Implementation of the Code of Conduct for Liner Conferences in Togo

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THE IMPLEMENTATION OF THE CODE OF CONDUCT FOR LINER CONFERENCES IN TOGO

By

Kossi ALETA

TOGO

A Paper submitted to the Faculty of the World Maritime University in partial satisfaction of the requirements for the award of a

MASTER OF SCIENCE DEGREE

in

GENERAL MARITIME ADMINISTRATION

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

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Eli A. Georgandopoulos

Professor Emeritus and former Rector of the Piraeus Graduate School of Industrial Studies-Greece

Visiting Professor at the World Maritime University
To my family mainly:

My father.

My daughter Matine

and her mother Tiroma

for their prayer for me.

MAY GOD BLESS ALL OF US!
THE IMPLEMENTATION OF THE UNCTAD CODE OF CONDUCT FOR LINER CONFERENCES IN TOGO
ACKNOWLEDGEMENTS

I am grateful to the Government of Togo through the directors of Maritime Affairs Mr ANEM Osseni and National Shipping Line Mr THAMDJA Souma who have made it possible for me to study at The world Maritime University.

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My deep appreciation goes to the responsibilities of Transatlantic Shipping Line, Sweden, Hoegh Line, Norway, NEPH, Hamburg Germany, SCADOA, SNO, Chargeur Reunies France and COWAC, North and South for the help I received from them during my job training in their respective institutions.

My recognition goes to Mr Taamah Nolana and my uncle Koussow for what they have done for me. I will never forget.

I thank finally all others who in various way helped me.
INTRODUCTION

Since the Second World war, it has been reported that the gap between the developed and developing countries has grown wider and wider. This has become an international problem which has mobilised the international community. The idea of an international new order was born with the creation of the United Nation Conference On Trade and Development (UNCTAD).

UNCTAD was established as a permanent body of the general assembly of the United Nations in 1964. The goal of Unctad was the promotion of world trade and economy particularly with regard to helping developing countries expand their self-sustained growth. UNTAD considers a wide range of problems: prices for primary products of developing countries; access to primary products the international markets; diversification of the economies of developing countries, reducing rising burden of debt; improving the terms of aid to promote shipping of less developed countries (LDCs).

In the area of shipping, UNCTAD established a committee of shipping in 1965. It includes forty five members from less developed countries, Eastern Europe, the People’s Republic of China coming later and Maritime Nations. The Committee holds one regular session annually provided there is no plenary meeting any particular year, its activities ranging from statistical and economical analysis in the field of shipping in general, to discussing and researching matters such as
freight rates, shipping conferences, bills of lading, promotion of the LDCS merchant marine, port improvements, surcharges etc.

The committee’s resolutions and recommendations are of an advisory nature. The committee on shipping has already adopted 57 resolutions and recommendations. Through these recommendations and resolutions, Unctad has been inspired and has initiated some international conventions promoting shipping adopted at plenipotentiary conferences. One of these conventions is the convention on the code of conduct for line conferences.

Qualified as an instrument calling for "a new international maritime order", the code of conduct for liner conferences is based not on hasard but on a long history of liner shipping. It is rewarding to note that the present chancellor of the World Maritime University, Mr C.P.Srivastava was the chairman of the plenipotentiary conference which adopted the convention after many difficult rounds of negotiations.

The reason behind adopting such an instrument is that conferences are private international cartels in the legal environment(*1). Their network is so complex that national legislations cannot regulate them effectively. Letting the conferences regulate themselves is not satisfactory because public and national interest will not be taken into consideration. The experiences

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(*1): Cf Amos Herman "Shipping Conferences" Lloyd's of London Press LTD page 12.
show that conferences abused their freedom. They did not publish tariffs; did not notify shippers regarding the terms of loyalty agreement and do not want to accept new members' lines.

The organisation of shippers, the intervention of governments in the form of nationalized fleet and the technological development involving the intensification of the competition made it clear that the old way of conducting conferences affaires could no longer be maintained.

The initiative of change came from the governments. In Europe the shipowners were asked to draft a code specifying rights and obligations and taking into account the shippers and government's interests. This led to the CENSA code (*1) which was not accepted by developing countries (*2) because they argued that they were not parties of that draft and that this code did not take into consideration their interest in the scope of UNCTAD's objectives. But the idea to have a code was maintained. All parties had to make proposals. Then in the UNCTAD III meeting in Santiago (Chile), three drafts were submitted and still no consensus was reached.

(*1): CENSA = Committee of European and Japanese shipowners' associations. Originally included EEC countries, Norway, Sweden and Japan which joined later.

(*2): Generally known in shipping as the group of 77. In UNCTAD they consist of group A & C
So, for these reasons, the General Assembly requested the Secretary General of the United Nations to convene, in 1973, a conference of plenipotentiaries under the auspices of UNCTAD, to consider and adopt a Convention or any multilateral, legally binding instrument on a code of conduct for liner conferences. A preparatory committee was appointed for this purpose. The conference of plenipotentiaries met in Geneva and on 6 April 1974 a convention on a code of conduct for liner conferences was adopted. It entered into force in October 1985.

The main features of the code are:

- Elimination of conferences power to decide at discretion on memberships.

- The freight and the volume sharing provision also the provision which establish equal right for all members lines in the decision making procedure of a conference.

- Abolishment of secrecy which surrounded conference agreements, tariffs and other related documents.

- Protection of shippers interest, consultation, freight rate determination.

- Criteria and procedure for freight rate determination.

- Provision for settlement of disputes.
The code of conduct for liner conference raised great interest in the theoretical order as well as in the practical order.

At the theoretical level, many authors wrote about it such as S.G. Suturmey; M.J. Shah; L.M.S. Rajwar; M. Georgandopolos; K.G. Sayer; Sanger Sen; B.M. Deakin; L. Fadika (*1); etc.

At the practical level, the code is a matter of discussion in many seminars; in the shippers councils, shipping lines, port authority of all countries who have ratified it and try to implement it.

Apart from these two interests, there is also the Reviewing Conference which is supposed to be held in 1988. Thus the question about the future of the UNCTAD Code rests in the spirit of all concerned.

According to this, it could be interesting to analyse how the code is being implemented in Togo, a coastal country and party to the code. The code itself did not state expressly how it must be implemented. It has been agreed that in order to enforce the code, contracting parties are requested to take such legislative or other measures as may be necessary to implement the code. Having established its national maritime infrastructures, the code of conduct seems to be an indispensable instrument which can help the country to participate in its international seaborne

(*1): Those authors have been more or less involved in UNCTAD Shipping Division work.
trade, and by doing so to obtain experience in the field of shipping. This point of view of Togo regarding the code of conduct, as well as the ways of its implementation, is almost the same as in other developing countries mainly in West and Central Africa. If this code seems to be indispensable for some, it is at the same time a matter of a struggle. So the implementation of the code is not without difficulties. But these difficulties can be minimised if some measure are taken at internal level, regional level as well as at international level. At international level mainly, the Reviewing Conference seems an important occasion to update the Code taking into account the views of all parties.

Thus the subject will be analysed in five points:

- Togo (*1) as a costal country within the international maritime environment (preliminary chapter).

- Views of the nations on the liner code of conduct (chapter 1).

- Measures taken for the implementation of the code in Togo (chapter 2).

- Difficulties arising in the implementation of the code (chapter 3).

- An attempt to solve some difficulties: Suggestions and recommendations for a better implementation of the code (chapter 4).

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(*1): Cf annex 4 page 158 to page 159.
Togo was a German protectorate from 1885 until 1914. Between 1914 until 1957 Togo was under the United Nation Council for decolonisation. French Togo was proclaimed a Republic in 1957 and achieved full independance on April 27th 1960. With a total area of 57,000 square kilometers, Togo is located in West Africa and is bounded to the West by Ghana, to the North by Burkina Fasso, to the East by Benin and to the South by the Gulf of Guinea. It is a coastal country, thoroughly dependent upon the international environment.

SECTION 1: TOGO A COASTAL COUNTRY.

North from the Gulf it stretches 600 kilometers and is 160 kilometers wide at its broadest point. The coast stretches from Lome (Aflao) to Aneho (Hillakondji) and is about 52 kilometres long. What about its maritime possibilities and its maritime infrastructures? This has to be briefly stated as well as its maritime activities in which it is involved.

A) MARITIME POSSIBILITIES AND MARITIME INFRASTRUCTURES.

The maritime possibilities and maritime
infrastructures are not negligible. It will be of interest to restate them in this context.

a) The maritime possibilities at present.

The coast line is about 52 Km from the border of Ghana to the border of Benin. This coast consists of the territorial sea, contiguous zone and exclusive economic zone. The territorial sea has a breadth of 12 nautical miles from the base line set up in accordance with third United Nation Conference on the Law Of the Sea (UNCLOS 3). The contiguous zone has an outer limit of not more than 24 nautical miles from the base line. The exclusive economic zone is not more than 200 nautical miles from the base line. The coastline of TOGO is subjected to erosion.

Apart from the coast, there are other maritime possibilities such as Lake Togo, Mono River Oti river and others. Lake Togo, called Agbodrafo, is a 15000 acre lagoon that teems with fish and aquatic wildlife. It is one of the country’s most compelling attractions. The Mono River is a natural border between Benin and Togo and is about 100 kilometers long. On this river, there is a barrage construction which will produce electricity for the two countries. The Oti river in the North of Togo drains in a south-westerly direction into the Volta River, which constitutes a part of the upper boundary with Ghana.

