriers or cross traders shall be entitled to the remaining 20% of the freight in volume and value.

(d) All importers and exporters whose businesses are registered in Nigeria shall reserve the carriage of their sea freight to Nigerian national carriers and recognised conferences for the purpose of allocation.

(e) Nigeria's share of 40% on each trade route will be allocated to recognised Nigerian national carriers according to a sharing scheme to be worked out by the Implementation Committee on the National Policy on Shipping.

(f) In addition to the UNCTAD provision, the Nigerian shipping policy provides that the carriage of 40% in volume and value of the bulk cargo generated by Nigeria's seaborne trade shall be carried by recognised Nigerian carriers.

(g) Another addition to the UNCTAD Code provides that Nigeria will enter into bilateral shipping agreements with other countries for carriage of goods on basis that they may be at variance with that of UNCTAD.
### TABLE 2.2

**U.K - WEST AFRICA JOINT SERVICE (UKWAL) CARRYINGS IN FREIGHT TONNES (000'S)**

<table>
<thead>
<tr>
<th>Cargo Type</th>
<th>1981</th>
<th>1982</th>
<th>1983 (1/2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nigeria Cargo</td>
<td>1252.5</td>
<td>892.3</td>
<td>247.4</td>
</tr>
<tr>
<td>Non Nigeria Cargo</td>
<td>215.9</td>
<td>156.2</td>
<td>59.0</td>
</tr>
<tr>
<td>Overall</td>
<td>1468.4</td>
<td>1048.5</td>
<td>306.4</td>
</tr>
<tr>
<td>Nigeria % of Overall</td>
<td>85%</td>
<td>85%</td>
<td>81%</td>
</tr>
</tbody>
</table>

**SOURCE:** UKWAL STATISTICS 1983

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In order to ensure the effective implementation of this policy, an Implementation Committee was to be set up by the Federal Government to advise the Minister of Transport in the following areas of shipping activities:

(a) The implementation of the provisions of the UNCTAD Code within the framework of International Shipping Industry, in such a manner as to ensure effective carriage of Nigeria's sea borne trade in volume and value by recognised Nigerian carriers

(b) All aspects of commercial shipping especially those relating to cargo sharing, ship procurement, freight rates etc.

(c) Monitoring allocation of cargo among the indigenous and foreign ships operating within Nigerian territorial waters
(d) Activities of shipping conferences
(e) Operation of clearing and forwarding agents, shipping agents, chandlers etc. in areas where they affect the implementation of this policy.

Looking at this Legislation, one can judge that had it been implemented, it would have gone a long way to enhance the balance of payment position of the country. Nigeria spends billions of Naira on shipments on foreign lines, and if they could carry a larger proportion of their own trade, there would be savings. In the U.K - West Africa Conference, Nigeria cargo accounts for 85% of the overall trade (table 2.2) yet the bulk of the cargo goes to U.K flag ships (table 3.2). The situation is even worse in the Continent - West Africa Conference where no pooling arrangements exist.

2.1.5

Despite the fact that the Ivory Coast, Ghana and other West African countries hope to make their freight booking centres work in their favour, it has come under severe criticism from European Lines, who feel that they are going to be cut off in the West African trade, which they have dominated for years. One does not, however understand the fears of the European Lines because in the first place, Article 47 of the code categorically states
"Each contracting party shall take such legislative or other measures as may be necessary to implement the present convention". Secondly, wherever there is the freight booking system there exist a waiver system which sort of allocate cargo to other lines when national flag vessels are not available. Normally, when the 40% target is achieved, the waiver system is supposed to work effectively.

It should be concluded that, the desire of most developing countries to set up freight Bureau is just an attempt to consolidate their 40% of their trade and not an attempt to control the whole trade.
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CHAPTER THREE

3.1 GENERAL OVERVIEW OF LINER SHIPPING IN WEST AFRICA

3.1.1 CONFERENCES SERVING THE WEST AFRICAN REGION

As many as nine liner conferences operate between West Africa and Europe, Asia and America, the major ones being the Continent - West Africa Conference with its Headquarters in Hamburg (Northern Section) and Paris (Southern Section), and having over twenty members; United Kingdom - West Africa Lines Service with its Headquarters in London with a membership of eight; and Mediterranean Europe - West Africa Conference with Headquarters in Marseilles and membership of sixteen. (See table 3.1 for a full list of conferences serving West Africa).

3.1.2 THE UNITED KINGDOM - WEST AFRICA JOINT SERVICE (UKWAL)

UKWAL with its Headquarters in Liverpool has a membership of eight shipping lines, three from U.K, one from Continent and four from West Africa. (Table 3.2). UKWAL is the only Conference operating to West Africa which practices the pooling of cargo and revenue. The big lines (by percentage cargo share) are the Elder Dempster Line (U.K) and Nigeria National Shipping Line (Nigeria). Percentage share of each line is determined by the
contribution of the Line's country's cargo in the pool, that is why we see that Nigeria which contributes about 85% of the whole pool cargo gets 31.5% for her National line, NNSL. Presently the trade is sort of shared on bilateral basis, with the UK Lines getting almost 50%. This situation is bound to change with the coming into force of the UNCTAD Code, and the steps being taken by West African lines will be discussed in the next chapter.

### TABLE 3.1

<table>
<thead>
<tr>
<th>Conference</th>
<th>Head Office</th>
<th>No. of Members from Developing countries</th>
<th>No. of Members from Developing countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Continent-West Africa Conference</td>
<td>Hamburg</td>
<td>8</td>
<td>19</td>
</tr>
<tr>
<td>Northern Section</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southern Section</td>
<td>Paris</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. U.K-West Africa Service</td>
<td>Liverpool</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>3. Med. Europe-West Africa Conference</td>
<td>Marseilles</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>4. America-West Africa Conference</td>
<td>New York</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>5. West Africa-South Africa Conference</td>
<td>Durban</td>
<td>-</td>
<td>8</td>
</tr>
<tr>
<td>6. West Africa-Far East Conference</td>
<td>Tokyo</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Angola/Cameroon Range</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. West Africa-Far East Conference</td>
<td>Tokyo</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Nigeria/Senegal Range</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
8. Associated Central-West Africa Lines
   Antwerp  2  6

9. US Great Lakes St. Lawrence River Ports-West Africa Agreement
   New York  2  3

SOURCE: CRONER'S WORLD DIRECTORY:- CONFERENCES (1982)

---

**TABLE 3.2**

MEMBERSHIP OF UKWAL AND PERCENTAGE SHARE OF MEMBERS IN CARGO POOL (AS AT 31/11/84)

<table>
<thead>
<tr>
<th>Line</th>
<th>Country</th>
<th>% Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Elder Dempster/Guinea Gulf</td>
<td>U.K</td>
<td>35.464</td>
</tr>
<tr>
<td>2. Palm Line</td>
<td>U.K</td>
<td>14.495</td>
</tr>
<tr>
<td>4. Black Star Line</td>
<td>Ghana</td>
<td>7.723</td>
</tr>
<tr>
<td>5. C.M.Z</td>
<td>Zaire</td>
<td>1.159</td>
</tr>
<tr>
<td>6. SITRAM</td>
<td>Ivory Coast</td>
<td>3.460</td>
</tr>
<tr>
<td>7. Hoegh</td>
<td>Norway</td>
<td>6.198</td>
</tr>
</tbody>
</table>

SOURCE: UKWAL SECRETARIAT, LIVERPOOL

---

3.1.3 CONTINENT WEST AFRICA CONFERENCE (COWAC)

COWAC is divided into two sections, the Northern and Southern Section. The Northern Section covers trade from the North Cape/Belgium range and is based in Hamburg and operates a Deutsch Mark tariff. The Southern Section
includes ports in the Dunkirk/Bayonne range, and is based in Paris and has a French Franc tariff. This division can be viewed as a reflection of Europe's historical links with West Africa and particularly the former colonial structure. French tariff is geared particularly to the so-called Francophone territories.

Cowac is looked at by most shipping lines as a "loose" conference where even tariff is not strictly adhered to, with a lot of "under cutting" of freight rates. This is probably due to the size of the conference. Meetings are not held on regular basis. For instance since 1980 the first time a Principals' Meeting was held was 1983 in Hamburg, unlike in the UKWAL where Principals' Meetings are held almost every quarter (March, June, September, December).

TABLE 3.3
MEMBERSHIP OF COWAC

<table>
<thead>
<tr>
<th>Line</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cameroon Shipping Lines</td>
<td>Cameroon</td>
</tr>
<tr>
<td>Companie Maritime des Chargeurs Reunis</td>
<td>France</td>
</tr>
<tr>
<td>Companie Beninoise de Navigation</td>
<td>Benin</td>
</tr>
<tr>
<td>Companie Maritime Belge</td>
<td>Belgium</td>
</tr>
<tr>
<td>Companie de Navigation Denis Freres</td>
<td>France</td>
</tr>
<tr>
<td>Woerman Line</td>
<td>West Germany</td>
</tr>
<tr>
<td>East Asiatic Company</td>
<td>Denmark</td>
</tr>
<tr>
<td>Estonian Shipping Company</td>
<td>U.S.S.R</td>
</tr>
</tbody>
</table>
### Line | Country
---|---
Elder Dempster Lines | U.K
Guinea Gulf Line | U.K
Hoegh Lines | Norway
Nedlloyd B.V | Holland
Palm Line | U.K
Polish Ocean Lines | Poland
SITRAM | Ivory Coast
SOTONAM | Togo
SNTM | Gabon
Delmas Vieljeux | France
Cosenam | Senegal
Nigeria National Shipping Line | Nigeria
Black Star Line | Ghana
Scandinavia West Africa Line | Sweden
V.E.B Deutfracht Seereederei | East Germany

**SOURCE: COWAC AGREEMENT**

### 3.2 NIGERIA AND LINER LINKS WITH WEST AFRICA

As mentioned elsewhere, Nigeria is a vital generator of business for liner shipping companies operating to West Africa, even for those French operators who traditionally have concentrated on former colonial territories, the so called Francophone countries. Nigeria traditionally accounts for some 60% of cargoes carried from the Hamburg/Antwerp range in the ships of Cowac (Northern
section). Even in the Southern section, Nigeria has represented about a third of total business.

Trading links with Nigeria since 1982/83 have been dominated by the upheavals in Nigeria. The Nigerian problems stem principally from oil price movements. Recession in the industrialised world coupled with changes on the supply side have dramatically reduced demand for OPEC crude at official price levels. The result has been plummeting revenues. At the start of 1981, Nigeria was producing something like 2 million barrels of oil a day. By the middle of the year, output has dropped to about 700,000 barrels a day. At the end of the year Nigeria was producing at around 800,000 barrels a day. Central Bank foreign reserves were estimated to be around $1 billion - enough to cover only a month's imports and arrears were continuing to mount towards international crisis levels.

These developments have had their effects in the liner shipping business. UKWAL for example reckons that trade was running at around 60% below the 1981 level ever since. Similar problems prevail in the Continental trades. As mentioned, Nigeria accounts for some 60% of Cowac Northern Section Cargoes and about 85% of UKWAL cargoes.

The impact of the Nigerian difficulties in shipping links was jerky. The initial crunch came in March 1982 when the country's central bank announced a clampdown by embargoing
letters of credit and suspending the "M form" system governing imports and the release of foreign exchange. Accompanying the documentary moves was a list of import restrictions designed to control trade in goods manufactured by Nigeria. Given the vagaries of the trade and the tendency of the Nigerian government to impose curbs without any warning, it is not surprising that liner links were, and are, in a state of turmoil. Each shipping company has its own list of horror stories to tell.

Shipping companies with Nigerian involvement have reacted to the market conditions in two basic ways. One course of action has been to try to maintain schedules, carrying on basically as though nothing had happened. The alternative response has been to tailor the sailing schedule and service frequency to the level of demand. This has caused some bunching, particularly at deadline times, followed by longer periods of greatly reduced activity. Operators adopting the latter course argue that they are meeting the needs of the market in that development has to be flexible, given the trading conditions.

Efforts have also been made to bring the tonnage employed into line with the reduced trade flows. Companies owning ships have been laying vessels up or seeking to switch them to other trades via the charter market. Charter specialists have been reducing their exposure by tonnage for shorter periods.

British trade links with West Africa, of course, are
dominated by Nigeria. During this period, UKWAL was affected by the economic disruptions in the country to a considerable extent. At the start of the period, 10 or 11 vessels were leaving U.K each month. This has dropped to 5 or 6, and is still falling. UKWAL runs its ships on three basic rotations, two of which serve Lagos/ Apapa. The reduction in the number of sailings has been accompanied by an increase in the range of discharge ports visited. Thus since 1982, UKWAL has ceased to schedule ships directly through to Lagos/Apapa and instead, had grafted on calls before the Nigerian capital. An increase in the number of U.K ports served on individual voyages is being noted.

3.3 OUTSIDER ACTIVITIES IN WEST AFRICA

In spite of the problems of the Nigerian market, a number of "outsider" lines (Lines not belonging to conferences) have been operating and their number increasing. These include Afea Star Line, which is offering a monthly container/conventional service from the North Continent and U.K. Afea is a substantial Far Eastern Shipowner in its own right.

A second contender is Hayling Sea Line, again with far Eastern connections. The Hamburg/Antwerp range plus Felixstowe (UK) are ports served using chartered vessels in the 15000 DWT class.
OT Africa Line (OTAL) operates a classic Ro-Ro service from North continent, France, and the U.K. Catering for the full cargo spectrum, the non-conference line is a joint venture involving the Antrak Group, Cross Marine Services, and Stena Line. North European calls include Felixstowe, Rotterdam, Zeebrugge, Hamburg and Le Havre. In West Africa, OTAL vessels proceed directly to Lagos/Apapa, followed by Tema, Lome, Cotonou, Douala and Warri.

Another Ro-Ro operator (non-conference) in the market is Matina Lines. Formerly run by the Labaid group out of Rotterdam Matina specialises in rolling cargoes - in cars, vans, trucks and trailers. Harwich, Rotterdam and Antwerp are served by this non-conference operator. Ports served in West Africa are Lagos/Apapa, Tema, Douala and Cotonou with other destinations subject to inducement.

Siosa-Grimaldi also offers a non-conference service out of the U.K and Antwerp to Lagos/Apapa. Vessels usually proceed from Southampton to Lagos/Apapa via Tema. Transit times for the last named port are between 13-18 days.

Medafrica Line offers a container only link supported by a multi-purpose operation. Calls are made at Hamburg, Rotterdam, Antwerp, Dunkirk, Liverpool, Felixstowe and Ipswich. Lagos/Apapa is the principal destination.

The established non-conference carrier Europe Africa Line (EAL) based in Bremen calls at Lagos/Apapa as a port of
a routeing which includes Dakar, Abidjan, Lome, Warri and Douala. Hamburg, Bremen, Rotterdam, Antwerp and Rouen are the normal loading ports.

Another major non-conference operator is Golden Liberty Line, whose operation is based on the cargo generated by the Nigerian/Indian trading group which controls it. Three ships in the 7500 DWT/226 TEU class are employed one owned and two chartered. GLL serves Antwerp, Harwich and Hamburg. In Nigeria the service is concentrated on Lagos/Apapa although through-transport is available to Kano, and Kaduna for container traffic.

3.4 CO-OPERATION AMONG LINES OPERATING TO WEST AFRICA

With the exception of Ghana’s Black Star Line and Ivory Coast’s SITRAM, all West Africa Shipping lines have some sort of relationship with one European Line or the other.

Camship (Cameroon) is $\frac{1}{3}$ owned by a West German Company so there is the German influence as far as management is concerned. Comapnie Maritime Zairoise (CMZ) of Zaire is managed by Companie Maritime Belgoise (CMB) of Belgium and are even represented at Conference Meetings by CMB officials. Senegal’s COSENAM (yet to own a ship) is controlled by Delmas Vieljeux of France. Cobenam of Benin is controlled by Societé Navale de l’Ouest (SNO) of France. SOTONAM of Togo are controlled by Woerman Line of West Germany. Infact all SOTONAM vessels are manned
by West Germans (except ratings). SONOTRAM of Gabon is also in the hands of Delmas Vieljeux while Nigeria Green Lines is aligned to Woerman Line.

Nigeria National Shipping Lines (NNSL) operates a "conference within a conference" with Palm Line, Elder Dempster and Hoegh Lines. This group is known as the NEPH group. They operate both in the COWAC and in the UKWAL and on most occasions take common stand at Conference meetings.

On the other side of the trade, CMB (Belgium), Nedlloyd (Holland), Delmas Vieljeux (France), Denin Freres (France) and Woerman Line (West Germany) operate a joint service within COWAC and other trades.

3.5 CONSULTATIONS BETWEEN CONFERENCES AND SHIPPERS

The growth of awareness of the need for regular consultations between shipper and shipowner at representative level is of comparatively recent origin and, with isolated exceptions, no sustained attempt seems to have been made by either party to join discussions at an adequate level of representation until 1983 when a meeting of Ministers of Western European Governments, predominantly the traditional maritime countries, projected the topic into the forum of international debate, albeit initially centred on Europe and focussed upon the structure and practices of European based shipping conferences and the collective
needs of the shippers they serve. Prior to this in the West Africa trade and elsewhere, there had, of course, existed for many years innumerable trade arrangements satisfactory to both parties so that apart from the constant, often almost day to day, contact between an individual shipowner and his regular customers which was and continues to be essential if business is to be conducted to the mutual advantage, there existed, and obviously must exist, methods of communication and consultation between shipowners represented jointly by their conferences and trade associations with sectional interests in a particular area of the trade served.

What was lacking was the larger forum, or more specifically the will and organisation to bring it into existence, for the ventilation of problems, the examination of grievances and the framing of policy agreements on a national scale, ultimately on an international scale. Whilst shipowners are sometimes blamed for this deficiency, which a decade later and viewed in the present climate of opinion does seem extraordinary, it is only fair to observe that any dialogue requires two parties and it is surely the responsibility of each party to look to their own arrangements for representation and to provide adequate mandate for those nominated or selected for the task. Shipowners had long since provided themselves with the means of representation and joint decision in the form of their liner conferences which had proven effective and beneficial for the regulation of their own affairs but, whilst recognising the need for consultation
with their customers at a comparable representational level of authority and influence, conferences could no more consult in the then prevailing vacuum than could they initiate a counter balancing movement on the part of shippers and trade associations collectively.

3.5.1 THE MINISTERIAL CONFERENCE OF CENTRAL AND WEST AFRICAN STATES

This body was set up in 1975 by 25 member countries from West and Central Africa with the following objectives:

(1) To bring together all the 25 nations constituting the West and Central Africa region and to formulate common maritime policies to safeguard their interests.

(2) Through resolutions, to press for
   (a) The ratification and the taking of measures for safeguarding the Code of Conduct for Liner conferences
   (b) The formation of National Shippers' Councils and the joint negotiation of freight rates through the Freight Negotiating Committee
   (c) Integration of the Ports Management Association of West/Central Africa in the structure of the Ministerial Conference
   (d) Co-operation agreements between national shipping lines/companies of member states
(e) Harmonisation of maritime laws and bilateral and multilateral agreements of member states.