On this list we can add other maritime
possibilities such as the Kara river, Koumongou river, Mo river, Ogou river, Anie river, Amou river and Kra river. To exploit these maritime possibilities, certain maritime infrastructures have been established.

b) Maritime infrastructures available.

Certain maritime infrastructures have been established to meet the maritime possibilities. These are: the Directorate of Maritime Affairs, the Port of Lomé, the National Shipping Line, Shipping Agencies and Directorate of Fishing.

The directorate of Maritime Affairs has been established by the government in order to be general supervising and co-ordinating body. In this respect, its duties as is stated in the document of its establishment are:

- Registration of ships and related functions, survey, inspection and certificates of ships, port state control of foreign ships, inspection and detention of unseaworthy ships.

- To conduct of examinations leading to the issuance of the appropriate certificates of competency and proficiency to various categories of seafarers.

- The manning of ships, conducting inquiries, investigating into shipping casualties, dealing with matters pertaining to the prevention, control, combating of marine pollution.
- The crew matters; registration of seamen, wrecks.
- The adoption and implementation of international maritime conventions.
- To advice to the government on maritime matters.

Nowadays all these functions are almost fulfilled and the first objective of the government is to provide to the Directorate of Maritime Affairs with trained and qualified people.

The ports of Lome are: the Port Autonomous of Lome which is the most important, the mineral port and the fisheries port. The Port Autonomous of Lome, (latitude 6°08 north, Longitude 1°17 east) is situated between the international coastal road Ghana-Togo-Benin and the Atlantic ocean. The Autonomous Port of Lome is a free port and administrates piloting, mooring, towing, handling, lights and beacons, watchtower and radio. Near to the Autonomous Port of Lome, there is one mineral port; another being in Kpeme for the purpose of the exploiting of phosphate. A small port for fisheries is also near the Port Autonomous.

The National Shipping Line (SOTONAM) has been established by a decree of 23 January 1979. This is a public enterprise. It sells only services; in this respect it has the title of a commercial enterprise. SOTONAM fulfils two duties: it is a shipping company and at the same time a shipping agency. As a shipping company, SOTONAM has two vessels: M/s HODO and M/s PIC d'AGOU. As a shipping agency, SOTONAM is a consignator of
many shipping lines such as SITRAM and SIVOMAR of the Ivory Coast, OT Africa Line of the Great Britain etc.

The shippers council has been established in view for defending the interests of all physical or moral shippers of Togo, mainly those who are exercising an activity and having concluded a contract with a conference or a shipping company in terms of transportation. Its duty is to consult shippers in all matters relating to maritime transportation and to participate in the negotiations with the conferences and to sign on behalf of the shippers the agreements which are in their interests. The other duty of the shippers council is to administrate the cargo sharing formula of the code of conduct for liner conferences.

Apart from these infrastructures there are some forwarding and shipping agencies such as SOAEM, STMP, AGETRAC, SOCOPAO, INTERTRANS etc; which like the others, are deeply involved in maritime activities and seaborne trade.

B) MARITIME ACTIVITIES AND SEABORNE TRADE.

The maritime activities are essentially fishing a small offshore industry and mainly shipping. As shipping is a servant of trade, it is important to examine seaborne trade and the main commercial partners.

a) Fishing and shipping.

Fishing as an activity is to a great extent
Alongside the coast and around the lagoon people are essentially fishermen. Usually they use traditional methods for fishing like pirogues which were estimated in 1981 to be about 8,100. 57% of fish was caught in the Atlantic Ocean and the rest inland. Almost all the fish are sold smoked or dried. Some effort has been made by the government to promote fishing activities such as the construction of a fishing quay and the establishment of a fishing company called STAL peche.

Beside this, the offshore industry has been established in view of the prospecting of petroleum alongside the coast of Togo and Benin. This new activity is unknown to the Togolese. The most important activity seems to be shipping.

Shipping is an old activity in Togo. The citizens near the coast of Togo have always used boats for shipping purposes. In the 14th century, the Portuguese traders started to sail along the coast of Togo. This was the revolution of sailing ships, later followed by steamships. The period of slavery stimulated shipping along this coast with the installation of counters. During the German protectorate, shipping as an activity became more interesting because of the construction of the wharf.

Between the two world wars many famous shipping lines such as the Societe Navale de l'Ouest (SNO), Hoegh Line, Deutch Africa Line, Societe Naval Delmas Vieljieux (SNDV) started to sail in Togo lese waters, and this led to the establishment of shipping agencies such as SOCOPAO, SOAEM etc.
After independence, one of the objectives of the government was to promote shipping activities in the country. This led to the construction of the port, to the creation of the Directorate of Maritime Affairs, to the establishment of a national shipping line, to the promotion of the national shippers council and some forwarding and shipping agencies. Nowadays, maritime activities are becoming more important because of the seaborne trade of the country.

a) Seaborne trade and main commercial partners.

The international seaborne shipping handles the largest proportion of the trade. Almost 90% of the external trade of the country is transported by sea, this because, as we know, transport by sea is cheaper than other transportation. In 1985 the seaborne trade of the country was as follows (*1).

<table>
<thead>
<tr>
<th>Imports</th>
<th>1985</th>
<th>1984</th>
<th>variations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luxury Products</td>
<td>3,096</td>
<td>3,449</td>
<td>-353</td>
</tr>
<tr>
<td>Textiles</td>
<td>27,771</td>
<td>18,026</td>
<td>9745</td>
</tr>
<tr>
<td>Others mat. of const.</td>
<td>36,530</td>
<td>25,705</td>
<td>10,825</td>
</tr>
<tr>
<td>Cement</td>
<td>1,334</td>
<td>697</td>
<td>637</td>
</tr>
<tr>
<td>Klinker</td>
<td>236,141</td>
<td>135,337</td>
<td>100,810</td>
</tr>
<tr>
<td>Cypse</td>
<td>10,150</td>
<td>5,050</td>
<td>5,100</td>
</tr>
<tr>
<td>Marble</td>
<td>461</td>
<td>414</td>
<td>47</td>
</tr>
<tr>
<td>Pouzzolouc</td>
<td>-</td>
<td>21,000</td>
<td>-21,000</td>
</tr>
<tr>
<td>Drink</td>
<td>8,031</td>
<td>10,457</td>
<td>-2,426</td>
</tr>
</tbody>
</table>

(*1) Source: Statistics of the Port Autonomous; 1985
<table>
<thead>
<tr>
<th>Product</th>
<th>Import 1</th>
<th>Import 2</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fish</td>
<td>10909</td>
<td>11,4444</td>
<td>535</td>
</tr>
<tr>
<td>Food products</td>
<td>166,232</td>
<td>217,533</td>
<td>-51,301</td>
</tr>
<tr>
<td>Diverse</td>
<td>88,932</td>
<td>82,394</td>
<td>6,538</td>
</tr>
<tr>
<td>Others marchandises</td>
<td>54,697</td>
<td>38,432</td>
<td>16,265</td>
</tr>
<tr>
<td>hydrocarbide</td>
<td>194,219</td>
<td>200,032</td>
<td>-5813</td>
</tr>
<tr>
<td>Transit march.</td>
<td>327,136</td>
<td>248,687</td>
<td>78,449</td>
</tr>
<tr>
<td>Transit hydrocarb.</td>
<td>17,904</td>
<td>-</td>
<td>17,904</td>
</tr>
<tr>
<td><strong>TOTAL IMPORT</strong></td>
<td>1,183,549</td>
<td>1,018,657</td>
<td>164,892</td>
</tr>
</tbody>
</table>

### Exports

<table>
<thead>
<tr>
<th>Product</th>
<th>Export 1</th>
<th>Export 2</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture prod.</td>
<td>83,944</td>
<td>66,214</td>
<td>17,730</td>
</tr>
<tr>
<td>Others Marchandises</td>
<td>68913</td>
<td>67,891</td>
<td>1,022</td>
</tr>
<tr>
<td>Klinker</td>
<td>-</td>
<td>134,891</td>
<td>-134,782</td>
</tr>
<tr>
<td>Phosphate</td>
<td>77</td>
<td>11</td>
<td>66</td>
</tr>
<tr>
<td>Raffined petroleum</td>
<td>13,119</td>
<td>2,095</td>
<td>11,024</td>
</tr>
<tr>
<td>Transit marchandises</td>
<td>6,486</td>
<td>12,868</td>
<td>-682</td>
</tr>
<tr>
<td><strong>TOTAL EXPORT</strong></td>
<td>172,539</td>
<td>283,861</td>
<td>-111,322</td>
</tr>
</tbody>
</table>

**TOTAL (EXPOR/IMP)** 1,356,088 1,302,518 53,570

**Transhipment prod.** 118,815 21,586 97,229

**Annex traffic** 45,370 40,205 5,167

**GENERAL TOTAL** 1,520,273 1,364,309 155,964

The table shows that the main import products are fish, dairy products, sugar, tobacco, paper, cotton fabrics, clothing, construction materials, iron, and steel. The main export product is phosphate which is a...
bulk commodity and does not came under the code provi-
sions. Phosphate represents 48% of all exports and 14% of the PNB. Others exported products include cocoa, cof-
fee, cotton (ginned), palm kernels, and petroleum prod-
ucts. Togo being an agriculture country, the projects of expansion of agriculture being carried out by the government will soon lead to the exportation of some food products such as milt, maize, yams and casava.

The main commercial partners(*1) in 1981 were:

<table>
<thead>
<tr>
<th>Countries</th>
<th>Exports</th>
<th>Imports</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>FRANCE</td>
<td>9,785.8</td>
<td>37,265.7</td>
<td>27,479.8</td>
</tr>
<tr>
<td>NETHERLANDS</td>
<td>12,237.3</td>
<td>10,578.0</td>
<td>1,659.3</td>
</tr>
<tr>
<td>UNITED KINGDOM</td>
<td>1,627.1</td>
<td>14,905.8</td>
<td>-13,278.7</td>
</tr>
<tr>
<td>FEDER. REP. GERM.</td>
<td>2,468.7</td>
<td>6,943.6</td>
<td>-4,474.9</td>
</tr>
<tr>
<td>YUGOSLAVIA</td>
<td>8,127.9</td>
<td>-</td>
<td>8,127.9</td>
</tr>
<tr>
<td>JAPAN</td>
<td>229.8</td>
<td>6,571.4</td>
<td>-634.6</td>
</tr>
<tr>
<td>OTHER COUNTRIES</td>
<td>21,763.8</td>
<td>41,504.5</td>
<td>-19,740.7</td>
</tr>
<tr>
<td>TOTAL</td>
<td>56,240.5</td>
<td>117,769.0</td>
<td>-61,528.5</td>
</tr>
</tbody>
</table>

The remark is that France accounted for 17% of the exports of Togo and 32% of imports.

This brief description of Togolese maritime infrastructures, maritime possibilities, maritime activities and seaborne trade makes it clear that Togo is involved in the maritime field and so she cannot avoid

(*1): Cf Croissance des jeunes nations, Nov. 1981 page 11
being part of the international maritime environment.

SECTION 2: TOGO WITHIN THE INTERNATIONAL MARITIME ENVIRONMENT

Every nation situated by the sea, has a right to navigate, to fish and to participate in the advantages which might result. But a coastal country must establish its rights in the sea taking into account the rights of the nearest border countries as well as the rights of the whole international community. The trade in the sea, that is to say shipping, is an international industry; it is a link in the chain of transportation from door to door(*1). These characteristics of the sea, mainly in sea transportation, make it clear that any coastal country must be in the international maritime network. So Togo is a member of some international instruments or bodies dealing with shipping and a member of the conferences system.

A. MEMBER OF INTERNATIONAL INSTRUMENT DEALING WITH MARITIME MATTERS.

The international community has been deeply involved in the problems of the sea regarding its better exploitation for the benefit of all concerned. So there are many international organisations which are interested in sea matters. One must make a difference between

(*1): Cf. A. Monsef, Series of lectures on shipping economics at the World Maritime University.
IMO which is a specialized agency dealing exclusively with the sea and with the other agencies or organs dealing partially or occasionally with shipping.

a) IMO and its conventions.

The convention for the establishment of IMO was drafted in Geneva on March 6, 1948. IMO started with 21 member states and has steadily grown and its membership at present totals 126 states.

The objectives of IMO as provided in article 1 of the charter are: inter alia, to provide machinery for cooperation among governments in the field of governmental regulations and pratice relating technical matters of all kinds affecting shipping engaged in international trade, to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation and prevention and control of maritime pollution from ships; and to deal with legal matter related thereto. In order to achieve these objectives, the organization considers and makes recommendations within its competence; provides for the drafting of convention agreements or other suitable instruments by concerning such conference; performs functions assigned to it; promotes measures for effective implementation of regulations adopted by the organization; facilitates as necessary technical cooperation within the scope of the organization.

The structure of IMO is as follows:
- A General Assembly which consists of the representatives of all member states and which meets once every two years.

- A Council which exercises the functions of the assembly in the period between the sessions of the assembly.

After comes the committees. They are: maritime safety committee, marine environment protection committee, legal committee, committee on technical cooperation, and facilitation committee. Under these committees follows the subcommittees. The current administration of IMO is the duty of the General Secretariat, which is located in London and is composed of a secretary general, a deputy secretary general and a number of international civil servants.

In the last twenty years, IMO has promoted the adoption of almost 30 conventions and protocols, and well over 500 codes and recommendations. The main IMO conventions are:

- Special Trade Passenger Ships Agreement, 1971, enter-
red into force, 1974.

Togo is an active member of IMO. None of IMO convention has yet been ratified and some measures are now being taken for the ratification and implementation.
a) Member of UN organs dealing occasionally or partially with shipping.

Togo is also active in some UN organs which are more or less interested in shipping matters. One of the UN organs dealing occasionally with shipping seems to be the United Nation Conference on the Law Of the Sea (UNCLOS). The importance of UNCLOS is it provides the "Code of Conduct" (1) for ocean usage for shipping, fishing, mining etc.

There have been only 3 UNCLOS: "UNCLOS I UNCLOS II and UNCLOS III. UNCLOS I/II in 1958/1960 produced 4 important documents which are still in general effect today. During those sessions, Togo one of the countries which claim for 200 miles zone which was taken into account in UNCLOSIII. UNCLOSIII, during 15 sessions from 1973 to 1982, produced the new UN convention. This new convention took into account all major law reform movements addressing most aspects of ocean uses. It was completed at Montego Bay in Jamaica and its content seems to be in favour of the requirements of developing countries.

The UN organs dealing partially with shipping are:

- The International Labour Organisation (ILO). ILO is involved from time to time in maritime affairs mainly regarding maritime labour and safety regulations. One can enumerate some conventions adopted
by ILO such as the minimum age convention of 1983 (No. 138), shipowner liability: sick and injured of 1936 (No. 55), medical examination of seafarer convention of 1946 (No. 73), prevention of accident for seafarer convention of 1970 (No. 134), accommodation of crew convention of 1949 (No. 92), Seamen's article of agreement convention 1926 (No. 23); Freedom of association and protection of rights, 1948 (No. 87); Right to organise and collective bargaining convention 1949 (No. 98), the merchant shipping minimum standards convention of 1976 (No. 147).

- The World Health Organisation deals from time to time with maritime health and guarantees, diseases etc.
- The World Meteorological Organisation (WMO) is interested in maritime weather.
- The International Telecommunication Union (ITU) is involved in the drawing of hydrographic charts which help navigation.
- The United Nation Environment Programme (UNEP) is deeply involved in the environment protection field.
- The United Nation Conference on Trade and Development (UNCTAD); established as said earlier by the UN assembly in Geneva. The points which interest UNCTAD concern shipping legislation, shippers interests, merchant fleet developments, the open registry issue, ports, multimodal transports and containerization, the liner conference system and the liner code. In these organisations, Togo is an active member and mainly in UNCTAD.

Also, having established its merchant fleet, it is an active member in the conferences system.
A. MEMBER OF CONFERENCES SYSTEM.

The word "conference" denotes no single system but is a generic term covering a wide variety of common services and common obligations undertaken by shipowners serving particular trades. Broadly speaking the term denotes a meeting of lines serving any particular route, aimed at an agreement on uniform and stable rates of freight and the provision of services under stated working conditions in that trade. It ranges from a very informal association to a well developed organisation with a permanent secretariat behind it. The organisation which the parties to such an agreement undertake towards one another vary as widely as the agreement itself (*1). At the present time there are about 360 conferences operating in various trades of the world (*2) and about 9 conferences serving West Africa. They are: Continent West Africa Conference (COWAC), Mediterranean Europe West Africa Conference (MEWAC), United Kingdom West Africa service (UKWAL), America West Africa Conference, West Africa South America Conference, West Africa Far East conference (Angola/Cameroun range), West Africa Far East Conference (Nigeria/Senegal range), Associated Central West Africa Line (SEWAL) and USA Great Lakes St Lawrence River Ports West Africa. Togo is a member of three of these conferences.

a) Member of COWAC Conference.

COWAC, Continent West Africa Conference, comprises two sections: Northern Section and Southern Section(*1).

The Northern Section covers, in Europe, all the ports from the North Cape to Antwerp/Zeebrugge (both inclusive) including all Scandinavian and Baltic Sea ports but excluding the United Kingdom and Northern Ireland ports and Eire. It covers in West Africa all the ports from Mauritania to Angola (both inclusive) including the Island of Cap Verde, Sao Tome Principe and the Island of Equatorial Guinea, due regard being paid to the exclusive right of the Associated Central West Africa Lines conference in respect of the trade between the Hamburg-Antwerp/Zeebrugge range and Zaire and Angola.