(f) Improvement of action undertaken in favour of landlocked countries.

There are three main organs of the Ministerial Conference, namely:

- The Regional Negotiating Committee
- Ports Management Association of West/Central Africa
- Association of National Shipping Lines

Of the three bodies, it is only the Regional Negotiating Committee which has been functioning effectively, although of late (since 1983) attempts are being made to make the Association of National Shipping Lines a reality, with series of meetings taking place, mainly on the initiative of Mr. Ahibe, the General Manager of SITRAM, who is also the Chairman of the Continent-West Africa Conference (COWAC), Northern section. One of the objectives of the Association is to take a common stand at Conference Meetings and also to forster cordial relations between the National Lines of the region.

3.5.2 THE REGIONAL NEGOTIATING COMMITTEE

This body is commonly known as the African Negotiating Committee (ANC) and perhaps it can be said that the continued existence of the Ministerial Conference has been
because of the hard work of this committee, which has since its inception been negotiating freight rates with the various conferences operating to West and Central Africa on behalf of Governments of the 25 member countries, and also shippers in these countries. Apart from general freight rates, the Committee negotiates the following on behalf of shippers:

- Port congestion surcharges
- Port additionals (imposed on ports by conferences for alleged unproductivity)
- Availability of Conference tariffs and regulations
- Introduction of and alterations in shippers' contracts and agreements
- Bill of Lading conditions in respect of containers
- Route diversions
- Minimum advance notice of increases in freight rates
- Methods of charge for heavy and long lifts
- Freight rate adjusting methods following currency devaluations or revaluations
- Special freight rates for the various Marketing Boards in the region, for instance the Ghana Cocoa Marketing Board, Nigeria Palm Board and Sierra Leone Produce Board.

Praises can be showered on the Negotiating Committee in the sense that for the past three years, freight rate increases in the sub region has been minimal compared to the era before they started working. Currently, they
have managed to freeze any freight increase on the America-West Africa trade for some time.
<table>
<thead>
<tr>
<th>REFERENCES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3. CRONERS'</td>
<td>World Directory - Conference 1982</td>
</tr>
<tr>
<td>4. COWAC</td>
<td>Conference Agreement, Hamburg 1984</td>
</tr>
<tr>
<td>5. GHANA SHIPPERS' COUNCIL</td>
<td>Draft Amendment Law 1983</td>
</tr>
<tr>
<td>7. LAMBERTH BROS. LTD</td>
<td>&quot;World Trade Review and Outlook&quot; London March 1983</td>
</tr>
</tbody>
</table>
CHAPTER FOUR

THE POSITION OF GHANA'S LINER SHIPPING

Although this paper is devoted to the whole West African sub-region's liner shipping, I am devoting this chapter to Ghana's liner shipping, in order to isolate Ghana's position, as far as the code of conduct is concerned and attempt to find out whether the code will be beneficial to Ghana's liner shipping, especially to her National Line, Black Star Line.

4.1

Ghana's Liner shipping scene is dominated by the State Shipping Corporation, Black Star Line to some extent, although foreign lines play an important role in the foreign trade of the State, and a number of smaller Ghanaian liner companies have fairly recently also entered the scene, mainly on the Continent and United Kingdom to West Africa route. The smaller Ghanaian liner companies are Remco Lines, Kadai Lines and Unity Star Line (yet to acquire a vessel of its own).

The bulk of Ghana's foreign trade is moved through the Tema port, a modest and shrinking share passing through
the Port of Takoradi.

The bulk of the trade between Ghana and the United Kingdom, North Continent, the Mediterranean and USA is organised in conferences with Ghana's largest National Line, Black Star Line (BSL) being a member of all these conferences. The other three national lines operate as outsiders.

4.1.1 GHANA'S TRADE WITH NORTH CONTINENT

This trade is organised through the Continent - West Africa Conference (COWAC), with BSL as a member. Black Star Line's percentage share in this trade (Antwerp-Hamburg range to West Africa) averages about 2% while in the trade to Ghana, the Line carries about 38% (see table 4.1). The Line's share in the total trade is however small, due to the fact that it operates mainly in the Antwerp-Hamburg range, not calling at Scandinavian ports and also Baltic ports. A look at table 4.2 will show that apart from the Antwerp-Hamburg range, cargoes move from Scandinavia (carried mainly by E.A.C Line) and the Baltic (carried by the Eastern bloc lines) to Ghana. A substantial amount of cargoes moving between French ports and Ghana are carried on Black Star Line vessels.
### TABLE 4.1

**COWAC SOUTHBOUND (ANTWERP HAMBURG RANGE - WEST AFRICA) (IN FREIGHT TONNES)**

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>TOTAL COWAC</td>
<td>TO GHANA</td>
</tr>
<tr>
<td>1979</td>
<td>2,026,050</td>
<td>112,010 (5.5%)</td>
</tr>
<tr>
<td></td>
<td>BSL 93,860</td>
<td>65,215 (58.2)</td>
</tr>
<tr>
<td>1980</td>
<td>2,407,000</td>
<td>88,565 (3.7)</td>
</tr>
<tr>
<td></td>
<td>BSL 34,065 (1.4%)</td>
<td>24,370 (27.5)</td>
</tr>
<tr>
<td>1981</td>
<td>2,742,630</td>
<td>113,070 (4.1)</td>
</tr>
<tr>
<td></td>
<td>BSL 51,985 (1.9%)</td>
<td>35,160 (31.1)</td>
</tr>
<tr>
<td>1982</td>
<td>2,325,340</td>
<td>47,750 (2.1)</td>
</tr>
<tr>
<td></td>
<td>BSL 23,070 (1.0%)</td>
<td>18,475 (30.7)</td>
</tr>
<tr>
<td>1983(1/2)</td>
<td>847,660</td>
<td>23,965 (2.8)</td>
</tr>
<tr>
<td></td>
<td>BSL 8,470 (1.0%)</td>
<td>8,470 (35.3)</td>
</tr>
</tbody>
</table>

**SOURCE:** COWAC STATISTICS 1979-83 (CONF. SECRETARIAT)

In the export shipments, on paper, about 80% of Ghana's cocoa are to go on BSL vessels but in practice this is not the case. The sole exporter of cocoa, Ghana Cocoa Marketing Company is by legislation, to use Black Star Line vessels for ports in Europe covered by the Line but due to reasons which cannot be discussed in this paper, less than 40% of the cocoa goes on Black Star Line vessels. Table 4.3 shows the trend from 1981-1983.
<table>
<thead>
<tr>
<th>Year</th>
<th>Country</th>
<th>COCOA</th>
<th>PRODUCTS</th>
<th>LOGS</th>
<th>TIMBER</th>
<th>OTHERS</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>COWAC</td>
<td>86,775</td>
<td>7,165</td>
<td>27,655</td>
<td>8,810</td>
<td>14,530</td>
<td>144,935</td>
</tr>
<tr>
<td></td>
<td>BSL</td>
<td>25,155(29%)</td>
<td>3,620(50%)</td>
<td>685(2%)</td>
<td>-</td>
<td>-</td>
<td>29,460(20%)</td>
</tr>
<tr>
<td>1982</td>
<td>COWAC</td>
<td>107,730</td>
<td>20,500</td>
<td>21,195</td>
<td>8,965</td>
<td>7,025</td>
<td>165,415</td>
</tr>
<tr>
<td></td>
<td>BSL</td>
<td>42,100(39%)</td>
<td>1,020(5%)</td>
<td>-</td>
<td>-</td>
<td>50</td>
<td>43,170(26%)</td>
</tr>
<tr>
<td>1983(1/2)</td>
<td>COWAC</td>
<td>32,320</td>
<td>670</td>
<td>5,570</td>
<td>2,165</td>
<td>1,200</td>
<td>41,925</td>
</tr>
<tr>
<td></td>
<td>BSL</td>
<td>8,000(25%)</td>
<td>190(28%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>8,190(20%)</td>
</tr>
</tbody>
</table>

**Source:** Annual Statistics, Black Star Line, Hamburg
<table>
<thead>
<tr>
<th>Year</th>
<th>SCANDINAVIA(^{(1)})</th>
<th>BALTIC(^{(2)})</th>
<th>ANTWERP/HAMBURG</th>
<th>TOTAL</th>
<th>FRANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1979</td>
<td>5425WT/6975FT</td>
<td>1555WT/2945FT</td>
<td>58,255WT/112010FT</td>
<td>62250WT/121925FT</td>
<td>6630WT/7925FT</td>
</tr>
<tr>
<td>1980</td>
<td>3910WT/6365FT</td>
<td>2600WT/3770FT</td>
<td>48,090WT/88605FT</td>
<td>54600WT/98795FT</td>
<td>14970WT/17470FT</td>
</tr>
<tr>
<td>1981</td>
<td>3315WT/4145FT</td>
<td>5150WT/15090</td>
<td>48,180WT/113070FT</td>
<td>57145WT/132305FT</td>
<td>4250WT/5735FT</td>
</tr>
<tr>
<td>1982</td>
<td>1735WT/2805FT</td>
<td>3415WT/7505FT</td>
<td>22,715WT/47750FT</td>
<td>27865WT/58860FT</td>
<td>682WT/1304FT</td>
</tr>
<tr>
<td>1983(^{(1/2)})</td>
<td>1086WT/1390FT</td>
<td>4660WT/11170FT</td>
<td>11565WT/23965FT</td>
<td>17300WT/3652FT</td>
<td>43WT/36525FT</td>
</tr>
</tbody>
</table>

1. Carried mainly by EAC Line
2. Carried by Eastern Bloc Lines

**Source:** ANNUAL STATISTICS - BLACK STAR LINE REPRESENTATIVES OFFICE, HAMBURG
4.1.2 GHANA-U.K TRADE

This trade is conducted through the United Kingdom-West Africa Lines Conference (UKWAL) of which Black Star Line is a founding member. In this conference, there exist a Pooling Arrangement. Each member line has a percentage share in the pool, which is revised from time to time. The share of individual lines is determined by the contribution of the member line's country's trade in the pool. As already mentioned in previous chapters, this trade is basically a U.K-Nigeria affair, as about 85% of the cargoes are destined for Nigerian ports. Ghana's contribution, despite its volume (7.5% in 1984) compared to that of Nigeria is the second in the pool. (See table 4.4). Black Star Line's percentage share in the pool, in the years preceding the coming into force of the UNCTAD code was 7.7%. It used to be 9.9% in 1976. In May 1985, at a Principals' Meeting held in Copenhagen, Denmark, shares of Member Lines were reviewed to be in line with the UNCTAD's sharing formula of 40:40:20. Black Star Line's share was slashed to 4.29%, a result of the adherence to the code's cargo sharing principles.

4.1.3 NON-CONFERENCE ACTIVITIES

Like in the Nigerian Liner trade, Ghana's liner trade is
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Senegal</td>
<td>3,525</td>
<td>4,242</td>
<td>3,217</td>
<td>10,984</td>
<td>2,939</td>
<td>4,240</td>
<td>2,747</td>
<td>9,926</td>
</tr>
<tr>
<td>Gambia</td>
<td>11,907</td>
<td>11,902</td>
<td>11,169</td>
<td>34,978</td>
<td>30</td>
<td>149</td>
<td>12</td>
<td>191</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>20,990</td>
<td>14,451</td>
<td>20,052</td>
<td>55,493</td>
<td>3,958</td>
<td>4,563</td>
<td>6,954</td>
<td>15,475</td>
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<tr>
<td>Guinea</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liberia</td>
<td>11,165</td>
<td>8,735</td>
<td>7,338</td>
<td>27,238</td>
<td>829</td>
<td>394</td>
<td>474</td>
<td>1,697</td>
</tr>
<tr>
<td>Ivory Coast</td>
<td>14,310</td>
<td>10,650</td>
<td>14,786</td>
<td>39,746</td>
<td>95,124</td>
<td>88,663</td>
<td>46,666</td>
<td>230,453</td>
</tr>
<tr>
<td>Togo</td>
<td>8,148</td>
<td>5,748</td>
<td>7,407</td>
<td>21,303</td>
<td>243</td>
<td>22</td>
<td></td>
<td>265</td>
</tr>
<tr>
<td>Benin</td>
<td>10,010</td>
<td>5,995</td>
<td>2,236</td>
<td>18,241</td>
<td>908</td>
<td></td>
<td>25</td>
<td>933</td>
</tr>
<tr>
<td>Nigeria</td>
<td>889,536</td>
<td>538,976</td>
<td>448,363</td>
<td>1,876,875</td>
<td>71,513</td>
<td>83,556</td>
<td>61,616</td>
<td>216,685</td>
</tr>
<tr>
<td>Cameroon</td>
<td>23,775</td>
<td>14,215</td>
<td>15,879</td>
<td>53,869</td>
<td>11,948</td>
<td>11,620</td>
<td>4,490</td>
<td>28,058</td>
</tr>
<tr>
<td>Equitorial Guinea</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gabon</td>
<td>144</td>
<td>2,686</td>
<td>2,352</td>
<td>5,182</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republic of Congo</td>
<td>1,966</td>
<td>1,709</td>
<td>1,069</td>
<td>4,744</td>
<td>6,740</td>
<td>4,747</td>
<td>3,566</td>
<td>15,073</td>
</tr>
<tr>
<td>Zaire</td>
<td>8,289</td>
<td>3,596</td>
<td></td>
<td>11,885</td>
<td>3,778</td>
<td>3,387</td>
<td></td>
<td>7,165</td>
</tr>
<tr>
<td>Angola</td>
<td></td>
<td></td>
<td>766</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

TOTAL: 1,048,072 663,723 578,966 2,290,761 265,565 245,677 170,270 681,612

SOURCE: UKWAL SECRETARIAT, LIVERPOOL
to some extent, characterised by non-conference liner activities. This is mainly due to the fact that Black Star Line limits its liner activities to U.K Ports (Liverpool, London, Avonmouth, Dublin) and ports within the Antwerp-Hamburg range in the North Continent, plus some French ports. In this situation, all cargoes originating from other ports, such as the Far East, America and Mediterranean move on non-conference vessels. (BSL ceased operating to the USA and Mediterranean from 1980). Non-conference operators active in Ghana include:

(1) O.T. Africa Line  
(2) Gulf Maritime  
(3) Remco Line  
(4) Afea Line  
(5) Gold Star Line  
(6) Zim Line

The last three lines, Afea, Gold Star and Zim lines operate mainly from the Far East while the others load from other U.K and continental ports not served by Black Star Line.

4.1.4 THE CODE'S EFFECTS ON BSL LINER OPERATIONS

One of the main objectives of the code is to help lines from developing countries participate in the carriage of their own external trade. However, the benefits to be
realised out of this new order varies from country to country. For instance, let us take a look at some category of lines and how their benefits vary. Let us group shipping lines in these three categories:

(a) Line from developing countries with a big volume of trade with insufficient tonnage. (Nigeria is an example of such a country, with her major National line, Nigeria National Shipping Line falling into this group)

(b) Lines from countries with vessels just sufficient to carry the country's external trade. (The Ivory Coast and her National line, SITRAM, fall in this group)

(c) Lines from countries with surplus tonnage; i.e. their volume of trade is so low that her own vessels have to find business elsewhere.

Black Star Line obviously falls within the third group, as from available statistics, it is evident that Ghana's foreign trade has been on a very low side for some years now. For instance, Ghana's contribution (imports) to the UKWAL cargo pool has decreased substantially from 173,198 tonnes in 1974 to 44,332 tonnes in 1984, a decrease of 74% (table 4.5).

In 1974, BSL had 16 (sixteen) general breakbulk vessels of about 10,000 DWT each. Around the same period 4 (four) 16,000 DWT multi-purpose vessels with a 500 TEU carrying
# TABLE 4.5

**GHANA’S CONTRIBUTION TO UKWAL POOL**

1974-1984 (IN TONNES)

<table>
<thead>
<tr>
<th>Year</th>
<th>Ghana</th>
<th>Total</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974</td>
<td>173,198</td>
<td>1,417,996</td>
<td>12.2</td>
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<td>1975</td>
<td>144,198</td>
<td>1,680,464</td>
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<td>1976</td>
<td>181,131</td>
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<td>184,907</td>
<td>2,153,286</td>
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<td>153,426</td>
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<td>1979</td>
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<td>1980</td>
<td>102,258</td>
<td>1,510,249</td>
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<td>78,658</td>
<td>1,514,476</td>
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<td>1982</td>
<td>44,307</td>
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<td>1983</td>
<td>40,818</td>
<td>663,723</td>
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<td>1984</td>
<td>44,332</td>
<td>578,966</td>
<td>7.6</td>
</tr>
</tbody>
</table>

*Decrease in total attributed to drastic austerity measures taken by government of Nigeria from 1983 to control imports, in the wake of decreasing oil revenues.*

**Source**: UKWAL STATISTICS 1974-1984 (CONF. SECRETARIAT)

Capacity were ordered from the Hyondai Shipyard, South Korea. In 1980, the line had 20 (twenty) vessels, but today the situation is very different. Only the four multi-purpose vessels and three of the general breakbulk vessels are
trading today, with the multi-purpose vessels employed mainly in the open-market leaving the three old ones to do the liner service. As and when the line gets a slot in the UKWAL pool, one of the multi-purpose vessels is withdrawn from charter to do the liner run. The rest of the vessels were sold between 1981 and 1984. This unfortunate situation has been the direct result of Ghana’s decreasing foreign trade.

Black Star Line was formed in 1957, with a foresight to carry the trade of all West African countries. This was exactly what happened from 1957 to the late 1970’s when other countries in the region started forming their own shipping lines. As the first indigenous line in Africa, South of the Sahara desert, BSL dominated the liner scene in West Africa with regular sailings between West Africa and U.K Continental Europe, USA/Canada and the Mediterranean. Her vessels had full employment, each performing on the average about 5 (five) sailings in a year between West Africa and the ports mentioned. At times, additional tonnage were chartered to supplement the lines fleet.

The coming into force of the Liner Code of Conduct has compounded the problems of Black Star Line, instead of being beneficial to the Line. For instance in the UKWAL Conference, as mentioned earlier, the share of the line before the code came into force was 7.7% but from May 1985 her share has been slashed to 4.2%, after basing the sharing on the UNCTAD formula. So long as the Conference
uses a member line's country's contribution in the trade to determine shares, the only way BSL's share will increase will be Ghana's contribution in the pool increasing, that is, improvement in her foreign trade. Currently 40% of the country's contribution to the pool comes to only 3% (1984 figures).

In Couac, the pooling system does not exist, but the situation is not different from that in UKWAL as far as BSL's participation is concerned. Almost all West Africa countries whose trade are covered by the conference now have their national fleet, and as such efforts are being made by their "appropriate authorities" to commandeer 40% of their trade to their ships. Invariably, in the Francophone West African countries notably, Ivory Coast, Cameroon and Gabon, it is becoming increasingly impossible for third flag lines to participate in their trade, as they have the "a priori" control of cargo which by legislation, sees to it that all government cargoes go to their National fleet. Apparently, all these countries have bilateral trade agreements with France, which makes it possible for their trade to be carried on French vessels and on their vessels. As a result, for some time now, BSL vessels from the continental ports have to be contended with the little cargo going to Ghana, and at times few parcels for Nigeria and Sierra Leone. The vessels are currently operating from the Continent at about 50% capacity.

Whilst Ghana's imports are going to be the same as they
are now for at least the next few years, a way of keeping the national fleet in business in the wake of problems being faced as a consequence of the introduction of the code will be to ensure through legislation, that all government cargoes which do not go on Conference lines and are as such outside the scope of the code are carried on national vessels.

A substantial amount of bulk wheat, maize, rice, machinery and other import licence covered cargoes are imported into the country by the Ghana National Procurement Agency (GNPA). Because the importation are on CIF basis, the suppliers nominate their own vessels. As stated earlier on, the code does not cover cargoes not carried by conference. These GNPA imports are carried outside the conferences and as such nothing stops the Government, if it so desires, to ensure that all such imports are on FOB basis. This will enable her national line have something to carry outside her conference operations.

Now, should one ask "why should Ghana be the first country in the world to ratify the code when it appears that her liner shipping, at its present state, will not benefit from the new order", what should be the answer be?

When examining the feasibility and desirability of Ghana's adherence to the code, a step which may appear not to be beneficial to the country's liner shipping, at least at her present state, several aspects must be scrutinized. Probably
the best answer to this question is that Ghana is not in a position of being able to exercise superior economic power over any of its trading partners, as the EEC or COMECON countries can do with theirs. In this light, the only thing to do is to follow the bandwagon and adhere to the provisions of the code and just hope that her economy picks up. When this happens, her national line will reap the benefits of the code.

Apart from the recommendations given in the previous page, other steps could be taken to boost Ghana's contribution in the UKWAL pool and also get more cargo for national vessels from the continent.

In the U.K trade, a lot of "Outsiders" carry Ghana's trade as earlier stated. The Ghana Shippers' Council, the "Appropriate Authority" for the code in Ghana can ensure that all cargoes going to Ghana from U.K are channelled into the UKWAL pool. Figures are not available but it is known that a substantial amount of cargoes are shipped on outsider vessels. If all these cargoes could be diverted into the UKWAL pool, Ghana's contribution in the pool will increase, thereby increasing Black Star Line's share in the pool.

In the Continent-Ghana trade, Cowac does not have any pooling arrangement and what members carry depend, to a large extent on the Lines own marketing strength. Black Star Line can
increase its marketing activities in the continent in order to obtain more cargoes for her vessels. Secondly, Ghana Shippers' Council can open an office in both London and Hamburg to monitor all cargoes going to Ghana. Most West African countries Shippers' Councils are doing this, and is helping their national lines a lot.
<table>
<thead>
<tr>
<th>REFERENCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. SVENDSEN, S.</td>
</tr>
<tr>
<td>5. ELI MOSES</td>
</tr>
<tr>
<td>6. DREWRY H.P.</td>
</tr>
<tr>
<td>8. UKWAL</td>
</tr>
</tbody>
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CHAPTER FIVE

WHAT IS HAPPENING IN COWAC AND UKWAL AS A RESULT OF THE COMING INTO FORCE OF THE CODE

As mentioned in Chapter 3, shipping companies have reacted to the Nigerian economic crisis and its effects on Liner Shipping in West Africa in two basic ways, trying to maintain schedules by carrying on as if nothing had happened; and tailoring schedules and service frequency to the level of demand. When it comes to the effects of the code’s implementation on COWAC and UKWAL operations, the situation is different.

5.1 MEMBERSHIP

There has been dramatic changes in membership of both UKWAL and COWAC since the coming into force of the code. In COWAC, during a Principals' meeting held in November 1983 in Hamburg (which I happened to be present), as many as three new members were admitted into the conference. Out of the three, two were from Nigeria, namely Great Britain Nigeria Line (GBN) and Nigeria Green Lines. Both Lines' membership were sponsored by the Nigerian Government with support from Nigeria National Shipping Lines (NNSL). (Since the inception of the code, the Government of Nigeria has been encouraging indigenous private lines to join the various Conferences operating to the country. This is seen as an effort to carry a substantial part of their own trade
which hitherto was carried by foreign lines). However, membership application from a Line in West Germany was blocked by member lines from West Germany who insisted that the current members from West Germany are capable of carrying the German share of the trade and as such the membership of the new line should not be entertained. It will interest the reader to know that in accordance with the Code's Article 1 on Membership, this new line satisfied all the membership entrance conditions. They even attached to their application a letter from their "Appropriate Authority", confirming their registration as a National Line, which automatically qualifies them to be members of the conference. This clearly contradicts EEC's Brussel Package which considers any Line in the community as a National Line.

It was clear to African Members present at the meeting that while the Conference (dominated by Lines from Europe) were eager to admit new members from West Africa, they were not interested in admitting new members from Europe. Thus in effect, while they were particularly careful not to reduce the share of the trade of existing European member lines, they did not care about that of their West African partners.

In UKWAL, as far as membership is concerned, there has been a considerable decrease in membership, since the code came into force. Prior to the inception of the code, the Conference had eight members. Today membership has reduced
to five. In 1984, some few months after the code came into force, Hoegh Lines, the only third flag line in the Conference submitted their notice to withdraw from the Conference. Although no reason was given, it was clear to members that Hoegh Lines feared that their existing share of the trade (6.1%) will be reduced drastically, judging from the pronouncements from African Lines who for years have criticised the 6.1% share allocated to Hoegh Lines, a third flag country (African lines like CMZ and SITRAM whose countries contributed to the pool had 1.1% and 3.4% respectively).

In 1985, prior to a Principals' Meeting held in Copenhagen to discuss among other things, Members' shares in the pool, CMZ and SITRAM decided to withdraw from the Conference as full members. A look at Table 4.4 shows that their countries contribution to the pool averages 1.2% and 2.1% respectively. Ivory Coast for instance is a country adhering strictly to the Code's sharing formula, and having taken cognisance of the fact that 40% of their country's contribution to the pool (2.1%) will be only 0.8% obviously do not see any justification in their continued membership of the Conference. Ivory Coast's main trading partner is France whose trade is carried by COWAC and therefore with the coming into force of the code, their interest lies more in COWAC than in UKWAL. The same situation applies to CMZ of Zaire. 40% of Zaire's contribution to the pool comes to 0.5%. Both lines however
declared their intentions of remaining in the Conference only as "dormant" members.

5.2 PARTICIPATION IN TRADE

5.2.1

As stated earlier, COWAC is considered as a "loose" Conference with no pooling arrangement and specific share of trade for member lines. The Secretariat does not monitor closely activities of member lines. During the November 1983 Principals' Meeting, a draft of a new Conference Agreement was submitted for Members' consideration and approval. All provisions and Articles in this new proposed Agreement were discussed and approved, with the exception of Article 17, dealing with shares in the trade. There was a deadlock when this topic was put up for discussion. Apparently, European lines had one stand while the African lines also had their own stand. On the eve of the meeting, the African lines had their own meeting and came up with the following, which was to be their common stand with regards to Article 17 of the Agreement. Among other things, the African lines wanted:

(1) To be considered as one group for the purpose of shares. They wanted the trade to be divided on the 40:40:20 basis and their 40% left to them to be shared among the Lines from West Africa themselves. The Annex to Resolution 1 of the UNCTAD
Code allows this. Here, it is stated in Part B, Participation in Trade, paragraph 4 that:

"National lines within a Region at one end are to have the flexibility of adjustments among themselves in regard to their shares".

(2) To participate in the 20% allocated to cross-traders. It is the wish of African Lines to be considered as cross traders in each other African countries trade with Europe. This means that after taking their 40% share in their own country's trade with Europe, they will participate as cross traders in their neighbours trade.

No Agreement was reached at this meeting, so the proposed new Agreement could not be signed. Article 17 was still to be resolved. A committee was set up comprising six members:

- 2 Representatives from European National Lines
- 2 Representatives from African Lines
- 2 Representatives from Cross traders

to deliberate on the African proposals and other related issues and submit their recommendation to the Conference Secretariat. To date, the proposed Agreement has not been signed, as Article 17 still remain unresolved.
5.2.2

As mentioned earlier, UKWAL members held a Principals' Meeting in Copenhagen in May 1985, and top on the Agenda was the re-allocation of members' percentage shares in the pool. This was necessary because prior to this, shares were based on certain criteria, but with the coming into force of the code, there was the need to base shares on the UNCTAD formula. Also there had been the withdrawal of Hoegh Line, a third flag line, from the Conference, and SITRAM and CMZ have decided to operate only as "dormant" members.

Prior to this meeting there had been several meetings to determine the basis for the new shares. Apparently this issue remained unresolved meeting after meeting as Members could not come to any compromise. It was generally agreed among members that sharing will be based on the UNCTAD formula but what was never resolved, until the Copenhagen meeting was whether to base shares on Member lines' previous years south bound (imports of African countries) or northbound (export) figures. Initially all the U.K lines wanted shares to be based on only one leg voyage, that is, southbound, while the African lines, except NNSL wanted shares to be based on the entire trade. What has been happening is that the U.K lines usually returned from West Africa in ballast as they considered the carriage of the West African exports unprofitable due
to high loading expenses and long days in port due to low productivity in these ports. Thus if their total carriage is used, their share would be lower than when southbound alone is used. This was the opposite to the stand and position of African lines, especially Black Star Line and SITRAM, who stand to gain more if both northbound and southbound figures are used. NNSL opposed using both northbound and southbound figures because they knew that Nigeria's exports have not been as high as their imports, and as such they stand to loose if both trades are used. (This is seen in table 5.2). U.K Lines later, on knowing the shares were to be based on the UNCTAD principles became indifferent, as their position will be the same which ever method is used (See table 5.2). So, it was Nigeria against the rest. They alone wanted shares to be based on southbound alone. As they control over 80% of the trade, obviously their stand could not be overruled despite the fact that they were alone as against all others. They made it clear that voting will not decide the issue. Later, with the withdrawal of CMZ and SITRAM, Black Star Line's support was lost and as such the Secretariat based the shares on southbound figures only, thus bowing to the pressure from NNSL.

Table 5.1 shows the position of members shares now and prior to the Copenhagen meeting. Table 5.2 shows how the new figures were arrived at.
### TABLE 5.1

**UKWAL POOL SHARES**

<table>
<thead>
<tr>
<th>Lines</th>
<th>Previous (Before Copenhagen)</th>
<th>Current (After Copenhagen)</th>
</tr>
</thead>
<tbody>
<tr>
<td>British Lines</td>
<td>50.00%</td>
<td>53.00%</td>
</tr>
<tr>
<td>NNSL</td>
<td>31.501</td>
<td>42.72</td>
</tr>
<tr>
<td>BSL</td>
<td>7.723</td>
<td>4.28</td>
</tr>
<tr>
<td>Others</td>
<td>10.776</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

**Source:** UKWAL SECRETARIAT

In arriving at the new shares, the Secretariat based their calculations on the following:

1. British Lines basic interest was assumed at 40%.
2. The percentage shares of African lines was restricted to those participating as full members.
3. The balance after calculating each line's 40% was split 50:50 between British and African lines, with the African lines portion, BSL and NNSL split between them according to their percentage shares.
4. No allowance was made for cross-traders. (The only cross trader in the Conference, Hoegh Lines withdrew their membership).
To begin with, basing calculations on UKWAL trade figures (southbound) from 1982-1984 (table 4.4) after allocating 40% to British Lines, 40% of Nigeria and Ghana's contribution to the pool was calculated as 32.772% and 2.201% respectively. This totalled 75.034%, leaving a balance of 24.996%. This was further shared 50:50 between British Lines and NNSL/BSL according to each line's percentage share, giving them 11.677% and 0.806% respectively. This brought the final calculation to 52.483% for British lines, 3.067% for BSL and 44.450% for NNSL. This process was repeated using northbound figures alone, and again using a combined northbound/southbound figures. As it has already been decided that shares are to be based on southbound only the final shares ought to have been 52.483% and 44.450% for British lines, BSL and NNSL respectively, but BSL knowing well that when a combined northbound/southbound figures are used will get them 5.513% instead of 3.067% protested. A compromise solution was found to this. An average was struck between the southbound only shares and the combined northbound/southbound to arrive at the final agreed shares of 53% for British lines, 4.29% for BSL and 42.72% for NNSL.

SUMMARY OF THE CALCULATIONS

A. BRITISH LINES' SHARE

(1) (Southbound only)

Share in trade (based on UNCTAD formula) = 40%

\[
\frac{50\% \text{ of balance of } 24.966}{52.483\%} = 12.483\%
\]

---(1)
(2) (Combined MB/SB)
Given shares
50% of balance of 27,989
Final Allocated Share (Average of (1), (2))

B. NNSL SHARE
(1) (Southbound only)
Nigeria's contribution to pool = 81.9% = 81.9%
40% of contribution = 32,773
Proportional share in balance = 11,677

(2) (Combined NB/SB)
Nigeria's contribution to pool = 70.4%
40% of contribution = 28,175
Proportional share in balance = 12,318

Final Allocated share (Average of (1), (2))

C. BSL SHARE
(1) (Southbound only)
Ghana's contribution to pool = 5.65%
40% of contribution = 2,261%
Proportional share in balance = 806

---(1)
40,493% ---(2)

---(1)
(2) (Combined NB/SB)

Ghana's contribution to pool = 9.58%

40% of contribution = 3,836

Proportional share in balance = 1,677

\[ \frac{1,677}{9.58} = 173\% \]

Final allocated share (Average of (1) (2)) = 4.29%

The method used to arrive at the shares should not be allowed to pass without comment. All along, the Secretariat divided the trade between British Lines and African Lines and excluded cross traders. This pre-supposes that shares will be in line with the Annex to Resolution 1 of the code, Section B, dealing with Participation in Trade, which calls for Equality of Rights of national lines at the two ends. This means that the British group and the African group should have equal rights. How come then, that, the total share of the British group is 53% as to the 47% of African Lines. At least, after calculations, the final figures ought to have reflected a 50:50 share between the two groups. Before the advent of the code, the total share of the British lines was 50% while that for African lines and the only cross trader was 50% (see table 3.2). It is therefore unacceptable that today that the shares are being based on the UNCTAD formula and provisions which call for "equal rights", British lines shares should exceed 50%. A question that may be asked is "why did the African lines
agree to this?" Perhaps judging from the figures one can say that NNSL did not see the need, so long as they had acquired a substantial increase in their shares (from 31.501% to 42.72%). On BSL's part perhaps Ghana's contribution to the pool weakens her bargaining power and can therefore not be in a position to push harder. It would only have been possible with the support of NNSL, for BSL to challenge the rational behind British lines share exceeding 50%, but as indicated earlier, NNSL are better off than they used to be so they will not see the need to support any challenge put up by BSL.

Another flaw in the shares calculation is why it was based mainly on southbound figures, and not only on the entire trade, that is, combined northbound and southbound. The Conference covers both northbound and southbound trades and as such there is no justification in deciding to base shares on southbound carryings. It is agreed that the Conference Pooling Arrangement covers only southbound trade but this has been the result of British lines not keen on loading northbound due to the diseconomies inherent in the northbound trade, and should have nothing to do with determining members' shares in the trade. The code, in my opinion, does not only talk of shares in a Pool but also shares in a Trade. Shares should have been based on the entire trade covered by the Conference and the northbound portion which any line may refuse to carry put in a pool for member lines who want to lift them to do so. After all, under Annex to
### TABLE 5.2

**UKWAL SHARES USING 1982-1984 FIGURES**

<table>
<thead>
<tr>
<th></th>
<th>SOUTHBOUND</th>
<th></th>
<th>NORTHBOUND</th>
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<th>COMBINED</th>
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<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
<td>(7)</td>
</tr>
<tr>
<td></td>
<td>40% of % Balance</td>
<td>% Total</td>
<td>40% of % Balance</td>
<td>% Total</td>
<td>40% of % Balance</td>
<td>% Total</td>
<td>40% of % Balance</td>
</tr>
<tr>
<td></td>
<td>SB Col(1)</td>
<td>(2)</td>
<td>Total</td>
<td>Basis</td>
<td>Basis</td>
<td>Cols(4)</td>
<td>Total</td>
</tr>
<tr>
<td>British</td>
<td>40,000</td>
<td>12.483</td>
<td>52,483</td>
<td>40,000</td>
<td>19.075</td>
<td>59.075</td>
<td>40,000</td>
</tr>
<tr>
<td>Ghana</td>
<td>2,261</td>
<td>0.806</td>
<td>3,067</td>
<td>9.132</td>
<td>7.972</td>
<td>17.104</td>
<td>3.836</td>
</tr>
<tr>
<td></td>
<td>75,034</td>
<td>24.966</td>
<td>100,000</td>
<td>61,850</td>
<td>38.150</td>
<td>100,000</td>
<td>72,011</td>
</tr>
<tr>
<td></td>
<td>24,966</td>
<td></td>
<td>38.150</td>
<td></td>
<td></td>
<td></td>
<td>27.989</td>
</tr>
<tr>
<td></td>
<td>100,000</td>
<td></td>
<td>100.00</td>
<td></td>
<td></td>
<td></td>
<td>100.00</td>
</tr>
</tbody>
</table>

**SOURCE:** UKWAL SECRETARIAT
Resolution 1 of the code, Section B, paragraph 3 states that:

"If National lines do not carry, or are unable to carry their allocated share of the trade and on this point they themselves shall make the decision - that PORTION of their share of the trade which they do not carry will revert to the pool to be share pro rata".

5.3

It was mentioned in Chapter 4 under "The Code's Effects on BSL Liner Operations" that it is not every Line in the developing world which will benefit from the code. What is happening in UKWAL with regards to shares, goes a long way to trumpet this assertion. While it has enhanced the position of NNSL, it has pushed BSL into an uncomfortable position. With her shares in the trade reduced from 7.7% to 4.29% the line will no doubt be thinking about their future as far as Liner Shipping is concerned, particularly, their continued membership of the UKWAL Conference.
REFERENCES

(1) UKWAL : Minutes of Principals' Meetings 1981-1985

(2) COWAC : Minutes of Principals' Meeting 1983

(3) UNCTAD : UNITED NATIONS CONFERENCE OF PLENIPOTENTIARIES ON A CODE OF CONDUCT FOR LINER CONFERENCES

CHAPTER SIX

ASSESSMENT AND CONCLUSION

6.1. FUTURE OF CONFERENCES OPERATING TO WEST AFRICA.

We have already discussed the importance of Nigeria in Liner Shipping in West Africa, her cargoes accounting for some 60% of cargoes carried by the Continent-West Africa Conference (COWAC) and about 85% of cargoes carried by the United Kingdom-West Africa Conference (UKWAL). Invariably, any conference vessel going to West Africa calls at one or two ports in Nigeria. We have also discussed the various bodies being set up by countries in West Africa to help implement the UNCTAD Code, in an attempt to make their national lines carry their national trade, at least 40% as stipulated by the UNCTAD cargo sharing formula. Cargo reservation or what is known as the "a priori" Control of cargo is being practised vigorously in countries like Ivory Coast and Cameroon, where almost all national cargoes are moved by SITRAM and CAMSHIP respectively. Mention has also been made of the effect of Nigeria's economic upheavals on COWAC and UKWAL operations, not forgetting also its direct effect on the operations of some national lines like the Black Star Line (BSL) of Ghana.