The Southern Section covers in Europe all the French North Sea, Channel and Atlantic ports from Dunkerke to Bayonne (both inclusive) including the Island of Cape Verde, Sao Tome and Principe and the Island of Equatorial Guinea. The COWAC conference is directed by a secretary general assisted by the deputy secretary general. In the Northern Section based in Hamburg the Deuth Mark Tariff operates; in the Southern Section based in Paris the French Franc Tariff operates. The member lines, both Northern Section as well as Southern Section, are:

(*1): Source; COWAC Agreement.
<table>
<thead>
<tr>
<th>Lines</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cameroun Shipping Line</td>
<td>Cameroun</td>
</tr>
<tr>
<td>Compagny Maritime des Chargeurs Reunis</td>
<td>France</td>
</tr>
<tr>
<td>Company Beninoise de Navigation(COBENAM)</td>
<td>Benin</td>
</tr>
<tr>
<td>Company Maritime Belge(CMB)</td>
<td>Belgium</td>
</tr>
<tr>
<td>Company de Navigation Denis/Freres</td>
<td>France</td>
</tr>
<tr>
<td>Deutch Africa Linien(DAL)</td>
<td>West Germany</td>
</tr>
<tr>
<td>East Asiatic Company</td>
<td>Denmark</td>
</tr>
<tr>
<td>Estonian Shipping Company</td>
<td>URSS</td>
</tr>
<tr>
<td>Elder Dempster lines LTD</td>
<td>U.K Guinea</td>
</tr>
<tr>
<td>Gulf line LTD</td>
<td>U.K</td>
</tr>
<tr>
<td>Hoegh Line Leif Hoegh&amp;coA/s</td>
<td>Norway</td>
</tr>
<tr>
<td>Nedlloyd lijnen B.v</td>
<td>Holland</td>
</tr>
<tr>
<td>Palm Line LTD</td>
<td>U.K</td>
</tr>
<tr>
<td>Polish Ocean Line</td>
<td>Poland</td>
</tr>
<tr>
<td>Societe Ivoirienne de Transport Maritime</td>
<td>Ivory coast</td>
</tr>
<tr>
<td>Societe Togolaise de Navigation Maritime</td>
<td>Togo</td>
</tr>
<tr>
<td>Societe National De Transport Maritime</td>
<td>Gabon</td>
</tr>
<tr>
<td>Societe Naval Chargeurs Delmas Vielgieux</td>
<td>France</td>
</tr>
<tr>
<td>Company Senegalaise de Navigation maritime</td>
<td>Senegal</td>
</tr>
<tr>
<td>Company Maritime Zairoise(CMZ)</td>
<td>Zaire</td>
</tr>
<tr>
<td>Nigeria Green Line LTD</td>
<td>Nigeria</td>
</tr>
<tr>
<td>Nigeria National Shipping Line</td>
<td>Nigeria</td>
</tr>
<tr>
<td>Black Star Line</td>
<td>Ghana</td>
</tr>
<tr>
<td>Scandinavian West Africa Line</td>
<td>Sweden</td>
</tr>
<tr>
<td>V.E.B Deuthfracht/SEE reeberci</td>
<td>East Germany</td>
</tr>
<tr>
<td>Societe Naval de IQuest(SNO)</td>
<td>France</td>
</tr>
<tr>
<td>Armement L.Martin</td>
<td>France</td>
</tr>
<tr>
<td>N’Gerba Shipping Line</td>
<td></td>
</tr>
<tr>
<td>Armement Mauriel &amp; Prom</td>
<td></td>
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</tbody>
</table>

Almost a total of 30 lines are members of the
COWAC conference which is the biggest in the world. Togo operates in this conference with two vessels.

b) Member of MEWAK and UKWAL.

MEWAC, Mediterranean Europe West Africa Conference has its headquarters in Marseille. It covers in Europe all the Mediterranean ports of France, Italy, Greece, Spain and Portugal. In West Africa it covers all the ports from Mauritania to Angola. The following are members of MEWAC: Cameroun Shipping Line, Company Beninoise de Navigation maritime, Company Maritime Zairoise, Express Navigation, Interpuertos S.A, Keller Shipping (Nautilus Line), Linea Transmare S.N.P., Lloyd Triestino, Marasia, maurel & prom / Nigerbras, Setramar S.P.A, Societe Ivoirienne de Transport Maritime, Societe Ivoirienne de Navigation, Societe Naval et Commercial Delmas Vielgieux, Societe togolaise de Navigation Maritime Splsna Plovba Piran (S.P.D). A total of 17 lines operate within this conference. In this conference Togo has no vessel sailing in MEWAC conference but still try to operate. This will be explained later on.

UKWAL, the United Kingdom West Africa Joint Service with its headquarters in Liverpool. It has about 9 shipping lines in its membership; 3 from the U.K, one from the continent and 5 from West Africa. UKWAL is the only conference operating in West Africa which practices the pooling of cargo and revenue. The percentage share of each line is determined by the contribution of the line’s country cargo in the pool. In this conference, Togo
operates in a joint service with OT Africa line which is not a member of any conference system.

The table below shows the member lines and their shares.

<table>
<thead>
<tr>
<th>LINES</th>
<th>COUNTRIES</th>
<th>% SHARES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elder Dempster Line</td>
<td>U.K</td>
<td>17.75%</td>
</tr>
<tr>
<td>Guinea Gulf Line</td>
<td>U.K</td>
<td>17.70%</td>
</tr>
<tr>
<td>Palm Line</td>
<td>U.K</td>
<td>14.49%</td>
</tr>
<tr>
<td>Nigeria</td>
<td>Nigeria</td>
<td>31.50%</td>
</tr>
<tr>
<td>Black Star Line</td>
<td>Ghana</td>
<td>7.72%</td>
</tr>
<tr>
<td>CMZ</td>
<td>Zaire</td>
<td>1.15%</td>
</tr>
<tr>
<td>SITRAM</td>
<td>Ivory Coast</td>
<td>3.46%</td>
</tr>
<tr>
<td>Hoegh Line</td>
<td>Norway</td>
<td>6.20%</td>
</tr>
<tr>
<td>SOTONAM</td>
<td>Togo</td>
<td></td>
</tr>
</tbody>
</table>

One can note from this table that the U.K. gets almost about 50% and Nigeria 31%. Knowing that Nigeria contributes about 85% of the cargo, this situation must be changed to meet the requirements of the code of conduct for liner conferences; because these countries have ratified the code. This small remark between Nigeria and U.K shows that there exists varieties points of view on the code. These points of view vary mainly between developed and developing countries. Before trying to explain how the code is being implemented in West African countries, mainly in Togo, it will be interesting to recall in the following chapter the views of the nations on the code.
The code of conduct entered into force on 6 October 1983. Few regulations concerning international markets have caused more debate and discussion than the UNCTAD code. It took ten years from its adoption until enough countries with enough tonnage had ratified the code. The code has been a struggle between traditional maritime nations and developing countries intending to gain experience and a better share of maritime wealth. The code had been from the start an extremely controversial issue. Even today the pros and cons of the code are being debated on a more pragmatic basis than in the early seventies(*1).

Thus, the views on the code are not homogeneous. As it is in all conventions, there are some points on which all parties agree and some on which the parties have divergent points of view because of their interests.

In this chapter, the aim is to analyse the position of UNCTAD on the code as an international body representing the whole world and to point out the position of the countries, mainly the position of developed countries and developing countries.

(*1): see gorgandopolous ;series of lectures on the code.
SECTION I: THE CODE AS SEEN BY UNCTAD.

The United Nation Conference on Trade and Development as said earlier was established in 1964. The first conference on Trade and Development was held in Geneva in 1964 and marked the beginning of a new period of closer cooperation and consultation between nations from all over the world in order to promote national economies and international trade. Following this view, the United Nations conference of plenipotentiary has adopted under the United Nations the code of conduct for liner conferences. Why such a tool? and what is it? To answer such questions, it necessary to explain "the raison d'etre of the code" and its contents.

A. THE "RAISON D'ETRE" OF THE CODE.

The raison d'etre of the code is stressed in the objectives and the principles of the code. The contracting parties on the present convention; Desiring to improve liner conference systems, Recognising 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 requirement of the trade concerned;

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

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

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

(f) The principle that conferences should make available to interest parties pertinent information about their activities which are relevant to those parties and should provide meaningful information on their activities(*1).

According to these objectives there is no doubt that the code is an instrument which aims to improve liner services and to enable developing countries to participate in international trade.

a) The code: a need to improve liner conference systems.

In the discussion for the adoption of the liner

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(*1): Cf to annex I page 122 to page 142; the text of the code.
it was widely agreed that shipping conferences are necessary because of their advantages, like uniform rates, without discrimination between shippers on the basis of their economic power or the size of their shipment, provide fixed rates and reasonable stability rates, provide a service with the frequency which shippers need for carrying out their normal business, eliminate rate competition among the conference members, etc.

But it has also been agreed that in the conference systems, the freight rates fixed are too high, this because of the monopolistic character of the conferences. They limitate competition among members and eliminate competition from outsiders. The conference rates are fixed unilaterally without negotiation with the shippers, these rates sometime do not reflect the prevailing market trends. The conference rates are often discriminatory in the sense that the difference in the rates do not relate to the differences in the costs. The loyalty arrangements fixed destroy for the shippers the freedom to choose their means of transport. In these conference systems there are sometimes some restrictions on the entry of new line mainly from developing countries. Also conferences are the rigid organizations which are very slow in adapting to changed circumstances.