From the above, it will therefore seem that the future of the Conferences operating to West Africa, in the wake of the coming into force of the Code, depends to a large extent on these two factors:

a) The future of Nigeria’s economy, and
b) What countries in West Africa are going to make of the bodies set up to implement the Code.

However, it seems that the first point is more related to UKWAL while the second is related to COWAC.

6.1.1 FUTURE OF NIGERIA'S ECONOMY.

One important factor which will determine the future of the Conferences operating to West Africa is the economic position of Nigeria, a country whose cargo is the lifeblood of these Conferences. As seen in Chapter Three, Nigeria's economic problems starting from 1981 had had disastrous effect on operations of both COWAC and UKWAL.

UKWAL for example, reckons that currently trade has been running at around 60% below the 1981 level, 10 or 11 vessels were leaving U.K. each month but now not more than 5 vessels sail a month.

A look at Table 6.1 shows that there has been a direct relation between Nigeria's imports and the UKWAL trade. From 1981 to 1984 the percentage decrease in Nigerian imports carried by UKWAL has been decreasing at the same rate as that of UKWAL total carryings to West Africa. This cannot be said of changes in Ghana's figures. For example in 1983 while the percentage decrease for UKWAL and Nigeria were -56% & -58% respectively, that for Ghana was -8%. The following year UKWAL had -62%, Nigeria -65% but Ghana had an increase of +9%. It therefore seems that UKWAL is much dependent on Nigeria's foreign trade. As has been mentioned already, the
future of UKWAL as a Conference depends on the future of Nigeria's economy. If Nigeria's foreign trade continues to fall like is happening now under their so-called "austerity" UKWAL might cease to be a Conference.

As far as Ghana's position is concerned, there is the tendency of UKWAL becoming a Nigeria-United Kingdom affair. That is, the Conference is gradually shifting towards a bi-lateral sort of arrangement. As mentioned earlier, C.M.Z. (Zaire), SITRAM (Ivory Coast) and Hoegh Lines (Norway) have all ceased to be members of the Conference leaving it for the U.K. Lines, Nigeria's N.N.S.L. and Ghana's B.S.L. Black Star Line's percentage share in the cargo pool has fallen from 7.7% to 4.3%.

This year by June, the line had finished carrying her percentage share of the pool with only two sailings (in the previous year B.S.L. had four sailings). This means her vessels will have to seek employment elsewhere for the rest of the year. It is obvious that if the trend continues, there is every possibility that B.S.L. may leave the Conference. The only thing that can save the situation is a substantial increase in Ghana's imports so as to increase her contribution in the UKWAL cargo pool which will subsequently increase B.S.L.'s percentage share of the pool. So long as the Codes formula is used to decide shares, and Ghana's imports are not increasing, the only ultimate result might be the withdrawal of B.S.L. from UKWAL, leaving the Conference for the U.K. lines and N.N.S.L.
TABLE 6.1
UKWAL TRADE FIGURES (in Tonnes).

<table>
<thead>
<tr>
<th>YEAR</th>
<th>UKWAL</th>
<th>% CHANGE</th>
<th>NIGERIA</th>
<th>% CHANGE</th>
<th>GHANA</th>
<th>% CHANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>1,514,476 (+0.3)</td>
<td>1,296,149 (+7)</td>
<td>78,658 (-23)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1982</td>
<td>1,048,072 (-30)</td>
<td>889,536 (-31)</td>
<td>44,536 (-44)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1983</td>
<td>663,723 (-56)</td>
<td>538,976 (-58)</td>
<td>40,818 (-8)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1984</td>
<td>570,966 (-62)</td>
<td>448,363 (-65)</td>
<td>44,332 (+9)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SOURCE: UKWAL SECRETARIAT.

6.1.2 IMPLEMENTATION OF THE CODE.

How the various countries in West Africa are going to implement the Code, will to a large extent also determine the future of some of the Conferences operating to the sub-region. This factor will affect COWAC more than UKWAL. This because, as mentioned in previous chapters, all the Francophone countries in West Africa have of late set up their National Shipping Lines (some are yet to own a vessel) and are all members of COWAC (but not UKWAL) due to the simple reason that their trade is more with France than with any country. French ports fall within the COWAC range of ports, with the COWAC Southern Section run from Paris.

We have already discussed the various scheme developed by countries in West Africa to help them implement the Code. It can be seen that in West Africa the implementation of the Code is more rigid in the Francophone countries than in the Anglophone countries (Ghana, Nigeria, Gambia, Sierra Leone and Liberia). Ivory Coast and Cameroon for
example adhere to the so-called "a priori" control of cargo which invariably ensures that all national cargoes go on their own vessels, and vessels of their trading partners. Almost all these Francophone countries have bi-lateral trade agreements with France and some other countries, under which their trade are conducted on their National fleet. If these countries manage, through their Shippers Councils to commandeer all government and import-licence-covered goods as is happening in Ivory Coast, Cameroon and Gabon, then there will be no cargo left for third flag vessels. COWAC does not have the Cargo Pooling System, and this means all the numerous third flag lines in the Conference will have to either fight for the few "leftovers" which will be available or find business elsewhere. If this happens, the Conference will disintegrate. As indicated in an earlier Chapter all these Francophone countries have vessels just enough to carry their national trade, so one cannot hope to get any surplus as is the case in Nigeria.

Although most of the European members of COWAC have criticised the setting up of Freight Booking Bureaux by some West African countries, these West African countries are determined to see to it that these Freight Bureaux work in their favour. They have set up their national fleet and they must find cargo for them. There are complaints that some countries like Ivory Coast and Cameroon's Shippers Councils who administer the cargo allocation
even go beyond consolidating their 40% of their share of the trade. They have also instituted sanctions for not shipping on national fleet. One of these sanctions is the forfeiture of import licence allocation the following year. These sanctions will force all nationals to use national vessels, thus killing operations of other member lines of the Conference who hitherto, competed on equal terms with the national lines where they existed, or dominated the trade where the country did not have a national fleet.

6.2 FUTURE LINE OF ACTION BY WEST AFRICAN NATIONAL LINES IN CONFERENCES.

Article 3 of Brussels Package states that "Where a Liner Conference operates a pool of a berthing, sailing and/or any form of cargo allocation agreement in accordance with Article 2 of the Code of Conduct, the volume of cargo to which the group of national shipping lines of each Member State participating in the trade or the Shipping Lines of the Member States participating in that trade as a third country shipping lines are entitled under the Code shall be redistributed. The redistribution of cargo shares shall be carried out on the basis of a unanimous decision by those shipping lines which are members of the Conference and participate in the redistribu-
A look at both UKWAL and COWAC membership shows that the African Lines’ counterparts are covered by this Article, as they are all coming from the E.E.C. (in COWAC a few are from the Eastern Bloc countries). This is further demonstrated in the UKWAL’s latest cargo sharing calculations in which the U.K. lines were allocated 53% which were to be re-allocated between the three lines. (see pages 86-88).

I am of the strong opinion that it will be beneficial to the West African Members of the Conference if they also came together, forced for a recognition as one group and then after securing the share of the group, redistributed their shares. This can be done by the application of commercial principles, taking into account, in particular, of:

a) The volume of cargo generated by each Line’s country’s cargo contribution in the pool.

b) Past performance of the shipping lines in the Conference trade.

c) The needs of the Shippers whose cargoes are being carried by the Conference.

Out of the 16 countries in West African covered by UKWAL, Nigeria and Ghana’s contribution into the pool currently amounts to about 88%. Since their national lines are the only two members from the Sub-region, it will be fair, judging from their contribution, for the Conference to recognise them as one group for the purpose of allocation.
of shares. In this case the U.K. lines will take 50% (in the absence of any cross-trader in the pool) and the West Africa group also take 50%. This is, the trade is shared equally between Britain Lines and West African lines.

If Article 3 of the Brussels Package allows for re-distribution of shares among the U.K. Lines so does the Code's Article 2, paragraph 8 also allows for shares re-distribution for the West Africa lines. Here it is stated that:

"The National Shipping lines of a region, members of a Conference at one end of the trade covered by the Conference, may re-distribute among themselves by mutual agreement the shares in the trades allocated to them............"

Perhaps this can be done more effectively through the Ministerial Conference of Central and West African States. They have the negotiation machinery to get the Conferences European members to table for negotiations.

Looking at Table 5.2 dealing with the method used in arriving at the current pool shares in UKWAL, if the above was considered as the basis for the shares, the African lines, i.e., B.S.L. and N.N.S.L. would have been better off. This is seen in Table 6.3 which shows what the situation would be if Africa lines are considered as a group. All the U.K. lines, as a group would have got 50% and BSL/NNSL as a group also getting 50%. If the 50% is split between B.S.L. and N.N.S.L. basing the sharing on their countries contribution in the pool N.N.S.L. gets 45% and B.S.L. 5% instead
TABLE 6.3: SUGGESTED METHOD TO BE USED IN DETERMINING UKWAL SHARES.
(50/50 BETWEEN BRITISH GROUP AND AFRICAN GROUP). (FIGURES IN PERCENTAGES).

<table>
<thead>
<tr>
<th></th>
<th>SOUTHBOUND ONLY</th>
<th>COMBINED NORTHBOUND/SOUTHBOUND</th>
<th>AVERAGE</th>
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<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td>50/50 BALANCE</td>
<td>50</td>
<td>-</td>
<td>50</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th></th>
<th>NORTHBOUND ONLY</th>
<th>SOUTHBOUND ONLY</th>
<th>COMBINED NORTHBOUND/SOUTHBOUND</th>
<th>AVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>50/50 BALANCE TOTAL</td>
<td>94</td>
<td>6.0</td>
<td>100</td>
<td>90</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ASSUMPTIONS:

1. In the absence of any cross-trader trade is shared 50/50 between British Lines and West African lines (based on the Code's equality principle).

2. B.S.L. and N.N.S.L. shares determined using their countries contribution in pool (6% 82% respectively for Southbound; and 10%, 70% for combined Northbound/Southbound).
of their allocated 42.71% and 4.2% respectively. This shows that N,N,S,L. are currently losing much, as a consequence of the method used in arriving at the current shares.

If this suggested method is used, in future if there is any new line from U.K., the line simple partakes in the 50% allocated to Britain lines, and likewise if any African national line decides to enter the trade, her share would come from the 50% allocated to the African lines.

6.3 COST CONSEQUENCES OF CARGO RESERVATION.

The term cargo reservation and flag discrimination are near synonyms for the various forms of flag protection practised by a growing number of countries. People who are against these practices say that they constitute non-tariff barriers which impede world trade, raise the cost of ocean transport and engender inefficiency.

This assertion is proved by Dr G.H. Bast and M.N. Kieft in a case study published in the book "The future of Liner Shipping". (see reference). In this case study which is based on actual trade figures, a comparison is made between two distinct shipping practices in respect of liner services between two trading areas; one on the basis of a co-operative agreement between the carriers (a Conference), the other on basis of the application of cargo reservation laws (bi-lateral agreement). The underlying
philosophy behind this case study is that in a line economic viability can be attained, respectively improved by optimal routeing, rationalisation and intelligent cooperation. This will not benefit only the carriers, be they state-owned or private liner companies but in a much wider scope also the communities they serve.

To summarise this study, it was seen that under bi-lateral arrangements vessels sailed from several countries in one region (say, West Africa) destined for the same overseas ports. It was revealed that it is foolish to operate liner services between two trading areas in this manner. Not only would the operation be uneconomical, causing freight rates to be higher than necessary, the greater number of ships required would cause port congestion or aggravate it, where it already exist. This would slow down the turnround of the ships and thus lower their effective carrying capacity. Secondly this concept has the effect of depriving all the participants of the opportunity to improve their economies of scale. By splitting up their transport markets in separate enclaves, they condemn themselves to the use of slower and less efficient tonnage (it must be noted here that this bi-lateral concept is likened to the UNCTAD 40-40-20 leaving out the 20%. The 40-40 which is the bulk is just like a bi-lateral arrangement).

The cost consequence of bi-lateralism as against normal liner services is summarised in Table 6.2. The study revealed that a side effect of the bi-lateral operation, which
cannot be quantified financially, is that the 28 ships make 857 port calls per annum whereas the joint service vessel make 400 calls per year for the same amount of cargo. The "bunching" of the ships in the ports on both sides of the ocean is bound to increase cost (congestion of ports and terminals, delays to vessels etc.). From Table 6.2 we see that the overall cost under the bi-lateral concept exceeds that of Joint Service by 44.8% which is a colossal figure. The concluding portion of the study showed that the total cost consequence of the bi-lateral versus the multi-carrier concept $ 13,194,896 more, and consequently, by calculation, the freight revenue require on increase of $ 16,53 per ton.

Bringing this study closer home, it is some how proved right. If one takes for instance the cargo reservation practices going on in West Africa, it would be seen that the ultimate result will be increase in freight rate due to high operational cost of the national lines of the sub-region which stems from in efficiency, irrational sailings and uneconomical operations: Most of these countries under the Code reserve almost all their national cargo to their national fleet, which in most cases are inefficient. Their breakeven points are so high due to high operational cost, and in the long run will lead to increase in freight rates. Perhaps the national importers and exporters will be paying more to their national carriers than they would have paid if normal liner services were being conducted in the
### Table 6.2

**SUMMARY OF COST CONSEQUENCES.**

<table>
<thead>
<tr>
<th>COST ITEMS</th>
<th>A BILATERAL CONCEPT $</th>
<th>B JOINT SERVICE $</th>
<th>A EXCEEDS B BY $</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Cost</td>
<td>26,429,600</td>
<td>18,460,800</td>
<td>7,968,800</td>
<td>43.2</td>
</tr>
<tr>
<td>Repairs &amp; Maintenance</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insurance</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20% of Investment</td>
<td>26,429,600</td>
<td>18,460,800</td>
<td>7,968,800</td>
<td>43.2</td>
</tr>
<tr>
<td>Port Expenses</td>
<td>1,117,664</td>
<td>830,768</td>
<td>286,896</td>
<td>34.5</td>
</tr>
<tr>
<td>Crew Cost</td>
<td>8,831,000</td>
<td>5,692,000</td>
<td>3,139,000</td>
<td>55.1</td>
</tr>
<tr>
<td>Bunkers</td>
<td>6,261,200</td>
<td>4,461,000</td>
<td>1,800,200</td>
<td>40.4</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>42,639,464</strong></td>
<td><strong>29,444,568</strong></td>
<td><strong>13,194,896</strong></td>
<td><strong>44.8</strong></td>
</tr>
</tbody>
</table>

1. 28 ships serve Bilateral arrangement
2. 8 ships are used in the joint service.
3. The same amount of cargo carried by A & B.
region.

I am of the opinion that the basic pattern of transport economy is no way different from that of other economic activities, that is, it must provide the best possible cost whilst procuring an acceptable return on investment. In accordance with customary economic appraisement, optimal quality of service in liner shipping inevitably entails also speed and frequency whilst the yield is highly sensitive to the degree of useful occupancy of the production units engaged in the process. If these conditions are met; sound operation of services is assured; if these are brushed aside liner shipping will be doomed to flounder in an endless bog of frustration. It is however my fervent hope that national lines of West Africa prove this case study wrong by giving their various countries and Shippers the optimum economic service in order not to cause freight rates to increase.

6.3 ECONOMIC CONSEQUENCES OF THE CODE.

The Code of Conduct came into force on the 6th October 1983, after the required number of States had ratified it. Most countries hope to benefit from this new order, so the question of its possible economic effects becomes one to which our attention should be turned.

As indicated by S.G. Sturmey during the International Symposium held at Bremen (see references) the type of economic effects which could be produced by the Code may be
categorised as two. First is the possible effect on the level of world income as a whole and the second is the effect on the distribution of income. However, it is highly unlikely that the effect on the global effects of the Code will be largely non-economic, for example, the strengthening of the weak against the strong to secure a more equitable bargaining situation. Professor Sturme"y thinks the transfer effect will be much more important, and economically, it is from there the major economic changes will occur. Although the measureable effects of the Code of Conduct on world incomes are likely to be small, they will be favourable. They will arise from change in the location of economic activity, and this will be the main factor. But there should be other overall gains from improvements in efficiency and a lessening of monopoly powers arising from the process of consultation.

It seems that developing countries have a strong comparative advantage in conventional shipping. We have heard for sometime now that liner shipping is unprofitable in the rich countries, and that a shift in the world division of economic function under which some of this was moved to poor countries should be a favourable move, leading the world nearer to an optimum allocation of resources rather than a move leading to a position further from the optimum. Some shipping economists feel that if there was a choice, liner shipping would practically have died out
in developed countries and would now be a virtual monopoly of developing countries since it is the most labour using area of shipping. However one should not think that because developing countries may today have a comparative advantage over developed countries in conventional liner shipping they are going to remain tied to an out-dated technology while the traditional maritime nations retain their present position of strength by adopting the most modern technologies. It must be borne in mind that shipping is an international industry. There are parts of ocean borne trade which, for the foreseeable future, will more economically be carried by fairly conventional vessels. In a system operating under the principles of classical economics these would be operated and owned in developing countries. We may now turn our attention to the question of income transfers. In most developed countries they believe that their shipping industries will suffer economic loss, as a result of the Code. Some even mention a loss of £1000 million per annum. What is not clear is whether this is being canvassed as a straight forward economic loss or whether it is a transfer from some European countries to those developing and other countries which stand the Code. The income transfers which are likely to occur as a result of the Code have several facets. Obviously the increases in income which would occur also imply a transfer; indeed the most important could not occur without a transfer. Other transfers are likely to be neutral as far as income level is concerned.
They will occur in a number of ways, for example, through the moderating effect of the Code on freight rate increases, the assistance to developing countries exports by promotional freight rates. Not all transfers will be from rich countries to poor countries and some will occur within these groups. However the major transfer will be from rich to poor, to the _generators_ of a large part of world trade but the carrier of a share which is significantly smaller, to those who ultimately bear the force of most freight rate increases but have little or no say in their determination, to those who could economically build up their economies by expanding their liner fleets but have to go cap in hand and beg to be allowed to carry their own trade. This sort of transfer is what economic development is all about.

So far as the Code is concerned, any income transfer, so far as the loss by the rich countries is concerned, will almost certainly be a slowing down in the rate of increase of income rather than a reduction. There is no evidence at all to suggest that the long term growth of world trade is going to be reversed, despite present tendencies, and therefore there is plenty of scope for individual shipping lines in developed countries which might find themselves losing trade as a result of the cargo allocation rules of the Code to move into other types of shipping. It is observed that changes are not going to occur overnight since most developing countries have neither the fleets to take up their
shares immediately nor the cash to expand those fleets rapidly.

In conclusion, it can be said that the world as a whole will economically gain from the Code; some poor countries will gain something at the expense of the rich. But basically the Code is not about income transfer. The Code is about justice and redressing of the balance of disadvantage. It is about the creation of a new deal and better order.
REFERENCES


Signatures and ratification of, or accessions to, the Convention on a Code of Conduct for Liner Conferences.

The countries, arranged in chronological order of signing, are:

<table>
<thead>
<tr>
<th>Country</th>
<th>Date of Signing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ghana</td>
<td>24 June 1975</td>
</tr>
<tr>
<td>Chile</td>
<td>25 June 1975</td>
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<td>Pakistan</td>
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<td>Gambia</td>
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<tr>
<td>Nigeria</td>
<td>10 September 1975</td>
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<tr>
<td>Benin</td>
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<td>United Republic of Tanzania</td>
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<td>India</td>
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<tr>
<td>Netherlands</td>
<td>6 April 1983</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>3 August 1983</td>
</tr>
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</table>
APPENDIX 2

The Brussels Package


THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof, having regard to the draft Regulation submitted by the Commission, having regard to the opinion of the European Parliament, having regard to the opinion of the Economic and Social Committee,

Whereas a Convention on a Code of Conduct for Liner Conferences has been drawn up by a Conference convened under the auspices of the United Nations Conference on Trade and Development and is open for ratification or accession;

Whereas the questions covered by the Code of Conduct are of importance not only to the Member States but also to the Community, in particular from the shipping and trading viewpoints, and it is therefore important that a common position should be adopted in relation to this Code;

Whereas this common position should respect the principles and objectives of the Treaty and make a major contribution to meeting the aspirations of developing countries in the field of shipping while at the same time pursuing the objective of the continuing application in this field of the commercial principles applied by shipping lines of the OECD countries;

Whereas to secure observance of these principles and objectives, since the Code of Conduct contains no provision allowing the accession of the Community as such, it is important that Member States ratify or accede to the arrangements provided for in this Regulation;

Whereas the stabilising role of conferences in ensuring reliable services to shippers is recognised, but it is nevertheless necessary to avoid possible breaches by conferences of the rules of competition laid down in the Treaty; whereas the Commission will accordingly forward to the Council a proposal for a Regulation concerning the application of those rules to sea transport.

HAS ADOPTED THIS REGULATION

Article 1

1. When ratifying the United Nations Convention on a Code of Conduct for Liner Conferences, or when acceding thereto, Member States shall inform the Secretary-General of the United Nations in writing that such ratification or accession has taken place in accordance with this Regulation.

2. The instrument of ratification or accession shall be accompanied by the reservations set out in Annex I.

Article 2

1. In the case of an existing conference, each group of shipping lines of the same nationality which are members thereof shall determine by commercial negotiations with another shipping line of that nationality whether the latter may participate as a national shipping line in the said conference.

If a new conference is created, the shipping lines of the same nationality shall determine by commercial negotiations which of them may participate as a national shipping line in the future conference.

2. Where the negotiations referred to in paragraph 1 fail to result in agreement, each Member State may, at the request of one of the lines concerned and after hearing all of them, take the necessary steps to settle the dispute.

3. Each Member State shall ensure that all vessel-operating shipping lines established on its territory under the Treaty establishing the European Economic Community are treated in the same way as lines which have their management head office on its territory and the effective control of which is exercised there.
The Brussels Package

Article 3

1. Where a liner conference operates a pool of a berthing, sailing and/or any other form of cargo allocation agreement in accordance with Article 2 of the Code of Conduct, the volume of cargo to which the group of national shipping lines of each Member State participating in that trade or the shipping lines of the Member States participating in that trade as third-country shipping lines are entitled under the Code shall be redistributed, unless a decision is taken to the contrary by all the lines which are members of the Conference and parties to the present redistribution rules. The redistribution of cargo shares shall be carried out on the basis of a unanimous decision by those shipping lines which are members of the Conference and participate in the redistribution, with a view to all those lines carrying a fair share of the conference trade.

2. The share finally allocated to each participant shall be determined by the application of commercial principles, taking account in particular of:
   (a) the volume of cargo carried by the conference and generated by the Member States whose trade is served by it;
   (b) past performance of the shipping lines in the trade covered by the pool;
   (c) the volume of cargo carried by the conference and shipped through the ports of the Member States;
   (d) the needs of the shipping lines whose cargoes are carried by the conference.

3. If no agreement is reached on the redistribution of cargoes referred to in paragraph 1, the matter shall, at the request of one of the parties, be referred to conciliation in accordance with the procedure set out in Annex II. Any dispute not settled by the conciliation procedure may, with the agreement of the parties, be referred to arbitration. In that event, the award of the arbitrator shall be binding.

4. At intervals to be laid down in advance, shares associated in accordance with paragraphs 1, 2 and 3 shall be regularly reviewed, taking into account the criteria set out in paragraph 2 and in particular from the viewpoint of providing adequate and efficient services to shippers.

Article 4

1. In a conference trade between a Member State of the Community and a State which is a party to the Code of Conduct and not an OECD country, a shipping line of another Member State of the OECD wishing to participate in the redistribution provided for in Article 3 of this Regulation may do so subject to reciprocity defined at governmental or ship-owners’ level.

2. Without prejudice to paragraph 3 of this Article, Article 2 of the Code of Conduct shall not be applied in conference trades between Member States or, on a reciprocal basis, between such States and the other OECD countries which are parties to the Code.

3. Paragraph 2 of this Article shall not affect the opportunities for participating as third-country shipping lines in such trades, in accordance with the principles reflected in Article 2 of the Code of Conduct, of the shipping lines of a developing country which are recognised as national shipping lines under the Code and which are:
   (a) already members of a conference serving these trades; or
   (b) admitted to such a conference under Article 1 (3) of the Code.

4. Articles 3 and 14 (9) of the Code of Conduct shall not be applied in conference trades between Member States or, on a reciprocal basis, between such States and other OECD countries which are parties to the code.

5. In conference trades between Member States and between these States and other OECD countries which are parties to the Code of Conduct, the suppliers and ship-owners of Member States shall not insist on applying the procedures for settling disputes provided for in Chapter VI of the Code in their mutual relationships or, on a reciprocal basis, in relation to suppliers and ship-owners of other OECD countries where other procedures for settling disputes have been agreed between them. They shall in particular take full advantage of the possibilities provided by Article 25 (1) and (2) of the Code for resolving disputes by means of procedures other than those laid down in Chapter VI of the Code.

Article 5

For adoption of decisions relating to matters defined in the conference agreement concerning the trade of a Member State, other than those referred to in Article 3 of this Regulation, the national shipping lines of such State shall consult all the other Community lines which are members of the conference before giving or withholding their assent.

Article 6

Member States shall, in due course, and after consulting the Commission, adopt the laws, regulations or administrative provisions necessary for the implementation of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15 May 1979

For the Council
The President
R. Boulin
ANNEX I

RESERVATIONS

When ratifying the Convention or when acceding thereto, Member States shall enter the following three reservations and interpretative reservation:

1. For the purposes of the Code of Conduct, the term 'national shipping line' may, in the case of a Member State of the Community, include any vessel-operating shipping line established on the territory of such Member State in accordance with the EEC Treaty.

2. (a) Without prejudice to paragraph (b) of this reservation, Article 2 of the Code of Conduct shall not be applied in conference trades between the Member States of the Community or, on a reciprocal basis, between such States and other OECD countries which are parties to the Code.

(b) Point (a) shall not affect the opportunities for participation as third country shipping lines in such trades, in accordance with the principles reflected in Article 2 of the Code, of the shipping lines of a developing country which are recognised as national shipping lines under the Code and which are:

(i) already members of a conference serving these trades;
(ii) admitted to such a conference under Article 1 (3) of the Code.

3. Articles 3 and 14 (9) of the Code of Conduct shall not be applied in conference trades between the Member States of the Community or, on a reciprocal basis, between such States and the other OECD countries which are parties to the Code.

4. In trades to which Article 3 of the Code of Conduct applies, the last sentence of that Article is interpreted as meaning that:

(a) the two groups of national shipping lines will coordinate their positions before voting on matters concerning the trade between their two countries;
(b) this sentence applies solely to matters which the conference agreement identifies as requiring the assent of both groups of national shipping lines concerned, and not to all matters covered by the conference agreement.

ANNEX II

CONCILIATION REFERRED TO IN ARTICLE 3 (3)

The parties to the dispute shall designate one or more conciliators.

Should they fail to agree on the matter, each of the parties to the dispute shall designate a conciliator and the conciliators thus designated shall co-opt another conciliator to act as chairman. Should a party fail to designate a conciliator or the conciliators designated by the parties fail to reach agreement on the chairman, the President of the International Chamber of Commerce shall, at the request of one of the parties, make the necessary designations.

The conciliators shall make every endeavour to settle the dispute. They shall decide on the procedure to be followed. Their fees shall be paid by the parties to the dispute.

NON-EEC MEMBERS OF OECD

Australia, Austria, Canada, Finland, Greece, Iceland, Japan, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United States.
CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES

OBJECTIVES AND PRINCIPLES

The Contracting Parties to the present Convention,

Desiring to improve the liner conference system,

Recognizing the need for a universally acceptable code of conduct for liner conferences,

Taking into account the special needs and problems of the developing countries with respect to the activities of liner conferences serving their foreign trade,

Agreeing to reflect in the Code the following fundamental objectives and basic principles:

(a) The objective to facilitate the orderly expansion of world sea-borne trade;

(b) The objective to stimulate the development of regular and efficient liner services adequate to the requirements of the trade concerned;

(c) The objective to ensure a balance of interests between suppliers and users of liner shipping services;

(d) The principle that conference practices should not involve any discrimination against the shipowners, shippers or the foreign trade of any country;

(e) The principle that conferences hold meaningful consultations with shippers' organizations, shippers' representatives and shippers on matters of common interest, with, upon request, the participation of appropriate authorities;

(f) The principle that conferences should make available to interested parties pertinent information about their activities which are relevant to those parties and should publish meaningful information on their activities.

Have agreed as follows:

Part one

Chapter I

DEFINITIONS

Liner conference or conference

A group of two or more vessel-operating carriers which provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions with respect to the provision of liner services.

National shipping line

A national shipping line of any given country is a vessel-operating carrier which has its head office of management and its effective control in that country and is recognized as such by an appropriate authority of that country or under the law of that country.

Lines belonging to and operated by a joint venture involving two or more countries and in whose equity the national interests, public and/or private, of those countries have a substantial share and whose head office of management and whose effective control is in one of those countries can be recognized as a national line by the appropriate authorities of those countries.

Third-country shipping line

A vessel-operating carrier in its operations between two countries of which it is not a national shipping line.

Shipper

A person or entity who has entered into, or who demonstrates an intention to enter into, a contractual or other arrangement with a conference or shipping line for the shipment of goods in which he has a beneficial interest.

Shippers' organization

An association or equivalent body which promotes, represents and protects the interests of shippers and, if those authorities so desire, is recognized in that capacity by the appropriate authority or authorities of the country whose shippers it represents.

Goods carried by the conference

Cargo transported by shipping lines members of a conference in accordance with the conference agreement.

Appropriate authority

Either a government or a body designated by a government or by national legislation to perform any of the functions ascribed to such authority by the provisions of this Code.

Promotional freight rate

A rate instituted for promoting the carriage of non-traditional exports of the country concerned.

Special freight rate

A preferential freight rate, other than a promotional freight rate, which may be negotiated between the parties concerned.
Chapter II
RELATIONS AMONG MEMBER LINES

Article 1
MEMBERSHIP

1. Any national shipping line shall have the right to be a full member of a conference which serves the foreign trade of its country, subject to the criteria set out in article 1, paragraph 2. Shipping lines which are not national lines in any trade of a conference shall have the right to become full members of that conference, subject to the criteria set out in article 1, paragraphs 2 and 3, and to the provisions regarding the share of trade as set out in article 2 as regards third-country shipping lines.

2. A shipping line applying for membership of a conference shall furnish evidence of its ability and intention, which may include the use of chartered tonnage, provided the criteria of this paragraph are met, to operate a regular, adequate and efficient service on a long-term basis as defined in the conference agreement within the framework of the conference, shall undertake to abide by all the terms and conditions of the conference agreement, and shall deposit a financial guarantee to cover any outstanding financial obligation in the event of subsequent withdrawal, suspension or expulsion from membership, if so required under the conference agreement.

3. In considering an application for membership by a shipping line which is not a national line in any trade of the conference concerned, in addition to the provisions of article 1, paragraph 2, the following criteria, inter alia, should be taken into account:
   (a) The existing volume of the trade on the route or routes served by the conference and prospects for its growth;
   (b) The adequacy of shipping space for the existing and prospective volume of trade on the route or routes served by the conference;
   (c) The probable effect of admission of the shipping line to the conference on the efficiency and quality of the conference service;
   (d) The current participation of the shipping line in trade on the same route or routes outside the framework of a conference; and
   (e) The current participation of the shipping line on the same route or routes within the framework of another conference.

The above criteria shall not be applied so as to subvert the implementation of the provisions relating to participation in trade set out in article 2.

4. An application for admission or readmission shall be promptly decided upon and the decision communicated by a conference to an applicant promptly, and in no case later than six months from the date of application. When a shipping line is refused admission or readmission the conference shall, at the same time, give in writing the grounds for such refusal.

5. When considering applications for admission, a conference shall take into account the views put forward by shippers and shippers' organizations of the countries whose trade is carried by the conference, as well as the views of appropriate authorities if they so request.

6. In addition to the criteria for admission set out in article 1, paragraph 2, a shipping line applying for re-admission shall also give evidence of having fulfilled its obligations in accordance with article 4, paragraphs 1 and 4. The conference may give special scrutiny to the circumstances under which the line left the conference.

Article 2
PARTICIPATION IN TRADE

1. Any shipping line admitted to membership of a conference shall have sailing and loading rights in the trades covered by that conference.

2. When a conference operates a pool, all shipping lines members of the conference serving the trade covered by the pool shall have the right to participate in the pool for that trade.

3. For the purpose of determining the share of trade which member lines shall have the right to acquire, the national shipping lines of each country, irrespective of the number of lines, shall be regarded as a single group of shipping lines for that country.

4. When determining a share of trade within a pool of individual member lines and/or groups of national shipping lines in accordance with article 2, paragraph 2, the following principles regarding their right to participation in the trade carried by the conference shall be observed, unless otherwise mutually agreed:
   (a) The group of national shipping lines of each of two countries the foreign trade between which is carried by the conference shall have equal rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference;
   (b) Third-country shipping lines, if any, shall have the right to acquire a significant part, such as 20 per cent, in the freight and volume of traffic generated by that trade.

5. If, for any one of the countries whose trade is carried by a conference, there are no national shipping lines participating in the carriage of that trade, the share of the trade to which national shipping lines of that country would be entitled under article 2, paragraph 4 shall be distributed among the individual member lines participating in the trade in proportion to their respective shares.

6. If the national shipping lines of one country decide not to carry their full share of the trade, that portion of
their share of the trade which they do not carry shall be
distributed among the individual member lines participating
in the trade in proportion to their respective shares.

7. If the national shipping lines of the countries concerned
do not participate in the trade between those
countries covered by a conference, the shares of trade
carried by the conference between those countries shall be
allocated between the participating member lines of third
countries by commercial negotiations between those lines.

8. The national shipping lines of a region, members of a
conference, at one end of the trade covered by the
conference, may redistribute among themselves by mutual
agreement the shares in trades allocated to them, in
accordance with article 2, paragraphs 4 to 7 inclusive.

9. Subject to the provisions of article 2, paragraphs 4 to
8 inclusive regarding shares of trade among individual
shipping lines or groups of shipping lines, pooling or
trade-sharing agreements shall be reviewed by the confer­
ence periodically, at intervals to be stipulated in those
agreements and in accordance with criteria to be specified
in the conference agreement.

10. The application of the present article shall com­
ence as soon as possible after entry into force of the
present Convention and shall be completed within a
transition period which in no case shall be longer than two
years, taking into account the specific situation in each of
the trades concerned.

11. Shipping lines members of a conference shall be
entitled to operate chartered ships to fulfil their conference
obligations.

12. The criteria for sharing and the revision of shares as
set out in article 2, paragraphs 1 to 11 inclusive shall apply
when, in the absence of a pool, there exists berthing, sailing
and/or any other form of cargo allocation agreement.

13. Where no pooling, berthing, sailing or other trade
participation agreements exist in a conference, either group
of national shipping lines, members of the conference, may
require that pooling arrangements be introduced, in respect
of the trade between their countries carried by the
conference, in conformity with the provisions of article 2,
paragraph 4; or alternatively they may require that the
sailings be so adjusted as to provide an opportunity to these
lines to enjoy substantially the same rights to participate in
the trade between those two countries carried by the
conference as they would have enjoyed under the pro­
visions of article 2, paragraph 4. Any such request shall be
considered and decided by the conference. If there is no
agreement to institute such a pool or adjustment of sailings
among the members of the conference, the groups of
national shipping lines of the countries at both ends of the
trade shall have a majority vote in deciding to establish such
a pool or adjustment of sailings. The matter shall be
decided upon within a period not exceeding six months
from the receipt of the request.

14. In the event of a disagreement between the national
shipping lines of the countries at either end whose trade is
served by the conference with regard to whether or not
pooling shall be introduced, they may require that within
the conference sailings be so adjusted as to provide an
opportunity to these lines to enjoy substantially the same
rights to participate in the trade between those two
countries carried by the conference as they would have
enjoyed under the provisions of article 2, paragraph 4. In
the event that there are no national shipping lines in one of
the countries whose trade is served by the conference, the
national shipping line or lines of the other country may
make the same request. The conference shall use its best
endeavours to meet this request. If, however, this request is
not met, the appropriate authorities of the countries at
both ends of the trade may take up the matter if they so
wish and make their views known to the parties concerned
for their consideration. If no agreement is reached, the
dispute shall be dealt with in accordance with the pro­
cedures established in this Code.

15. Other shipping lines, members of a conference, may
also request that pooling or sailing agreements be intro­
duced, and the request shall be considered by the confer­
ence in accordance with the relevant provisions of this
Code.

16. A conference shall provide for appropriate measures
in any conference pooling agreement to cover cases where
the cargo has been shut out by a member line for any
reason excepting late presentation by the shipper. Such
agreement shall provide that a vessel with unbooked space,
capable of being used, be allowed to lift the cargo, even in
excess of the pool share of the line in the trade, if otherwise
the cargo would be shut out and delayed beyond a period
set by the conference.

17. The provisions of article 2, paragraphs 1 to 16
inclusive concern all goods regardless of their origin, their
destination or the use for which they are intended, with the
exception of military equipment for national defence
purposes.