Thus, it has been an urgent need to change the undesirable aspects of the conferences behaviour. There have been many official national inquiries into the working of the system. The earliest was in 1909; the Royal Commission on Shipping Reny in the UK, followed by one in the USA in 1913-14 called the Alexander Committee. The
most recent inquiry in the U.K was the Rochdale Committee report. After came the reports of the UNCTAD secretariat of shipping. In all these reports, it was stressed that it is urgent to have a code to which all conferences must refer in order to avoid such abuse. So the code aim is to improve conference systems. It is the international body which must "keep watch" (\*1) over what shipping conferences are doing, a body which is some sort of watchdog to which complaints could be referred.

b) The code: an instrument taking into account developing countries needs.

The remark was that conferences either refuse to admit or limit the admission and participation of L.D.Cs. as a member of their organization. Also the special situation makes rate increases more damaging to exports than to the exports of other nations especially developed countries. There was no doubt on what was right and the need of L.D.Cs for assistance in the field of shipping. In the United Nations Document A/8124 (1970) it states that in the field of invisibles and shipping the objective is to promote by national and international action, the earnings of developing countries from invisible trade and to minimise the net outflow of foreign exchange from those countries arising from invisible transaction shipping. The merit of the Untacd code is that it has taken into consideration the needs of developing countries. In this code the strategy statement emphasizes the principle

\*1): Cf G.Sturmey "workbook on the application of the code" page 10.
of participation of national lines with an increasing share in conferences operating in their national trades. L.D.CS should be admitted to way port conferences.

Because of the liner code, the shipping companies of developing countries can join conferences serving their foreign trade through membership and cargo sharing provisions. This leads to an analysis of the contents of the code.

B. THE CONTENTS OF THE CODE.

The code is divided into two parts: Part One is divided into 5 chapters:

Chapter One deals with the definition of liner conferences or conference liner services, National shipping lines, third country shipping lines, shippers organization and appropriate authorities.

Chapter Two deals with relations among members lines, the meaning of membership, participation in trade, the decision making procedures, the sanctions, the self policing and the conference agreements.

Chapter Three takes into account the relations with shippers by explaining the loyalty arrangements, the dispensation of the availability of tariffs and related conditions and/or regulations, annual reports and consultation machinery.

Chapter Four is related to the freight rate: criteria for freight rate determination, conference tariffs and classification of tariff rates, general freight rate increases, promotional freight rates surcharges and currency changes.

Chapter Five is related to other matters such as fighting
ships adequacy of service, head office of a conference and representation.

Part Two contains two Chapters:

Chapter Six concerns provisions and machinery for settlement of disputes.

Chapter Seven deals with final clauses such as implementation, signature, ratification acceptance and accession, entry into force, amendments and review conferences.

In total, the contents of the code consist of 54 articles. The main provisions of the code have to be taken into consideration followed by some comments.

a) The main provisions of the code.

The main provisions of the code seem to be:

Article 1 which deals with the structure of the conferences which are only open to national shipping lines which serve the trade of their country. The national lines have to satisfy certain objectives and commercial criteria laid down in the article. Article 2 lays down the 40-40-20 cargo sharing formula which provides that the national line of each country at the end of a route served by a conference shall have an equal share of the freight and volume of traffic generated by their mutual foreign trade. The third country shipping line will have the right to acquire only up to 20% of the trade. This provision seems to be the key provision. Article 3 deals with decision making procedures of conferences. It will be based on equality of all the members. Article 7 deals with loyalty agreements. Article 11 deals with mandatory consultation machinery between conferences and shippers or their councils in the matter of freight rates. According to articles 24 to 46, almost any pos-
possible dispute which might arise under the code, that is to say between a conference member and shipper's council, must be subjected to international mandatory conciliation at the request of any of the parties. Dispute between shipping lines of the same flag will be settled within the framework of the national jurisdiction of that country. If the parties agree on the conciliation procedure, conciliation should refer to the code and if the code is silent upon a point, then the conciliators are to apply the law agreed upon by the parties. Article 47 provides that each contracting party shall take such legislative or other measures as may be necessary to implement the code.

b) Brief comments on the code.

The code covers the subject of relations among members of conferences. Its provisions practically forces conferences to pool their trade especially where the cargo sharing formula is implemented. The code gives weighted votes in matters concerning the countries members' interests, disputes, sanctions for violations of conference agreement and protects shippers rights. The code requires publications of tariffs. Consultations between conferences and shippers are forced by the code. The code states that rates should be fixed at a low level and prohibits discrimination in rates and requires clear and simple cargo classification. A notice of 150 days is required before a general rate increase. Surcharges and "CAF"(*1) are also subject to consultation and prior notices. Conferences are requested to nominate representatives in countries of call.

(*1): CAF = Currency Adjustment Factor.
The code supplies technical provisions for the functions and recruiting of conciliators and the appointment of a registrar. Contracting parties are requested to take such legislative action and other measures in order to implement the code. The code sets out how to become a member of the convention and the conditions which must be required for the code to enter into force. The code has two annexes, one including modal rules for consultation machinery and the other is a group general resolution which deals with non conference shipping lines adopted by the delegation to the conference.

In the introduction of the code it is said that conference practices should not involve any discrimination against shipowners, yet in article 2.4 the code adopts a formula which gives 20% to the third flag carrier. This point is one of those which raises the different position of nations on the code(*1).

SECTION II: THE POSITION OF NATIONS ON THE CODE.

The code as it is adopted represents a political comprise among the diverse views of many nations. It reflects the continuing debate between those who advocate commercial control of international shipping and those who prefer government management and regulation. It reflects a power struggle between a relatively small number of traditional maritime countries and a large number of developing countries. Thus it is logical to present the position of developed countries on the code and

(*1): Cf Amos Herman "Shipping conferences" Llrd B SJD page 172.
the points of view of developing countries, generally called the groupe of 77(*1).

A. THE CODE AND THE DEVELOPED COUNTRIES.

Developed countries on the convention of the code of conduct are EEC countries, the Scandinavian countries, Eastern European countries, Japan, Australia and the U.S.A. Those countries points of view are fundamentally different from developing countries but they do not have homogeneous position on the code. Their point of view differs accordingly as one deals with the open market system or closed market system. This will be developed in two parts: The EEC and Scandinavian countries point of view and the U.S.A. and other countries position.

a) The EEC and scandinavian countries point of view.

The ten members of the EEC which are now twelve(*2) adopted a regulation that established specific conditions under which community members must accede to the code. In essence the regulation accepts the provision of the code for trade between the community and developed countries but opts for a continuation of the status quo for trade between the community and developed countries with reciprocal agreements among developing countries to allow cross trading with each other. The EEC countries made at least three reservations.

(*1): The group of 77 is composed of Latin American Asian and African countries. (see page 40).

(*2) Spain and Portugal have been admitted.
The first reservation defines national shipping lines in the case of a member state as including any vessel operating shipping lines established on the territory of such a member state in accordance with the EEC treaty. The second reservation rejects the 40 40 20 cargo sharing formula included in article 2 of the code between member states and other OECD countries(*1) who are parties to the code. The third reservation excludes the application of article 3 and 14 of the code in conference trade between the EEC members or on a reciprocal basis between these states and OECD members to the code. The remark is that the code is silent on the reservations. Contracting parties on the base of bilateral agreement may decide upon this question.

The Scandinavian countries with the UK, Netherlands and Greece have expressed concern that the code may serve as a vehicle to eliminate cross traders. Such elimination is possible under a rigid application of the code to adjust the conference position of the trade rather than to all liner trade. The Scandinavian countries implementing legislation expect to seek to prevent elimination of cross traders.

b) The U.S.A. position and other countries.

Based on its traditional free market principle and on the numerous conflicts between existing in U.S.A. laws and the code, the U.S.A. government’s position has been to oppose the code.

(*) OECD countries consist of EEC countries, USA, Japan and Australia.
An important reason for this position has been and remains the strong anti-trust views of the U.S.A. Most U.S.A. carriers agree that bilateral liner agreement tailored to the requirements of each trade are a preferable course of government action to the ratification of the code. The U.S.A. opposes the code on several grounds more particular because its membership provides for the pooling of cargo and those providing the 40 40 20 formula would in the long run tend to increase costs and reduce the quality of service in a trade: the provision which stipulates for a 15 month rate stability is damaging in the view that the period is unreasonably long. Also in the view of the U.S.A. administration, national lines, are given by the code, unduepower since article 3 provides a veto power in their favour. The conclusion is that the U.S.A.'s opposition to the code arises more from general government policy philosophy which is in favour of free competition and a free enterprise system than those points pointed out above. Japan's position as well as Australia's is almost the same as the position of the U.S.A. It is interesting to point out that among some developing countries, particularly those with a strong free market orientation and those with a well developed merchant marine, engaged in cross trading such as Israel, Hong Kong, Singapore, there is opposition to the code as in the U.S.A.

However, as far the other countries, such as those called socialist countries, the position is in favour of the code with some reservations as in the EEC countries. Many of the communist nations of Eastern Europe, China, and Cuba have acceded to the code with the reservation that exempts joint shipping service agreements
under which most of their liner shipping is conducted. Several South American nations have done likewise. Many of those countries have already achieved a share of 50 percent or more of the liner trade and are not therefore so interested in a 40 percent share.

But what about the position of the L.D.Cs, generally called the group of 77?

B. THE GROUP OF 77'S VIEWPOINT ON THE CODE.

The group of 77 refers more or less to all the less developed countries from Africa, Asia, and Latin America. The special economic and political conditions of L.D.Cs. make their shipping needs different from developed countries. Thus they require distinctive treatment in ocean transportation. From the point of view of L.D.Cs. the code of conduct for liner conferences seems to be for them an instrument of promotion of the national fleet and an improvement in the balance of payment and a document calling for new international maritime order.

a) The code as an instrument of promotion of the national fleet and an improvement in the balance of payment.

The larger the LDCs fleet, the larger the gross income from shipping and then the improvement in the balance of payment. A number of international resolutions have been adopted in recent years aimed at facilitating
the expansion of the merchant fleets of developing countries.

Firstly UNTAD V adopted a resolution(*1) requesting international financial institutions to assist the finances of developing countries and the purchasing of new or second hand ships. The UNCTAD committee of shipping urged the World Bank and regional development banks to consider increased lending for vessel acquisition(*2). Various resolutions by the U.N., the group of 77 and regional group of LDCs have advocated larger merchant marines for LDCs. The code of conduct finally provides a basis and suitable conditions for developing countries to increase their merchant fleets: this can be easy as it enables these countries to be a member of a conference system and it already furnishes them a right of 40% of the cargo.

Beside this the expectation from shipping for LDCs can be: net foreign exchanges, saving on the country's present or normal traffic, assistance in the form of value added to the country's foreign trade and economy generated through the economic activity generated by low freight rates and or new, better or more secure shipping services and or better apport returns on essential bulk commodities, backwards and forward linkages with the rest of the economy which lead to greater economic diversifi-

(*1): This Resolution is called Resolution No 21.
cation and development, and a net profit from shipping operations.

As one knows LDCs are chronically short of foreign exchange and the need to pay freight rates in convertible currency worsens their already shaky balance of payments situation. The prices of primary products which LDCs export rise very slowly and even go down in comparison to the price increases of manufactured commodities. That is to say the price of the manufactured goods they import raises steadily. Combining low income from exports with the high expenses of exports and high freight rates in both directions has a negative impact on the balance of payment of LDCs. So the code by its provisions encourages these countries to try to gain experience in shipping and so improve their balance of payments as they can at least amortized the cost of transportation and then reduce the level of the freight rate by their competitiveness in shipping.

b) The code as an instrument calling for a new international maritime order.

According to L. FADIKA (*1)"the code is nowadays an essential element for the elaboration of an international maritime policy taking into account the needs and the points of view of all countries for the interest of well international trade" this opinion is shared by

(*1): Mr Lamine Fadika is the Minister of Merchant Marine of Ivory Coast.

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all the LDCs. In fact, in the past, maritime transportation was dominated as pointed out earlier, by a "mare librum". This principle, which has an essential aim to make the industries of transportation private, is now out of date. So the maritime policy of all countries over the world has been submitted to deep changement. If in the past the great maritime countries dominated liner shipping, today, with the granting of independence of colonial countries, mainly in Africa in the 1960s and the taking into account of conscientiousness of the interest of these countries by their leaders weighs more and more on the new international maritime order.

There are nowaday almost 70 maritime nations with more than 130 flags. This makes it clear that cooperation is needed in the maritime field. So the necessity of a new international maritime order to take into account the "desiderata" of LDCs which claimed that the equilibrium of their economies is strictly dependant on their possibilities of trading with developed countries. Thus it was necessary to find a solution on the divergence of developed countries and LDCs. The code is at the same time a technical attempt to regulate an industry and the expression of vision in the future in shipping.

For the group of 77, the code is a part of their broad shipping aspirations. These aspirations are not only, as many people seem to believe, simply to have a large fleet. In fact they are much broader. In their breach they have forcefully stated by H.F BOIGNY president of Ivory Coast, when he said "the way of our liberty passes by the sea". Following this opinion many
countries from West and Central Africa adopted adequate measures based on the code’s provisions and a number of bilateral treaties were concluded. These measures and treaties aim to implement the code. This will be analysed in the following chapter.
THE MEASURES TAKEN TO IMPLEMENT THE CODE.

The biggest disadvantage of any international instrument is the lack of enforceability. Delegations from various countries meet, discuss and agree on numerous matters. But when it comes to carrying out the agreement, there is no medium with authority to enforce the performance. The drafting parties invent the most elaborate conventions, but have no power to enforce their decisions. The only feasible solution is to authorise national governments to enforce the provisions of the agreement.

Regarding the code of conduct for liner conferences, it is stated that the contracting parties have to agree to incorporate it into their domestic legal systems and every government must take care of the execution of the code. If contracting parties agree, in principle, on the substance matters which the code covers, and if they agree to exercise their jurisdiction only over conferences sailing in an outward direction from their countries, the enforcement of the provision of the code can be assured and the conflicts of laws could be avoided. (*1)

In Togo, like other West and Central African countries, some efforts are being made to enforce the code. There are legal measures taken for the

(*1): Geogandopolous series of lectures on the code.

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implementation of the code and some practical techniques employed from time to time to meet the requirements of the code.

SECTION I

LEGAL MEASURES TAKEN FOR THE IMPLEMENTATION OF THE CODE

Article 47 (a) of the code provides: "Each contracting party shall take such legislative or other measures as may be necessary to implement the convention. The party shall give effect to this convention either by giving force of law or by including it in their national legislation."

For the implementation of the code, according to this article, it requires an implementing legislation and implementing bodies.

A) THE IMPLEMENTING LEGISLATION IN TOGO.

The government has ratified the code through the presidential ordinance no. 44 of the 10th October 1977. The article 1 of this ordinance states: "It authorises the ratification of the convention relating to the code of conduct for liner conferences signed on 25 June 1975". Article 2 states: "The present ordinance will be published in J.O.(#1) of the Republique of Togo and be

(*1): J.O = abbreviation of French word "Journal Officiel"
executed as state law "

So in bringing the code into effect in any country there is no debate concerning the place of the government regarding its national interests. This requires an explanation of the importance of the legislation to the national interest and the different texts adopted in Togo for the implementation of the code.

a) The legislation and the national interest.

With the implementing legislation the government can protect the national interest. It can, with the implementing legislation, tie the hands of those negotiating the modalities of the application in order to ensure that those modalities protect the national interest.

There are many reasons which lead countries, mainly developing countries to legislate bearing primarily in mind the national interest. These reasons are:

-the pervasiveness of C.I.F imports and F.O.B(*1) exports in developing countries leaving the importer and exporter with a contractual relationship with shipping lines, so that, only the government is in the position to protect their interests.

-the shipping companies in developing countries are frequently state owned; whether they operate in the market on market principles or operate as government

(*1) C.I.F= Cost, Insurance and Freight.

C.A.F= Cost and Freight.
agencies, the influence of the government is always indispensable.

- finally, where the state is the principal exporter and/or importer, it is unavoidable that the government will play the key role in the establishment of adequate legislation.

Throughout the negotiation of the code there was a controversy on the matter of legislation and national interest in the implementation of the code. For developed countries the role of the government must be to lay down a general policy leaving to individuals (shipping lines and conferences) to establish an appropriate practice within that general policy. For most developing countries the government, lays down both the policy and either engages directly or closely in the establishment of appropriate practice.

It must be pointed out that, essentially, there is no polarisation between the practice of the two types of countries. It seems that the era leading to the enforcement of the code requires the presence of the government. In this view Togo has adopted some legislations, taking into account the national interest, for the implementation of the code.

b) The legislations adopted for the implementation of the code.

Different texts (*1), that is to say the decrets,  

(*1): see annex 3, page 144 to 155.
the ordinances and ministerial orders have been drafted and published with the view of giving effect to the convention on the code of conduct for liner conferences in Togo.

- Firstly there is the ordinance carrying the ratification of the Code of Conduct for Liner Conferences. It is a full ratification, which means that no reservation has been made. The whole convention as stated in article 2 of the ordinance must be incorporated in the national legislation and be applied as a national law.

- Secondly the ordinance No. 80-11 bis of 9th January 1980 carrying the repartition of maritime traffic and the creation of the national shippers council. With 15 articles this ordinance gives in general the guidelines of how cargo sharing must be applied, the duty of the national shippers council and sanctions in the event of violation of the provisions.

- Thirdly decree No. 80-8 of 9th January 1980 carrying out the organization and the status of the national shippers council. It settles clearly, in 24 articles, what the aims and the duties of the shippers council are.

- Fourthly many interministrial orders. The most important are:
  . The interministrial order NO. 004/MEE/MCT carrying the regulations for maritime traffic in Togo. It consists of three chapters: Chapter one deals with general dispositions which are related to the cargo sharing formula, Chapter two deals with the deliverance of the attestation of reservation of the freight in both directions: importations and exportations, Chapter
three deals with the sanctions.

The interministrial order No. 03/MCT/MFE of 19th February 1981 carrying the creation of a commission in charge of the enforcement of interministrial orders No. 004.

The interministrial order No. 25 /MCT/MET of 6th November 1986 completing the interministrial order No. 004.

The interministrial order No. 003 MFT/MCT of 2th March 1982 carrying the creation and definition of the shipper card of national shippers council and the amount to be paid for deliverance and renewal.