Article 3

DECISION-MAKING PROCEDURES

The decision-making procedures embodied in a confer­
ence agreement shall be based on the equality of all the full
member lines; these procedures shall ensure that the voting
rules do not hinder the proper work of the conference and
the service of the trade and shall define the matters on
which decisions will be made by unanimity. However, a
decision cannot be taken in respect of matters defined in a
conference agreement relating to the trade between two
countries without the consent of the national shipping lines
of those two countries.
Article 4

SANCTIONS

1. A shipping line member of a conference shall be entitled, subject to the provisions regarding withdrawal which are embodied in pool schemes and/or cargo-sharing arrangements, to secure its release, without penalty, from the terms of the conference agreement after giving three months’ notice, unless the conference agreement provides for a different time period, although it shall be required to fulfill its obligations as a member of the conference up to the date of its release.

2. A conference may, upon notice to be specified in the conference agreement, suspend or expel a member for significant failure to abide by the terms and conditions of the conference agreement.

3. No expulsion or suspension shall become effective until a statement in writing of the reasons therefor has been given and until any dispute has been settled as provided in chapter VI.

4. Upon withdrawal or expulsion, the line concerned shall be required to pay its share of the outstanding financial obligations of the conference, up to the date of its withdrawal or expulsion. In cases of withdrawal, suspension or expulsion, the line shall not be relieved of its own financial obligations under the conference agreement or of any of its obligations towards shippers.

Article 5

SELF-POLICING

1. A conference shall adopt and keep up to date an illustrative list, which shall be as comprehensive as possible, of practices which are regarded as malpractices and/or breaches of the conference agreement and shall provide effective self-policing machinery to deal with them, with specific provisions requiring:

(a) The fixing of penalties or a range of penalties for malpractices or breaches, to be commensurate with their seriousness;

(b) The examination and impartial review of an adjudication of complaints, and/or decisions taken on complaints, against malpractices or breaches, by a person or body unconnected with any of the shipping lines members of the conference or their affiliates, on request by the conference or any other party concerned;

(c) The reporting, on request, on the action taken in connexion with complaints against malpractices and/or breaches, and on a basis of anonymity for the parties concerned, to the appropriate authorities of the countries whose trade is served by the conference and of the countries whose shipping lines are members of the conference.

2. Shipping lines and conferences are entitled to the full co-operation of shippers and shippers’ organizations in the endeavour to combat malpractices and breaches.

Article 6

CONFERENCE AGREEMENTS

All conference agreements, pooling, berthing and sailing rights agreements and amendments or other documents directly related to, and which affect, such agreements shall be made available on request to the appropriate authorities of the countries whose trade is served by the conference and of the countries whose shipping lines are members of the conference.

Chapter III

RELATIONS WITH SHIPPERS

Article 7

LOYALTY ARRANGEMENTS

1. The shipping lines members of a conference are entitled to institute and maintain loyalty arrangements with shippers, the form and terms of which are matters for consultation between the conference and shippers’ organizations or representatives of shippers. These loyalty arrangements shall provide safeguards making explicit the rights of shippers and conference members. These arrangements shall be based on the contract system or any other system which is also lawful.

2. Whenever loyalty arrangements are made, the freight rate applicable to loyal shippers shall be determined within a fixed range of percentages of the freight rate applicable to other shippers. Where a change in the differential causes an increase in the rates charged to shippers, the change can be implemented only after 180 days’ notice to those shippers or according to regional practice and/or agreement. Disputes in connexion with a change of the differential shall be settled as provided in the loyalty agreement.

3. The terms of loyalty arrangements shall provide safeguards making explicit the rights and obligations of shippers and of shipping lines members of the conference in accordance with the following provisions, inter alia:

(a) The shipper shall be bound in respect of cargo whose shipment is controlled by him or his affiliated or subsidiary company or his forwarding agent in accordance with the contract of sale of the goods concerned, provided that the shipper shall not, by evasion, subterfuge, or intermediary, attempt to divert cargo in violation of his loyalty commitment;

(b) Where there is a loyalty contract, the extent of actual or liquidated damages and/or penalty shall be specified in the contract. The member lines of the conference may, however, decide to assess lower liquidated damages or to waive the claim to liquidated damages. In
any event, the liquidated damages under the contract to be paid by the shipper shall not exceed the freight charges on the particular shipment, computed at the rate provided under the contract;

(c) The shipper shall be entitled to resume full loyalty status, subject to the fulfillment of conditions established by the conference which shall be specified in the loyalty arrangement;

(d) The loyalty arrangement shall set out:
   (i) A list of cargo, which may include bulk cargo shipped without mark or count, which is specifically excluded from the scope of the loyalty arrangement;
   (ii) A definition of the circumstances in which cargo other than cargo covered by (i) above is considered to be excluded from the scope of the loyalty arrangement;
   (iii) The method of settlement of disputes arising under the loyalty arrangement;
   (iv) Provision for termination of the loyalty arrangement on request by either a shipper or a conference without penalty, after expiry of a stipulated period of notice, such notice to be given in writing; and
   (v) The terms for granting dispensation.

4. If there is a dispute between a conference and a shippers' organization, representatives of shippers and/or shippers about the form or terms of a proposed loyalty arrangement, either party may refer the matter for resolution under appropriate procedures as set out in this Code.

Article 8

Dispensation

1. Conferences shall provide, within the terms of the loyalty arrangements, that requests by shippers for dispensation shall be examined and a decision given quickly and, if requested, the reasons given in writing where dispensation is withheld. Should a conference fail to confirm, within a period specified in the loyalty arrangement, sufficient space to accommodate a shipper's cargo within a period also specified in the loyalty arrangement, the shipper shall have the right, without being penalized, to utilize any vessel for the cargo in question.

2. In ports where conference services are arranged subject to the availability of a specified minimum of cargo (i.e. on inducement), but either the shipping line does not call, despite due notice by shippers, or the shipping line does not reply within an agreed time to the notice given by shippers, shippers shall automatically have the right, without prejudicing their loyalty status, to use any available vessel for the carriage of their cargo.

Article 9

Availability of Tariffs and Related Conditions and/or Regulations

Tariffs, related conditions, regulations, and any amendments thereto shall be made available on request to shippers, shippers' organizations and other parties concerned at reasonable cost, and they shall be available for examination at offices of shipping lines and their agents. They shall spell out all conditions concerning the application of freight rates and the carriage of any cargo covered by them.

Article 10

Annual Reports

Conferences shall provide annually to shippers' organizations, or to representatives of shippers, reports on their activities designed to provide general information of interest to them, including relevant information about consultations held with shippers and shippers' organizations, action taken regarding complaints, changes in membership, and significant changes in service, tariffs and conditions of carriage. Such annual reports shall be submitted, on request, to the appropriate authorities of the countries whose trade is served by the conference concerned.

Article 11

Consultation Machinery

1. There shall be consultations on matters of common interest between a conference, shippers' organizations, representatives of shippers and, where practicable, shippers, which may be designated for that purpose by the appropriate authority if it so desires. These consultations shall take place whenever requested by any of the above-mentioned parties. Appropriate authorities shall have the right, upon request, to participate fully in the consultations, but this does not mean that they play a decision-making role.

2. The following matters, inter alia, may be the subject of consultation:
   (a) Changes in general tariff conditions and related regulations;
   (b) Changes in the general level of tariff rates and rates for major commodities;
   (c) Promotional and/or special freight rates;
   (d) Imposition of, and related changes in, surcharges;
   (e) Loyalty arrangements, their establishment or changes in their form and general conditions;
   (f) Changes in the tariff classification of ports;
   (g) Procedure for the supply of necessary information by shippers concerning the expected volume and nature of their cargoes; and
   (h) Presentation of cargo for shipment and the requirements regarding notice of cargo availability.

3. To the extent that they fall within the scope of activity of a conference, the following matters may also be the subject of consultation:
(a) Operation of cargo inspection services;
(b) Changes in the pattern of services;
(c) Effects of the introduction of new technology in the carriage of cargo, in particular unitization, with consequent reduction of conventional service or loss of direct services; and
(d) Adequacy and quality of shipping services, including the impact of pooling, berthing or sailing arrangements on the availability of shipping services and freight rates at which shipping services are provided; changes in the areas served and in the regularity of calls by conference vessels.

4. Consultations shall be held before final decisions are taken, unless otherwise provided in this Code. Advance notice shall be given of the intention to take decisions on matters referred to in article 11, paragraphs 2 and 3. Where this is impossible, urgent decisions may be taken pending the holding of consultations.

5. Consultations shall begin without undue delay and in any event within a maximum period specified in the conference agreement or, in the absence of such a provision in the agreement, not later than 30 days after receipt of the proposal for consultations, unless different periods of time are provided in this Code.

6. When holding consultations, the parties shall use their best efforts to provide relevant information, to hold timely discussions and to clarify matters for the purpose of seeking solutions of the issues concerned. The parties involved shall take account of each other's views and problems and strive to reach agreement consistent with their commercial viability.

Chapter IV
FREIGHT RATES

Article 12
CRITERIA FOR FREIGHT-RATE DETERMINATION

In arriving at a decision on questions of tariff policy in all cases mentioned in this Code, the following points shall, unless otherwise provided, be taken into account:

(a) Freight rates shall be fixed at as low a level as is feasible from the commercial point of view and shall permit a reasonable profit for shipowners;

(b) The cost of operations of conferences shall, as a rule, be evaluated for the round voyage of ships, with the outward and inward directions considered as a single whole. Where applicable, the outward and inward voyage should be considered separately. The freight rates should take into account, among other factors, the nature of cargoes, the interrelation between weight and cargo measurement, as well as the value of cargoes;

(c) In fixing promotional freight rates and/or special freight rates for specific goods, the conditions of trade for these goods of the countries served by the conference, particularly of developing and land-locked countries, shall be taken into account.

Article 13
CONFERENCE TARIFFS AND CLASSIFICATION OF TARIFF RATES

1. Conference tariffs shall not unfairly differentiate between shippers similarly situated. Shipping lines members of a conference shall adhere strictly to the rates, rules and terms shown in the tariffs and other currently valid published documents of the conference and to any special arrangements permitted under this Code.

2. Conference tariffs should be drawn up simply and clearly, containing as few classes/categories as possible, depending on the commodity and, where appropriate, for each class/category; they should also indicate, wherever practicable, in order to facilitate statistical compilation and analysis, the corresponding appropriate code number of the item in accordance with the Standard International Trade Classification, the Brussels Tariff Nomenclature or any other nomenclature that may be internationally adopted; the classification of commodities in the tariffs should, as far as practicable, be prepared in co-operation with shippers' organizations and other national and international organizations concerned.

Article 14
GENERAL FREIGHT-RATE INCREASES

1. A conference shall give notice of not less than 150 days, or according to regional practice and/or agreement, to shippers' organizations or representatives of shippers and/or shippers and, where so required, to appropriate authorities of the countries whose trade is served by the conference, of its intention to effect a general increase in freight rates, an indication of its extent, the date of effect and the reasons supporting the proposed increase.

2. At the request of any of the parties prescribed for this purpose in this Code, to be made within an agreed period of time after the receipt of the notice, consultations shall commence, in accordance with the relevant provisions of this Code, within a stipulated period not exceeding 30 days or as previously agreed between the parties concerned; the consultations shall be held in respect of the bases and amounts of the proposed increase and the date from which it is to be given effect.

3. A conference, in an effort to expedite consultations, may or upon the request of any of the parties prescribed in this Code as entitled to participate in consultations on general freight-rate increases shall, where practicable, reasonably before the consultations, submit to the participating parties a report from independent accountants of repute, including, where the requesting parties accept it as one of the bases of consultations, an aggregated analysis of
data regarding relevant costs and revenues which in the opinion of the conference necessitate an increase in freight rates.

4. If agreement is reached as a result of the consultations, the freight-rate increase shall take effect from the date indicated in the notice served in accordance with article 14, paragraph 1, unless a later date is agreed upon between the parties concerned.

5. If no agreement is reached within 30 days of the giving of notice in accordance with article 14, paragraph 1, and subject to procedures prescribed in this Code, the matter shall be submitted immediately to international mandatory conciliation, in accordance with chapter VI. The recommendation of the conciliators, if accepted by the parties concerned, shall be binding upon them and shall be implemented, subject to the provisions of article 14, paragraph 9, with effect from the date mentioned in the conciliators’ recommendation.

6. Subject to the provisions of article 14, paragraph 9, a general freight-rate increase may be implemented by a conference pending the conciliators’ recommendation. When making their recommendation, the conciliators should take into account the extent of the above-mentioned increase made by the conference and the period for which it has been in force. In the event that the conference rejects the recommendation of the conciliators, shippers and/or shippers’ organizations shall have the right to consider themselves not bound, after appropriate notice, by any arrangement or other contract with that conference which may prevent them from using non-conference shipping lines. Where a loyalty arrangement exists, shippers and/or shippers’ organizations shall give notice within a period of 30 days to the effect that they no longer consider themselves bound by that arrangement, which notice shall apply from the date mentioned therein, and a period of not less than 30 days and not more than 90 days shall be provided in the loyalty arrangement for this purpose.

7. A deferred rebate which is due to the shipper and which has already been accumulated by the conference shall not be withheld by, or forfeited to, the conference as a result of action by the shipper under article 14, paragraph 6.

8. If the trade of a country carried by shipping lines members of a conference on a particular route consists largely of one or few basic commodities, any increase in the freight rate on one or more of those commodities shall be treated as a general freight-rate increase, and the appropriate provisions of this Code shall apply.

9. Conferences should institute any general freight-rate increase effective in accordance with this Code for a period of a stated minimum duration, subject always to the rules regarding surcharges and regarding adjustment in freight rates consequent upon fluctuations in foreign exchange rates. The period over which a general freight-rate increase is to apply is an appropriate matter to be considered during consultations conducted in accordance with article 14, paragraph 2, but unless otherwise agreed between the parties concerned during the consultations, the minimum period of time between the date when one general freight-rate increase becomes effective and the date of notice for the next general freight-rate increase given in accordance with article 14, paragraph 1 shall not be less than 10 months.

Article 15
PROMOTIONAL FREIGHT RATES

1. Promotional freight rates for non-traditional exports should be instituted by conferences.

2. All necessary and reasonable information justifying the need for a promotional freight rate shall be submitted to a conference by the shippers, shippers’ organizations or representatives of shippers concerned.

3. Special procedures shall be instituted providing for a decision within 30 days from the date of receipt of that information, unless mutually agreed otherwise, on applications for promotional freight rates. A clear distinction shall be made between these and general procedures for considering the possibility of reducing freight rates for other commodities or of exempting them from increases.

4. Information regarding the procedures for considering applications for promotional freight rates shall be made available by the conference to shippers and/or shippers’ organizations and, on request, to the Governments and/or other appropriate authorities of the countries whose trade is served by the conference.

5. A promotional freight rate shall be established normally for a period of 12 months, unless otherwise mutually agreed between the parties concerned. Prior to the expiry of the period, the promotional freight rate shall be reviewed, on request by the shipper and/or shippers’ organization concerned, when it shall be a matter for the shipper and/or shippers’ organization, at the request of the conference, to show that the continuation of the rate is justified beyond the initial period.

6. When examining a request for a promotional freight rate, the conference may take into account that, while the rate should promote the export of the non-traditional product for which it is sought, it is not likely to create substantial competitive distortions in the export of a similar product from another country served by the conference.

7. Promotional freight rates are not excluded from the imposition of a surcharge or a currency adjustment factor in accordance with articles 16 and 17.

8. Each shipping line member of a conference serving the relevant parts of a conference trade shall accept, and not unreasonably refuse, a fair share of cargo for which promotional freight rate has been established by the conference.
Article 16

SURCHARGES

1. Surcharges imposed by a conference to cover sudden or extraordinary increases in costs or losses of revenue shall be regarded as temporary. They shall be reduced in accordance with improvements in the situation or circumstances which they were imposed to meet and shall be cancelled, subject to article 16, paragraph 6, as soon as the situation or circumstances which prompted their imposition cease to prevail. This shall be indicated at the moment of their imposition, together, as far as possible, with a description of the change in the situation or circumstances which will bring about their increase, reduction or cancellation.

2. Surcharges imposed on cargo moving to or from a particular port shall likewise be regarded as temporary and likewise shall be increased, reduced or cancelled, subject to article 16, paragraph 6, when the situation in that port changes.

3. Before any surcharge is imposed, whether general or covering only a specific port, notice should be given and there shall be consultation, upon request, in accordance with the procedures of this Code, between the conference concerned and other parties directly affected by the surcharge and prescribed in this Code as entitled to participate in such consultations, save in those exceptional circumstances which warrant immediate imposition of the surcharge. In cases where a surcharge has been imposed without prior consultation, consultations, upon request, shall be held as soon as possible thereafter. Prior to such consultations, conferences shall furnish data which in their opinion justify the imposition of the surcharge.

4. Unless the parties agree otherwise, within a period of 15 days after the receipt of a notice given in accordance with article 16, paragraph 3, if there is no agreement on the question of the surcharge between the parties concerned referred to in that article, the relevant provisions for settlement of disputes provided in this Code shall prevail. Unless the parties concerned agree otherwise, the surcharge may, however, be imposed pending resolution of the dispute, if the dispute still remains unresolved at the end of a period of 30 days after the receipt of the above-mentioned notice.

5. In the event of a surcharge being imposed, in exceptional circumstances, without prior consultation as provided in article 16, paragraph 3, if no agreement is reached through subsequent consultations, the relevant provisions for settlement of disputes provided in this Code shall prevail.

6. Financial loss incurred by the shipping lines members of a conference as a result of any delay on account of consultations and/or other proceedings for resolving disputes regarding imposition of surcharges in accordance with the provisions of this Code, as compared to the date from which the surcharge was to be imposed in terms of the notice given in accordance with article 16, paragraph 3, may be compensated by an equivalent prolongation of the surcharge before its removal. Conversely, for any surcharge imposed by the conference and subsequently determined and agreed to be unjustified or excessive as a result of consultations or other procedures prescribed in this Code, the amounts so collected or the excess thereof as determined hereinabove, unless otherwise agreed, shall be refunded to the parties concerned, if claimed by them, within a period of 30 days of such claim.

Article 17

CURRENCY CHANGES

1. Exchange rate changes, including formal devaluation or revaluation, which lead to changes in the aggregate operational costs and/or revenues of the shipping lines members of a conference relating to their operations within the conference provide a valid reason for the introduction of a currency adjustment factor or for a change in the freight rates. The adjustment or change shall be such that in the aggregate the members concerned neither gain nor lose, as far as possible, as a result of the adjustment or change. The adjustment or change may take the form of currency surcharges or discounts or of increases or decreases in the freight rates.

2. Such adjustments or changes shall be subject to notice, which should be arranged in accordance with regional practice, where such practice exists, and there shall be consultations in accordance with the provisions of this Code between the conference concerned and the other parties directly affected and prescribed in this Code as entitled to participate in such consultations, save in those exceptional circumstances which warrant immediate imposition of the adjustment or change. In the event that this has been done without prior consultations, consultations shall be held as soon as possible thereafter. The consultations should be on the application, size and date of implementation of the currency adjustment factor or freight-rate change, and the same procedures shall be followed for this purpose as are prescribed in article 16, paragraphs 4 and 5, in respect of surcharges. Such consultations should take place and be completed within a period not exceeding 15 days from the date when the intention to apply a currency surcharge or to effect a freight-rate change is announced.