These are the texts in force for the application of the code. They clearly need implementing bodies.

B) THE IMPLEMENTING BODIES.

One thing is to legislate and another is to have a body or bodies which must apply this legislation. At the national level it seems that there are three or so bodies which are concerned with the code. Following the code these bodies at the national level are:

- The national shipping line, which is a vessel operating carrier which has its head office 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.

- The shippers organization which is an association or equivalent body which promotes, represents and protects the interest of shippers and if this association so
desires, can be recognized in that capacity by the appropriate authority of that country whose shipper is represented.

-An appropriate authority which may be a government or a body designed by the government or by national legislation to perform any of the functions ascribed to such an authority by the provisions of the code.

Looking into the different texts drawn up for the enforcement of the code, three such institutions seems to be the right number of implementing bodies. Firstly the Ministry of Transport and Trade seems to be designated by the government as an appropriate authority. Secondly the shippers council seems to be the administrative body of the code and the national shipping line the beneficiary of the cargo sharing formula.

a) The Appropriate Authority Body in the Implementation:
   The Ministry of Transport and Trade.

   The role of the appropriate authority, as said earlier, seems be assumed by the Ministry of Trade and Transport. This is confirmed by the role it plays in carrying out the enforcement of the code. As we defined it earlier an appropriate authority is a body designed to do those things under which the code says it can or should do. The code did not say anything about the status of such a body. Clearly, an appropriate authority can be a part of the government, as it is in Togo. It is through an examination of what an appropriate authority can do rather than through a study of the obscurely
worded definition that we can arrive at an understanding of what it really is.

Certain attributes of an appropriate authority are found in the definition of the code. According to the code an appropriate authority could:
- Recognise a national shipping line.
- Recognise if it so desires a shippers organisation.
- An appropriate authority can request that its views on the admission of a new member to a conference be taken into account.
- Appropriate authorities of the countries at both ends of the trade may, if they so wish, take up the matter of a disagreement between their groups of national shipping lines on the question of pooling and make their views known. It seems, however, that an appropriate authority cannot act on its own in such matters.
- Conferences shall provide machinery for reporting, upon request, to appropriate authorities on action taken in connection with malpractices, etc.
- Conferences shall make available to the appropriate authorities, upon request, copies of the conference agreement and other related documents.
- Appropriate authorities shall have the right, upon request, to participate in consultations but this does not mean they play a decision-making role.
- Appropriate authorities have a right to request information and notice of intended action by the conferences(*1).

Following this, there is no doubt that the Ministry of Trade and Transport in Togo plays the role

(*1): Gorgandopolous; series of lectures on the code.

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of an appropriate authority. The Ministry as an appropriate authority has chosen the national shipping line as a line which can belong to a conference system and carry the 40% of the code. The Ministry of Trade and Transport has organized the shippers council and recognized it as an administrative body of the code in the country.

b) The administrative body in the implementation:

The National Shipper’s Council.

The code does not deal directly with the question of how its application is to be administrated at international level (in the conference system) as well as at internal level (in a given country). The code is silent in this matter. In internal side there is no doubt that any given country having ratified the code and trying to implement it, will have an administrative body. This administrative body can be the appropriate authority or other bodies which the government judges useful.

The most difficult administrative question in a given country seems to be the mechanism of cargo allocation. In Togo the Shippers Council, established by the government itself, is fully empowered to administrate the application of the code mainly in the question relating to cargo sharing. According to the interministerial order no 03/MCT/MET of 20th May 1981 article 1, a national commission has been created in charge of the implementation of the interministerial order no 004/MFE/MCT of 9th February 1981 carrying the
regulations regarding maritime traffic in Togo. This commission is composed as follows: a president as the director of maritime affairs; members: the directors of SOTONAM, STMP, SOAM, AGETRAC, CICA, SONACOM, OPAT, and a representative of the customs directorate. The commission is requested to carry out the duty of National Shipper’s Council. This administrative role recognised by the government to the Shipper’s Council makes it clear that the Shipper’s Council represents the shippers but is closely linked to the government. This "para-public" character of the Shipper’s Council is almost the same in all developing countries, mainly those from West and Central Africa countries. Because they have been promoted by the government and carried at the same time the role of administrating the code, those shippers councils of West and Central Africa have a union called the Negotiating Committee of the Ministerial Conference of West and Central African states which is the only body to negotiate the freight rates with the conferences and to defend the interest of their national shipping lines.

The question raised is: having the administrative role of the code, how does the shippers council follow the requirements of the code, in fact how can it be sure that its national line’s rights are almost 40%? Neither the code, nor the implementing legislation has gone about this question; but in practice some techniques are used.

SECTION 2: SOME PRACTICAL TECHNIQUES USED TO MEET THE IMPLEMENTATION REQUIREMENTS.

Before the present code, the world conferences
through their various committees administrated their own rules subject only to their own internal systems of checking and control to ensure that the job was correctly done in accordance with the conference agreements. The code of conduct which regulates the conference system did not state how to fix the share in the traffic of each member, to maintain a record of the loading of each member, to operate a system whereby over carriers compensate under carriers. What the code says is that each contracting party has the right to carry 40-40-20 and each party shall take such legislative measures to implement the code. In the implementing legislation the cargo sharing formula seems to be the most important. How is this task to be performed? Some techniques of control are used mainly by West/Central African countries. These techniques are different depending on whether one wants to meet the requirements of control loading or to meet the exigence of regularity of service in shipping.

A) TECHNIQUES TO CONTROL LOADING.

The developing countries, mainly the countries member to the West and Central Africa Ministerial Conference, have developed some techniques of implementation which go very well with their implementing legislation and their wish to participate in the trade. These techniques are not the same in the trade where there already is bilateral agreement and the trade where there is not.
a) The trade where there is bilateral agreement.

Almost fifteen African countries, mainly those which were under French colonisation, had concluded a certain agreements of cooperation with the French. After the adoption of the liner code of conduct the French government claimed that the provision of the liner code cannot apply without taking into account these agreements. Because these agreements are still in force the French in accordance with those countries (Togo included) has developed a technique for the implementation of the code by promoting the creation of an institution called SECRETAMA (*1) as the only body which can follow if the code is applied in the spirit of these agreements. The SECRETAMA has the role of controlling all cargo moving from France to those countries and to evaluate the amount of cargo carried by each party and then to see if it is in accordance with the objective of the code. In another words if the parties have got their 40-40 share for liner shipping at both ends and 20 for outsiders. The technique used by SECRETAMA seems to be the posteriori system. With this system the control, which ensures that shares are respected, comes after shipment. The system in this bilateral agreement is a little informal because it takes into consideration only the physical sharing. Here each line guesses or follows conference predictions as to the amount of cargo shipped and its composition mainly in terms of volume.

The lines submit to SECRETAMA, on a regular basis.

(*1): SECRETAMA, in French = secretariat maritime.

of annex 5 page 160 to 162.
basis, the statistics of their loading and then SECRETAMA calculates the under carrying and over carrying. The over carryers pay in their earnings in excess of their quotas minus a standard cargo handling charge which in total exactly equals that due to the under carryers. It will be noted that if the system was formal it would be a little bite favorable to developing countries because in this case the line has the right to carry a percentage by freight revenue and volume of cargo. With an posteriori system as its used with the French all shipowners are expected to do their best not to over carry nor to under carry in relation to their quotas but no one expects them to achieve an exact allocation, hence a system of compensation has been introduced in order to rectify errors after shipment.

b) The trade where there is no bilateral agreement.

To control loading another system is used mainly in the trade where Togo has not concluded bilateral agreement, that is in the Northern bound COWAC Conference. This system is the priori system or preshipment cargo control. The priori system ensures that differences or excess loadings do not arise. In Togo the system requires that 10 days before the shipment of goods, the tender of cargo must be in the hands of the Shipper Council which will provide the exportation of an attestation of reservation of freight. All importation of merchandises by sea must be accompanied by an attestation too. This is known in Europe by the term waver through booking offices. For all the irreguralities against the provision the shipowner is forced to pay 50%
of the amount of freight of the merchandises which have been irregularly shipped.

With this preshipment control of loading, developing countries, mainly West and Central African countries, want to carry cargo and they do not as a result of inexperience and their generally smaller size of cargo, to be handicapped by not getting a fair share of the most profitable cargo which is by no means the most highly rated. Monetary compensation is not interesting because it only compensates for under earning not for low profits. According to Sturmey the third world wants an a priori system which helps to overcome the established advantages of their traditional partners who clearly prefer the posteriori system which helps them to guard those advantages. In accordance with this view there is no doubt that developing countries prefer an a priori to a posteriori system. So at the next round of negotiations of Unctad, which will probably deals with the application of the code, there will be pressure to adopt such a system in place of whatever the existing system.

Preshipment cargo control has been criticized by developed countries mainly in the countries where LDC freight booking office are established such as Hamburg, Antwerp, Rotterdam. An argument used against the a priori system, may be with very good reason, is that it is cumbersome, inefficient, time consuming and expensive but those complainers are not able to produce documented evidence to support their allegation in this regard.