3. If no agreement is reached within 15 days through consultations, the relevant provisions for settlement of disputes provided in this Code shall prevail.

4. The provisions of article 16, paragraph 6 shall apply, adapted as necessary to currency adjustment factors and freight-rate changes dealt with in the present article.
Chapter V
OTHER MATTERS

Article 18
FIGHTING SHIPS

Members of a conference shall not use fighting ships in the conference trade for the purpose of excluding, preventing or reducing competition by driving a shipping line not a member of the conference out of the said trade.

Article 19
ADEQUACY OF SERVICE

1. Conferences should take necessary and appropriate measures to ensure that their member lines provide regular, adequate and efficient service of the required frequency on the routes they serve and shall arrange such services so as to avoid as far as possible bunching and gapping of sailings. Conferences should also take into consideration any special measures necessary in arranging services to handle seasonal variations in cargo volumes.

2. Conferences and other parties prescribed in this Code as entitled to participate in consultations, including appropriate authorities if they so desire, should keep under review, and should maintain close co-operation regarding the demand for shipping space, the adequacy and suitability of service, and in particular the possibilities for rationalization and for increasing the efficiency of services. Benefits identified as accruing from rationalization of services shall be fairly reflected in the level of freight rates.

3. In respect of any port for which conference services are supplied only subject to the availability of a specified minimum of cargo, that minimum shall be specified in the tariff. Shippers should give adequate notice of the availability of such cargo.

Article 20
HEAD OFFICE OF A CONFERENCE

A conference shall as a rule establish its head office in a country whose trade is served by that conference, unless agreed otherwise by the shipping lines members of that conference.

Article 21
REPRESENTATION

Conferences shall establish local representation in all countries served, except that where there are practical reasons to the contrary the representation may be on a regional basis. The names and addresses of representatives shall be readily available, and these representatives shall ensure that the views of shippers and conferences are made rapidly known to each other with a view to expediting prompt decisions. When a conference considers it suitable, it shall provide for adequate delegation of powers of decision to its representatives.

Article 22
CONTENTS OF CONFERENCE AGREEMENTS, TRADE PARTICIPATION AGREEMENTS AND LOYALTY ARRANGEMENTS

Conference agreements, trade participation agreements and loyalty arrangements shall conform to the applicable requirements of this Code and may include such other provisions as may be agreed which are not inconsistent with this Code.

Part two
Chapter VI
PROVISIONS AND MACHINERY FOR SETTLEMENT OF DISPUTES

A. GENERAL PROVISIONS

Article 23

1. The provisions of this chapter shall apply whenever there is a dispute relating to the application or operation of the provisions of this Code between the following parties:

(a) A conference and a shipping line;
(b) The shipping lines members of a conference;
(c) A conference or a shipping line member thereof and a shippers' organization or representatives of shippers or shippers; and
(d) Two or more conferences.

For the purposes of this chapter the term "party" means the original parties to the dispute as well as third parties which have joined the proceedings in accordance with (a) of article 34.

2. Disputes between shipping lines of the same flag, as well as those between organizations belonging to the same country, shall be settled within the framework of the national jurisdiction of that country, unless this creates serious difficulties in the fulfillment of the provisions of this Code.

3. The parties to a dispute shall first attempt to settle it by an exchange of views or direct negotiations with the intention of finding a mutually satisfactory solution.

4. Disputes between the parties referred to in article 23, paragraph 1 relating to:

(a) Refusal of admission of a national shipping line to a conference serving the foreign trade of the country of that shipping line;
Refusal of admission of a third-country shipping line to a conference;

(c) Expulsion from a conference;

(d) Inconsistency of a conference agreement with this Code;

(e) A general freight-rate increase;

(f) Surcharges;

(g) Changes in freight rates or the imposition of a currency adjustment factor due to exchange rate changes;

(h) Participation in trade; and

(i) The form and terms of proposed loyalty arrangements

which have not been resolved through an exchange of views or direct negotiations shall, at the request of any of the parties to the dispute, be referred to international mandatory conciliation in accordance with the provisions of this chapter.

Article 24

1. The conciliation procedure is initiated at the request of one of the parties to the dispute.

2. The request shall be made:

(a) In disputes relating to membership of conferences: not later than 60 days from the date of receipt by the applicant of the conference decision, including the reasons therefor, in accordance with article 1, paragraph 4 and article 4, paragraph 3;

(b) In disputes relating to general freight-rate increases: not later than the date of expiry of the period of notice specified in article 14, paragraph 1;

(c) In disputes relating to surcharges: not later than the date of expiry of the 30-day period specified in article 16, paragraph 4 or, where no notice has been given, not later than 15 days from the date when the surcharge was put into effect; and

(d) In disputes relating to changes in freight rates or the imposition of a currency adjustment factor due to exchange rate changes: not later than five days after the date of expiry of the period specified in article 17, paragraph 3.

3. The provisions of article 24, paragraph 2 shall not apply to a dispute which is referred to international mandatory conciliation in accordance with article 25, paragraph 3.

4. Requests for conciliation in disputes other than those referred to in article 24, paragraph 2, may be made at any time.

5. The time-limits specified in article 24, paragraph 2 may be extended by agreement between the parties.

6. A request for conciliation shall be considered to have been duly made if it is proved that the request has been sent to the other party by registered letter, telegram or telexprinter or has been served on it within the time-limits specified in article 24, paragraph 2 or 5.

7. Where no request has been made within the time-limits specified in article 24, paragraphs 2 or 5, the decision of the conference shall be final and no proceedings under this chapter may be brought by any party to the dispute to challenge that decision.

Article 25

1. Where the parties have agreed that disputes referred to in article 23, paragraph 4 (a), (b), (c), (d), (h) and (i) shall be resolved through procedures other than those established in that article, or agree on procedures to resolve a particular dispute that has arisen between them, such disputes shall, at the request of any of the parties to the dispute, be resolved as provided for in their agreement.

2. The provisions of article 25, paragraph 1 apply also to the disputes referred to in article 23, paragraph 4 (c), (f) and (g), unless national legislation, rules or regulations prevent shippers from having this freedom of choice.

3. Where conciliation proceedings have been initiated, such proceedings shall have precedence over remedies available under national law. If a party seeks remedies under national law in respect of a dispute to which this chapter applies without invoking the procedures provided for in this chapter, then, upon the request of a respondent to those proceedings, they shall be stayed and the dispute shall be referred to the procedures defined in this chapter by the court or other authority where the national remedies are sought.

Article 26

1. The Contracting Parties shall confer upon conferences and shippers' organizations such capacity as is necessary for the application of the provisions of this chapter. In particular:

(a) A conference or a shippers' organization may institute proceedings as a party or be named as a party to proceedings in its collective capacity;

(b) Any notification to a conference or shippers' organization in its collective capacity shall also constitute a notification to each member of such conference or shippers' organization;

(c) A notification to a conference or shippers' organization shall be transmitted to the address of the head office of the conference or shippers' organization. Each conference or shippers' organization shall register the address of its head office with the Registrar appointed in accordance with article 46, paragraph 1. In the event that a conference or a shippers' organization fails to register or has no head office, a notification to any member in the name of the conference or shippers' organization shall be
deemed to be a notification to such conference or organization.

2. Acceptance or rejection by a conference or shippers' organization of a recommendation by conciliators shall be deemed to be acceptance or rejection of such a recommendation by each member thereof.

**Article 27**

Unless the parties agree otherwise, the conciliators may decide to make a recommendation on the basis of written submissions without oral proceedings.

**B. INTERNATIONAL MANDATORY CONCILIATION**

**Article 28**

In international mandatory conciliation the appropriate authorities of a Contracting Party shall, if they so request, participate in the conciliation proceedings in support of a party being a national of that Contracting Party, or in support of a party having a dispute arising in the context of the foreign trade of that Contracting Party. The appropriate authority may alternatively act as an observer in such conciliation proceedings.

**Article 29**

1. In international mandatory conciliation the proceedings shall be held in the place unanimously agreed to by the parties or, failing such agreement, in the place decided upon by the conciliators.

2. In determining the place of conciliation proceedings the parties and the conciliators shall take into account, *inter alia*, countries which are closely connected with the dispute, bearing in mind the country of the shipping line concerned and, especially when the dispute is related to cargo, the country where the cargo originates.

**Article 30**

1. For the purposes of this chapter an international panel of conciliators shall be established, consisting of experts of high repute or experience in the fields of law, economics of sea transport, or foreign trade and finance, as determined by the Contracting Parties selecting them, who shall serve in an independent capacity.

2. Each Contracting Party may at any time nominate members of the panel up to a total of 12, and shall communicate their names to the Registrar. The nominations shall be for periods of six years each and may be renewed. In the event of the death, incapacity or resignation of a member of the panel, the Contracting Party which nominated such person shall nominate a replacement for the remainder of his term of office. A nomination takes effect from the date on which the communication of the nomination is received by the Registrar.

3. The Registrar shall maintain the panel list and shall regularly inform the Contracting Parties of the composition of the panel.

**Article 31**

1. The purpose of conciliation is to reach an amicable settlement of the dispute through recommendations formulated by independent conciliators.

2. The conciliators shall identify and clarify the issues in dispute, seek for this purpose any information from the parties, and on the basis thereof, submit to the parties a recommendation for the settlement of the dispute.

3. The parties shall cooperate in good faith with the conciliators in order to enable them to carry out their functions.

4. Subject to the provisions of article 25, paragraph 2, the parties to a dispute may at any time during the conciliation proceedings decide in agreement to have recourse to a different procedure for the settlement of their dispute. The parties to a dispute which has been made subject to proceedings other than those provided for in this chapter may decide by mutual agreement to have recourse to international mandatory conciliation.

**Article 32**

1. The conciliation proceedings shall be conducted either by one conciliator or by an uneven number of conciliators agreed upon or designated by the parties.

2. Where the parties cannot agree on the number or the appointment of the conciliators as provided in article 32, paragraph 1, the conciliation proceedings shall be conducted by three conciliators, one appointed by each party in the statement(s) of claim and reply respectively; and the third by the two conciliators thus appointed, who shall act as chairman.

3. If the reply does not name a conciliator to be appointed in cases where article 32, paragraph 2 would apply, the second conciliator shall, within 30 days following the receipt of the statement of claim, be chosen by lot by the conciliator appointed in the statement of claim from among the members of the panel nominated by the Contracting Party or Parties of which the respondent(s) is(are) a national(s).

4. Where the conciliators appointed in accordance with article 32, paragraphs 2 or 3 cannot agree on the appointment of the third conciliator within 15 days following the date of the appointment of the second
conciliator, he shall, within the following 5 days, be chosen by lot by the appointed conciliators. Prior to the drawing by lot:

(a) No member of the panel of conciliators having the same nationality as either of the two appointed conciliators shall be eligible for selection by lot;

(b) Each of the two appointed conciliators may exclude from the list of the panel of conciliators an equal number of them subject to the requirement that at least 30 members of the panel shall remain eligible for selection by lot.

Article 33

1. Where several parties request conciliation with the same respondent in respect of the same issue, or of issues which are closely connected, that respondent may request the consolidation of those cases.

2. The request for consolidation shall be considered and decided upon by majority vote by the chairman of the conciliators so far chosen. If such request is allowed, the chairman will designate the conciliators to consider the consolidated cases from among the conciliators so far appointed or chosen, provided that an uneven number of conciliators is chosen and that the conciliator first appointed by each party shall be one of the conciliators considering the consolidated case.

Article 34

Any party, other than an appropriate authority referred to in article 28, if conciliation has been initiated, may join in the proceedings:

either

(a) As a party, in case of a direct economic interest;

or

(b) As a supporting party to one of the original parties, in case of an indirect economic interest,

unless either of the original parties objects to such joinder.

Article 35

1. The recommendations of the conciliators shall be made in accordance with the provisions of this Code.

2. When the Code is silent upon any point, the conciliators shall apply the law which the parties agree at the time the conciliation proceedings commence or thereafter, but not later than the time of submission of evidence to the conciliators. Failing such agreement, the law which in the opinion of the conciliators is most closely connected with the dispute shall be applicable.

3. The conciliators shall not decide ex aequo et bono upon the dispute unless the parties so agree after the dispute has arisen.

4. The conciliators shall not bring a finding of non liquet on the ground of obscurity of the law.

5. The conciliators may recommend those remedies and reliefs which are provided in the law applicable to the dispute.

Article 36

The recommendations of the conciliators shall include reasons.

Article 37

1. Unless the parties have agreed before, during or after the conciliation procedure that the recommendation of the conciliators shall be binding, the recommendation shall become binding by acceptance by the parties. A recommendation which has been accepted by some parties to a dispute shall be binding as between those parties only.

2. Acceptance of the recommendation must be communicated by the parties to the conciliators, at an address specified by them, not later than 30 days after receipt of the notification of the recommendation; otherwise, it shall be considered that the recommendation has not been accepted.

3. Any party which does not accept the recommendation shall notify the conciliators and the other parties, within 30 days following the period specified in article 37, paragraph 2 of its grounds for rejection of the recommendation, comprehensively and in writing.

4. When the recommendation has been accepted by the parties, the conciliators shall immediately draw up and sign a record of settlement, at which time the recommendation shall become binding upon those parties. If the recommendation has not been accepted by all parties, the conciliators shall draw up a report with respect to those parties rejecting the recommendation, noting the dispute and the failure of those parties to settle the dispute.

5. A recommendation which has become binding upon the parties shall be implemented by them immediately or at such later time as is specified in the recommendation.

6. Any party may make its acceptance conditional upon acceptance by all or any of the other parties to the dispute.

Article 38

1. A recommendation shall constitute a final determination of a dispute as between the parties which accept it, except to the extent that the recommendation is not recognized and enforced in accordance with the provisions of article 39.
2. "Recommendation" includes an interpretation, clarification or revision of the recommendation made by the conciliators before the recommendation has been accepted.

**Article 39**

1. Each Contracting Party shall recognize a recommendation as binding between the parties which have accepted it and shall, subject to the provisions of article 39, paragraphs 2 and 3, enforce, at the request of any such party, all obligations imposed by the recommendation as if it were a final judgement of a court of that Contracting Party.

2. A recommendation shall not be recognized and enforced at the request of a party referred to in article 39, paragraph 1 only if the court or other competent authority of the country where recognition and enforcement is sought is satisfied that:

   (a) Any party which accepted the recommendation was, under the law applicable to it, under some legal incapacity at the time of acceptance;

   (b) Fraud or coercion has been used in the making of the recommendations;

   (c) The recommendation is contrary to public policy (ordre public) in the country of enforcement; or

   (d) The composition of the conciliators, or the conciliation procedure, was not in accordance with the provisions of this Code.

3. Any part of the recommendation shall not be enforced and recognized if the court or other competent authority is satisfied that such part comes within any of the subparagraphs of article 39, paragraph 2 and can be separated from other parts of the recommendation. If such part cannot be separated, the entire recommendation shall not be enforced and recognized.

**Article 40**

1. Where the recommendation has been accepted by all the parties, the recommendation and the reasons therefor may be published with the consent of all the parties.

2. Where the recommendation has been rejected by one or more of the parties but has been accepted by one or more of the parties:

   (a) The party or parties rejecting the recommendation shall publish its or their grounds for rejection, given pursuant to article 37, paragraph 3, and may at the same time publish the recommendation and the reasons therefor;

   (b) A party which has accepted the recommendation may publish the recommendation and the reasons therefor; it may also publish the grounds for rejection given by any other party unless such other party has already published its rejection and the grounds therefor in accordance with article 40, paragraph 2 (a).

3. Where the recommendation has not been accepted by any of the parties, each party may publish the recommendation and the reasons therefor and also its own rejection and the grounds therefor.

**Article 41**

1. Documents and statements containing factual information supplied by any party to the conciliators shall be made public unless that party or a majority of the conciliators agrees otherwise.

2. Such documents and statements supplied by a party may be tendered by that party in support of its case in subsequent proceedings arising from the same dispute and between the same parties.

**Article 42**

Where the recommendation has not become binding upon the parties, no views expressed or reasons given by the conciliators, or concessions or offers made by the parties for the purpose of the conciliation procedure, shall affect the legal rights and obligations of any of the parties.

**Article 43**

1. (a) The costs of the conciliators and all costs of the administration of the conciliation proceedings shall be borne equally by the parties to the proceedings, unless they agree otherwise.

   (b) When the conciliation proceedings have been initiated, the conciliators shall be entitled to require an advance or security for the costs referred to in article 43, paragraph 1 (a).

2. Each party shall bear all expenses it incurs in connexion with the proceedings, unless the parties agree otherwise.

3. Notwithstanding the provisions of article 43, paragraphs 1 and 2, the conciliators may, having decided unanimously that a party has brought a claim vexatiously or frivolously, assess against that party any or all of the costs of other parties to the proceedings. Such decision shall be final and binding on all the parties.

**Article 44**

1. Failure of a party to appear or to present its case at any stage of the proceedings shall not be deemed an admission of the other party's assertions. In that event, the other party may, at its choice, request the conciliators to close the proceedings or to deal with the questions presented to them and submit a recommendation in accordance with the provisions for making recommendations set out in this Code.
2. Before closing the proceedings, the conciliators shall grant the party failing to appear or to present its case a period of grace, not exceeding 10 days, unless they are satisfied that the party does not intend to appear or to present its case.

3. Failure to observe procedural time-limits laid down in this Code or determined by the conciliators, in particular time-limits relating to the submission of statements or information, shall be considered a failure to appear in the proceedings.

4. Where the proceedings have been closed owing to one party's failure to appear or to present its case, the conciliators shall draw up a report noting that party's failure.

**Article 45**

1. The conciliators shall follow the procedures stipulated in this Code.

2. The rules of procedure annexed to the present Convention shall be considered as model rules for the guidance of conciliators. The conciliators may, by mutual consent, use, supplement or amend the rules contained in the annex or formulate their own rules of procedure to the extent that such supplementary, amended or other rules are not inconsistent with the provisions of this Code.

3. If the parties agree that it may be in the interest of achieving an expeditious and inexpensive solution of the conciliation proceedings, they may mutually agree to rules of procedure which are not inconsistent with the provisions of this Code.

4. The conciliators shall formulate their recommendation by consensus or failing that shall decide by majority vote.

5. The conciliation proceedings shall finish and the recommendation of the conciliators shall be delivered not later than six months from the date on which the conciliators are appointed, except in the cases referred to in article 23, paragraph 4 (e), (f), and (g), for which the time limits in article 14, paragraph 1 and article 16, paragraph 4 shall be valid. The period of six months may be extended by agreement of the parties.

**C. INSTITUTIONAL MACHINERY**

**Article 46**

1. Six months before the entry into force of the present Convention, the Secretary-General of the United Nations shall, subject to the approval of the General Assembly of the United Nations, and taking into account the views expressed by the Contracting Parties, appoint a Registrar, who may be assisted by such additional staff as may be necessary for the performance of the functions listed in article 46, paragraph 2. Administrative services for the Registrar and his assistants shall be provided by the United Nations Office at Geneva.

2. The Registrar shall perform the following functions in consultation with the Contracting Parties as appropriate:

(a) Maintain the list of conciliators of the international panel of conciliators and regularly inform the Contracting Parties of the composition of the panel;

(b) Provide the names and addresses of the conciliators to the parties concerned on request;

(c) Receive and maintain copies of requests for conciliation, replies, recommendation, acceptances, or rejections, including reasons therefor;

(d) Furnish on request, and at their cost, copies of recommendations and reasons for rejection to the shippers' organizations, conferences and Governments, subject to the provisions of article 46;

(e) Make available information of a non-confidential nature on completed conciliation cases, and without attribution to the parties concerned, for the purposes of preparation of material for the Review Conference referred to in article 52; and

(f) The other functions prescribed for the Registrar in article 26, paragraph 1 (c) and article 30, paragraphs 2 and 3.

**Chapter VII**

**FINAL CLAUSES**

**Article 47**

**IMPLEMENTATION**

1. Each Contracting Party shall take such legislative or other measures as may be necessary to implement the present Convention.

2. Each Contracting Party shall communicate to the Secretary-General of the United Nations, who shall be the depository, the text of the legislative or other measures which it has taken in order to implement the present Convention.

**Article 48**

**SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION**

1. The present Convention shall remain open for signature as from 1 July 1974 until and including 30 June 1975 at United Nations Headquarters and thereafter remain open for accession.
2. All States are entitled to become Contracting Parties to the present Convention by:
   (a) Signature subject to and followed by ratification, acceptance or approval; or
   (b) Signature without reservation as to ratification, acceptance or approval; or
   (c) Accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to this effect with the depositary.

Article 49
ENTRY INTO FORCE

1. The present Convention shall enter into force six months after the date on which not less than 24 States, the combined tonnage of which amounts to at least 25 per cent of world tonnage, have become Contracting Parties to it in accordance with article 48. For the purpose of the present article the tonnage shall be deemed to be that contained in Lloyd's Register of Shipping — Statistical Tables 1973, table 2 "World Fleets — Analysis by Principal Types", in respect to general cargo (including passenger/cargo) ships and container (fully cellular) ships, exclusive of the United States reserve fleet and the American and Canadian Great Lakes fleets.

2. For each State which thereafter ratifies, accepts, approves or accedes to it, the present Convention shall come into force six months after deposit by such State of the appropriate instrument.

3. Any State which becomes a Contracting Party to the present Convention after the entry into force of an amendment shall, failing an expression of a different intention by that State:
   (a) Be considered as a Party to the present Convention as amended; and
   (b) Be considered as a Party to the unamended Convention in relation to any Party to the present Convention not bound by the amendment.

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*At its 9th plenary meeting on 6 April 1974, the Conference adopted the following understanding recommended by its Third Main Committee:

"In accordance with its terms, the present Convention will be open to participation by all States, and the Secretary-General of the United Nations will act as depositary. It is the understanding of the Conference that the Secretary-General, in discharging his functions as depositary of a convention or other multilateral legally binding instrument with an "All-States" clause, will follow the practice of the General Assembly of the United Nations in implementing such a clause and, whenever advisable, will request the opinion of the General Assembly before receiving a signature or an instrument of ratification, acceptance, approval or accession."

# Article 50
DENUNCIATION

1. The present Convention may be denounced by any Contracting Party at any time after the expiration of a period of two years from the date on which the Convention has entered into force.

2. Denunciation shall be notified to the depositary in writing, and shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the date of receipt by the depositary.

# Article 51
AMENDMENTS

1. Any Contracting Party may propose one or more amendments to the present Convention by communicating the amendments to the depositary. The depositary shall circulate such amendments among the Contracting Parties, for their acceptance, and among States entitled to become Contracting Parties to the present Convention which are not Contracting Parties, for their information.

2. Each proposed amendment circulated in accordance with article 51, paragraph 1 shall be deemed to have been accepted if no Contracting Party communicates an objection thereto to the depositary within 12 months following the date of its circulation by the depositary. If a Contracting Party communicates an objection to the proposed amendment, such amendment shall not be considered as accepted and shall not be put into effect.

3. If no objection has been communicated, the amendment shall enter into force for all Contracting Parties six months after the expiry date of the period of 12 months referred to in article 51, paragraph 2.

# Article 52
REVIEWS CONFERENCES

1. A Review Conference shall be convened by the depositary five years from the date on which the present Convention comes into force to review the working of the Convention, with particular reference to its implementation, and to consider and adopt appropriate amendments.

2. The depositary shall, four years from the date on which the present Convention comes into force, seek the views of all States entitled to attend the Review Conference and shall, on the basis of the views received, prepare and circulate a draft agenda as well as amendments proposed for consideration by the Conference.

3. Further review conferences shall be similarly convened every five years, or at any time after the first Review Conference, at the request of one-third of the
Contracting Parties to the present Convention, unless the first Review Conference decides otherwise.

4. Notwithstanding the provisions of article 52, paragraph 1, if the present Convention has not entered into force five years from the date of the adoption of the Final Act of the United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences, a Review Conference shall, at the request of one-third of the States entitled to become Contracting Parties to the present Convention, be convened by the Secretary-General of the United Nations, subject to the approval of the General Assembly, in order to review the provisions of the Convention and its annex and to consider and adopt appropriate amendments.

Article 53
FUNCTIONS OF THE DEPOSITARY

1. The depositary shall notify the signatory and acceding States of:

(a) Signatures, ratifications, acceptances, approvals and accessions in accordance with article 48;
(b) The date on which the present Convention enters into force in accordance with article 49;
(c) Denunciations of the present Convention in accordance with article 50;
(d) Reservations to the present Convention and the withdrawal of reservations;
(e) The text of the legislative or other measures which each Contracting Party has taken in order to implement the present Convention in accordance with article 47;
(f) Proposed amendments and objections to proposed amendments in accordance with article 51; and
(g) Entry into force of amendments in accordance with article 51, paragraph 3.

2. The depositary shall also undertake such actions as are necessary under article 52.

Article 54
AUTHENTIC TEXTS – DEPOSIT

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, will be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, having been duly authorized to this effect by their respective Governments, have signed the present Convention, on the dates appearing opposite their signatures.

132.

ANNEX TO THE CONVENTION
Model rules of procedure for international mandatory conciliation

Rule 1

1. Any party wishing to institute conciliation proceedings under the Code shall address a request to that effect in writing, accompanied by a statement of claim to the other party, and copied to the Registrar.

2. The statement of claim shall:

(a) Designate precisely each party to the dispute and state the address of each;
(b) Contain a summary statement of pertinent facts, the issues in dispute and the claimant’s proposal for the settlement of the dispute;
(c) State whether an oral hearing is desired and, if so, and to the extent then known, the names and addresses of persons to give evidence, including experts’ evidence, for the claimant;
(d) Be accompanied by such supporting documentation and relevant agreements and arrangements entered into by the parties as the claimant may consider necessary at the time of making the claim;
(e) Indicate the number of conciliators required, any proposal concerning the appointment of conciliators, or the name of the conciliator appointed by the claimant in accordance with article 32, paragraph 2, and
(f) Contain proposals, if any, regarding rules of procedure.

3. The statement of claim shall be dated and shall be signed by the party.

Rule 2

1. If the respondent decides to reply to the claim, he shall, within 30 days following the date of his receipt of the statement of claim, transmit a reply to the other party and copied to the Registrar.

2. The reply shall:

(a) Contain a summary statement of pertinent facts opposed to the contentions in the statement of claim, the respondent’s proposal, if any, for the settlement of the dispute and any remedy claimed by him with a view to the settlement of the dispute;
(b) State whether an oral hearing is desired and, if so, and to the extent then known, the names and addresses of persons to give evidence, including experts’ evidence, for the respondent;
(c) Be accompanied by such supporting documentation and relevant agreements and arrangements entered into by the parties as the respondent may consider necessary at the time of making the reply;
(d) Indicate the number of conciliators required, any proposal concerning the appointment of conciliators, or the name of the conciliator appointed by the respondent in accordance with article 32, paragraph 2; and
(e) Contain proposals, if any, regarding rules of procedure.

3. The reply shall be dated and shall be signed by the party.

Rule 3

1. Any person or other interest desiring to participate in conciliation proceedings under article 34 shall transmit a written request to the parties to the dispute, with a copy to the Registrar.

2. If participation in accordance with (a) of article 34 is desired, the request shall set forth the grounds therefor, including the information required under rule 1, paragraph 2 (a), (b) and (d).
3. If participation in accordance with (b) of article 34 is desired, the request shall state the grounds therefor and which of the original parties would be supported.

4. Any objection to a request for joinder by such a party shall be sent by the objecting party, with a copy to the other party, within seven days of receipt of the request.

5. In the event that two or more proceedings are consolidated, subsequent requests for third-party participation shall be transmitted to all parties concerned, each of which may object in accordance with the present rule.

Rule 4

By agreement between the parties to a dispute, on motion by either party, and after affording the parties an opportunity of being heard, the conciliators may order the consolidation or separation of all or any claims then pending between the same parties.

Rule 5

1. Any party may challenge a conciliator where circumstances exist that cause justifiable doubts as to his independence.

2. Notice of challenge, stating reasons therefore, should be made prior to the date of the closing of the proceedings, before the conciliators have rendered their recommendation. Any such challenge shall be heard promptly and shall be determined by majority vote of the conciliators in the first instance, as a preliminary point, in cases where more than one conciliator has been appointed. The decision in such cases shall be final.

3. A conciliator who has died, resigned, become incapacitated or disqualified shall be replaced promptly.

4. Proceedings interrupted in this way shall continue from the point where they were interrupted, unless it is agreed by the parties or ordered by the conciliators that a review or rehearing of any oral testimony take place.

Rule 6

The conciliators shall be judges of their own jurisdiction and/or competence within the provisions of the Code.

Rule 7

1. The conciliators shall receive and consider all written statements, documents, affidavits, publications or any other evidence, including oral evidence, which may be submitted to them by or on behalf of any of the parties, and shall give such weight thereto as in their judgement such evidence merits.

2. (a) Each party may submit to the conciliators any material it considers relevant, and at the time of such submission shall deliver certified copies to any other party to the proceedings, which party shall be given a reasonable opportunity to reply thereto;

(b) The conciliators shall be the sole judges of the relevance and materiality of the evidence submitted to them by the parties;

(c) The conciliators may ask the parties to produce such additional evidence as they may deem necessary to an understanding and determination of the dispute, provided that, if such additional evidence is produced, the other parties to the proceedings shall have a reasonable opportunity to comment thereon.

Rule 8

1. Whenever a period of days for the doing of any act is provided for in the Code or in these rules, the day from which the period begins to run shall not be counted, and the last day of the period shall be counted, except where that last day is a Saturday, Sunday or a public holiday at the place of conciliation, in which case the last day shall be the next business day.

2. When the time provided for is less than seven days, intermediate Saturdays, Sundays and public holidays shall be excluded from the computation.

Rule 9

Subject to the provisions relating to procedural time-limits in the Code, the conciliators may, on a motion by one of the parties or pursuant to agreement between them, extend any such time-limit which has been fixed by the conciliators.

Rule 10

1. The conciliators shall fix the order of business and, unless otherwise agreed, the date and hour of each session.

2. Unless the parties otherwise agree, the proceedings shall take place in private.

3. The conciliators shall specifically inquire of all the parties whether they have any further evidence to submit before declaring the proceedings closed, and a notation thereof shall be recorded.

Rule 11

Conciliators’ recommendations shall be in writing and shall include:

(a) The precise designation and address of each party;

(b) A description of the method of appointing conciliators, including their names;

(c) The dates and place of the conciliation proceedings;

(d) A summary of the conciliation proceedings, as the conciliators deem appropriate;

(e) A summary statement of the facts found by the conciliators;

(f) A summary of the submissions of the parties;

(g) Pronouncements on the issues in dispute, together with the reasons therefor;

(h) The signatures of the conciliators and the date of each signature;

(i) An address for the communication of the acceptance or rejection of the recommendation.

Rule 12

The recommendation shall, so far as possible, contain a pronouncement on costs in accordance with the provisions of the Code. If the recommendation does not contain a full pronouncement on costs, the conciliators shall, as soon as possible after the recommendation, and in any event not later than 60 days thereafter, make a pronouncement in writing regarding costs as provided in the Code.

Rule 13

Conciliators’ recommendations shall also take into account previous and similar cases whenever this would facilitate a more uniform implementation of the Code and observance of conciliators’ recommendations.
RESOLUTIONS ADOPTED BY THE CONFERENCE

1. Completion of the work of the Conference

_The United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences,_

_Having met_ in accordance with General Assembly resolution 3035 (XXVII) of 19 December 1972 to consider and adopt a convention or any other multilateral legally binding instrument on a code of conduct for liner conferences,

_Having agreed_ unanimously in respect of a large number of paragraphs contained in the draft code of conduct for liner conferences annexed to the reports of the three main committees of the Conference of Plenipotentiaries,

_Having noted_ that the principles in regard to the settlement of some fundamental issues before the United Nations Conference of Plenipotentiaries for a Code of Conduct for Liner Conferences submitted by the President of the Conference, and annexed to this resolution, have been accepted, among the States participating in the Conference, by all developing countries, all socialist countries of Eastern Europe and a number of developed market-economy countries, and having noted also that a number of other developed market-economy countries have not accepted the above-mentioned principles and that a number of other such countries have reserved their position on the subject,

_Taking note_ that all countries which have accepted the principles referred to in the preceding paragraph have agreed that these principles shall form the basis of further work on the relevant sections of the draft code of conduct for liner conferences,

_Taking note_ also of the views of countries which have not accepted the principles referred to above and the desire of these countries that their views be taken into account in the further work,

1. _Takes note_ of the substantial progress achieved during the first part of the Conference;

2. _Takes note_ also of the report on the plenary meetings of the Conference and of the reports of its three main committees;

3. _Considers_ that the best interests of all countries will be served by a resumption of the United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences in Geneva on 11 March 1974 for a period of three weeks in order that it may complete its task;

4. _Requests_ the Secretary-General of the United Nations and the Secretary-General of UNCTAD to make arrangements for the resumption of the Conference of Plenipotentiaries accordingly;

5. _Affirms_ that the large number of paragraphs agreed unanimously and contained in the draft code of conduct for liner conferences annexed to the reports of the three main committees of the Conference of Plenipotentiaries shall not be reopened for any further discussion or for changes in the texts of these paragraphs, with the exception of any editorial and/or legal drafting changes that may be deemed necessary;

6. _Notes_ the agreement of all countries who have accepted the principles in regard to the settlement of some fundamental issues before the United Nations Conference of Plenipotentiaries for a Code of Conduct for Liner Conferences submitted by the President of the Conference, and annexed to this resolution, to continue to regard these principles as the basis for further work at the resumed Conference of Plenipotentiaries and not to reopen discussion on these principles and also not to reopen for any further discussion or changes the relevant paragraphs of the draft code agreed by all such countries, and based on these principles, with the exception of any editorial and/or legal drafting changes that may be deemed necessary or any other drafting changes considered necessary for securing improved conformity of the texts of these paragraphs with the agreed principles;

7. _Confirms_ the willingness of all parties to this resolution to continue negotiations at the resumed Conference of Plenipotentiaries from the stage reached at its adjournment with a view to considering and adopting at the resumed conference a convention or any other multilateral legally binding instrument on a code of conduct for liner conferences;

8. _Requests_ the UNCTAD secretariat to prepare texts in legal language in respect of texts annexed to the reports of the main committees of the Conference and to circulate such texts to the Governments of all member States as an aid to their consideration well in advance of the resumption of the Conference of Plenipotentiaries.

6th plenary meeting
15 December 1973
ANNEX TO RESOLUTION 1

Principles in regard to the settlement of some fundamental issues before the United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences

A. Role of Governments

1. Upon the request of Governments, requisite information is to be furnished by the conferences.

2. Government representatives are to have the right to be present during consultations, to participate in the discussions fully, to make suggestions, and to promote agreement between the parties, but they shall have no role of a decision-maker.

3. Governments are to have a similar right of participation in conciliation proceedings.

B. Participation in trade

1. Equality of the rights of national lines at the two ends.

2. A share of 20 per cent is to be allocated to third-flag lines where they exist.

3. If national lines do not carry, or are unable to carry, their allocated share of the trade — and on this point they themselves shall make the decision — that portion of their share of the trade which they do not carry will revert to the pool to be shared pro rata.

4. National lines within a region at one end are to have the flexibility of adjustments among themselves in regard to their shares.

C. Implementation

1. Every effort is to be made by the parties to reach a settlement during consultations.

2. Where a matter is not settled by consultation and a dispute arises, it should be submitted to mandatory international conciliation; among such matters are questions relating to freight rates, surcharges, and currency adjustment factors.

3. Conciliators’ recommendations, if accepted by the parties, shall be binding.

4. If conciliators’ recommendations are rejected, reasons for their rejection are to be stated comprehensively in writing and published.

5. A review conference is to be convened after five years to review the working of the convention with particular reference to implementation. Such review conferences are to be held every five years thereafter.

D. Criteria for the determination of freight rates

1. These criteria should be as contained in the proposal submitted by the socialist countries of Eastern Europe for paragraph 54 of the Code.*

2. The time between the date when one general freight-rate increase becomes effective and the date of notice of the next general freight rate increase should not be less than 12 months.

Note. Reference was made to the apprehensions among different groups in regard to the question of outside competition, but the hope was expressed that this problem would be satisfactorily resolved by mutual discussion in the Committee or drafting group concerned.

2. Non-conference shipping lines

The United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences,

Having prepared the Convention on a Code of Conduct for Liner Conferences with a view to improving the liner conference system,

Bearing in mind that the Convention is applicable to liner conferences and their external relations,

Resolves that:

1. Nothing in that Convention shall be construed so as to deny shippers an option in the choice between conference shipping lines and non-conference shipping lines subject to any loyalty arrangements where they exist;

2. Non-conference shipping lines competing with a conference should adhere to the principle of fair competition on a commercial basis;

3. In the interest of sound development of liner shipping service, non-conference shipping lines should not be prevented from operating as long as they comply with the requirements of paragraph 2 above.

9th plenary meeting 6 April 1974

3. Local conciliation

The United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences,

Bearing in mind the importance of the consultation provisions and the dispute settlement procedures provided in the Convention on a Code of Conduct for Liner Conferences,

Noting that proposals were made to provide in the Code for submitting some disputes to local conciliation,

1. Requests the first Review Conference to be convened in accordance with article 52 of the Convention to give priority consideration to the subject of local conciliation, taking into account the views expressed by the Contracting Parties to the Convention on whether or not the absence of local conciliation has hampered the effective settlement of
disputes and, if so, which subjects should be considered appropriate for localized conciliation and what procedures should be applied for resolving such disputes.

2. **Agrees** that in preparing for the Review Conference the depositary shall seek the views of all States entitled to attend the Review Conference, which should be required to take into account the views expressed by appropriate authorities, liner conferences and shippers' organizations.

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9th plenary meeting  
6 April 1974