To sum up, this system the national shipping is
lucky to have its share of good quality. But liner shipping requires a regularity of service. Most developing countries having got their share of trade, are able to provide the regularity of service which is indispensable for shippers and thus the code for this, will fail its purpose as well as the implementing legislation. What can be done to meet the requirement of the code in accordance with the regularity of the service?

B) TECHNIQUES USED TO CARRY THE 40% IN ACCORDANCE TO REGULARITY OF SHIPPING SERVICES.

It is recognized that liner shipping is an industry which is characterized by great complexity. In fact the most important characteristic of liner shipping is to give a service on a particular trade route with the regularity and frequency which the shippers need for carrying on their normal business and with specialized design where they are required. Unlike a tramp, a liner has to provide a service to shippers to ship little and often. A liner has to provide suitable space to carry a mixture of cargo.

The code provides the right for liner countries to carry 40%. One thing is to have a right another is to be able to carry this right. So most West African countries have conventional ships and to meet the regularity of a shipping service is, from time to time, difficult compared to their partners in Europe. So they use certain parallel techniques such as Slot Chartering.
and the method of retrocession of rights.

a) The technique of Slot Chartering

In developing countries, and in West and Central African countries in particular, the liner shipping company is not always able to fulfill its duty regarding the regularity and frequency of a shipping service. The reason is that sometimes those countries own a limited number of vessels, sometimes the ship is in dry dock, and sometimes due to technological developments their vessels are late in their timetable.

For these reasons, in Togo, the technique of slot chartering is always used to meet the requirement of the code. By slot chartering one refers to space allocation. The technique works as follows: three persons are involved in this kind of agreement.

- An apparent carrier undertakes to carry the goods on his own bills of lading. Then he makes an agreement with a real carrier.
- The real carrier is only in relationship with the apparent carrier. Between the two persons there is an agreement of transportation and the real carrier agrees to carry the goods of the apparent carrier and to pay him a certain commission which has already been agreed in the agreement.
- The shipper is only in relationship with the apparent carrier. The shipper do not know the real carrier. In event of damage, the shipper claims against the apparent carrier who must pay the damage. The apparent carrier after having paid, can claim back his money from the real carrier with whom he is in contract of transportation.
The only advantage of this system is that it enables a given carrier such COSENA\(\text{(*)1}\) which does not own a vessel, to carry its trade and to get experience in shipping before deciding one day to promote a shipping line. This technique enables certain countries which have a limited fleet with vessels that are from time to time late in the timetabling or are in dry dock at least to carry its cargo by slot chartering.

The slot chartering technique is used by SOTONAM mainly in the COWAC and MEWAK conferences with some lines such as SIVOMAR, SITRAM and SCADO\(\text{(*)2}\). The real disadvantage of this technique is that it cannot solve the problem of developing countries which is to increase their fleets and to participate effectively in ocean transportation.

b) The technique of retrocession of rights.

Instead of using slot chartering which requires some responsibility for the apparent carrier another technique without any risk is used. This is generally called the technique of retrocession of right which means that any given country which does not have a shipping line can sail its 40% with another shipping line. In this technique the contract is only between the apparent carrier and the real carrier. The real carrier "A" agrees to carry the 40% of the apparent carrier "B" not in the bills of lading of "B" like it is in slot chartering but

\[\text{(*)1: COSENA = Senegal National Shipping Line.}\]
\[\text{(*)2: Service Commun d'Armements Deservant l'Ouest Afrique.}\]
in its own bills of lading. The apparent carrier receives from the real carrier a mutually agreed commission fixed in advance.

The advantage of this technique is that the apparent carrier receives a profit without any risk, because, when something occurs in the contract of transportation the shippers rely only on the real carrier. It seems to be like a joint venture where all the parties gain their profit in accordance with their share. But this kind of joint venture is a little bit different. Here, the apparent carrier can look like a shareholder in the company of a real carrier. The share of the apparent carrier is the 40% of the code of conduct which has been sold to the real carrier in order to get a commission on the net freight rate.

In the MEWAK and UKWAL Conferences the Togo National Shipping Line uses the technique of retrocession with certain companies such as SIVOMAR and OT Africa Line. In the MEWAK conference it is with SIVOMAR from time to time as slot chartering or retrocession of rights. In the UKWAL conference, it is with OT Africa Line which seems to be a real joint service.

These are the techniques used to meet the requirements of the code regarding the regularity of shipping services. This shows how difficult it is to implement the code without using parallel techniques. It seems then important to analyse the difficulties of the application of the code.
CHAPTER III

THE DIFFICULTIES ARISING IN THE IMPLEMENTATION OF THE CODE.

A nation which ratifies or accedes to the code will have agreed to take internal government action on an individual basis to enable and to require of its citizens and businesses over which it controls to act in accordance with the principle and concept of the code. Meanwhile a basic problem confronting each government which has agreed to take appropriate action to implement the code is to discern just what the code requires and does not. The implementing legislation of each country must ensure that the application of the code is in the scope of the code's objectives, principles and provisions. Otherwise the misinterpretation could lead to a variety of applications and therefore, to the multiplicity of conflicting interest.

Substantively, the UNCTAD code is a complex convention(*1). Because of that, its implementation in West African countries in general and in Togo in particular raises some difficulties. These difficulties can be summarized in two points: the difficulties arising in the interpretation of the code and the difficulties coming from the international maritime environment mainly due to technological advancement in liner shipping.

SECTION I THE DIFFICULTIES IN THE INTERPRETATION OF THE CODE

The code is qualified by some authors as a flexible instrument. This flexibility is reflected in some points of the code stipulations indicating that certain steps can be taken such as "unless otherwise mutually agreed," or unless otherwise provided". It has also been noticed that some provisions are quite clear e.g. article 1 relating to memberships, article 11 relating to shippers council, article 23 relating to rate changes, surcharges, currency adjustment factors and the loyalty agreement.

But some negative comments have been raised regarding the code. It has been estimated that the code is replete with broad, undefined terms apparently contradictory and with mutually exclusive requirement and escape clauses such as "unless otherwise mutually agreed" and that the code fails to provide a sufficient definition of the mechanism by which these goals would be achieved in order to provide real measures, whether or not the steps taken by each nation are in accordance with the code. Therefore then the code is full of ambiguities in some of its provisions and some important aspects have not even been taken into consideration.

A) THE AMBIGUITY AND UNCERTAINTY OF SOME PROVISIONS: THE EXAMPLE OF THE CARGO SHARING FORMULA.

In most of the provisions of the code some ambiguities and uncertainties appear and need to be interpreted. The following provisions can be noticed:
- No definition of a pool is given. The existence of a definition would have helped to resolve two problems: that a conference will administrate the application of the 40-40-20 principle and that control of cargo will be on a posteriori basis.

- The definition of an appropriate authority is not clear. This leads to confusion concerning the rights of the governmental institutions to participate in consultations.

- The conciliation machinery in the code is ambiguous and very complicated. It appears that it is possible for national disputes to be settled but for international disputes the parties are not bound unless they accept the recommendation of the conciliation.

- The question of the cargo sharing and reallocation of cargo is not clearly handled.

This last point concerning cargo sharing is the most ambiguous and attracts more attention in West and Central African countries because of the controversy which surrounds it. Should the code be applied to conference cargo or to the whole trade? Which criteria should apply for the sharing of the 20 percent? These are the two points which must be analysed.

a) the cargo covered.

As mentioned before, there is a great controversy about the cargo which must be carried:
Article 2(1) of the code states that "Any shipping line admitted of a conference shall have sailing and loading rights in the trade covered by that conference". Considering only this point it seems that the cargo covered is only the cargo carried by the conference. This is doubtful, because in article 2(17) it is stated that "The provisions of article 2(1) include, 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 purpose". These two points of article one seems to be contradictory and this leads to different interpretations regarding the cargo covered.

For developed countries, mainly traditional maritime nations, the cargo covered must be only the cargo carried by the conference according to article 2(1). They argue that the title of the code is the code for liner conferences and nothing else. They go far in estimating that this cargo covered by the conference must be only in volume and not in freight. For developing countries only the term "all goods" must be taken into consideration. The cargo covered for West and Central African countries concerns the whole trade.

In Togo, according to article 1 of the ordinance No 80(11 bis) of 9 January, all maritime freight in provenance or at destination of Togo is shared between national shipping lines and the foreign lines according the key formula 40-40-20 of the code of conduct for liner conferences, following the instruction of the minister of transport under the recommendation of ministrial confe-
rence of West and Central African States on maritime transportation, at the exception of carriage of freight belonging to the state, to public collectivity and to Togolese public establishments with an administrative character. Following this article the cargo covered is all cargo of the whole trade. For the sharing purpose the exception is not only on the military equipment, this exception also include the state, public administrations and the collective equipment(*1).

This wide interpretation of article 2(17) follows the principle that where the law is not clear the parties must interpret it to their advantages. The aim of concluding the code was not only to regulate the conferences but also to enable developing countries to participate in ocean transportation. It seems that if the cargo covered has to be only the conference cargo, the code could have missed one of its main objectives which is as already mentioned, to enable developing countries to participate in shipping. To achieve this noble objective it could be indispensable to expressly include the bulk cargo in the code.

b) The third flag and the 20 percent.

The third flag is any shipping line member of a conference or not, operating in a given trade between two countries which are members of a conference.

(*1) This provision is translated from French into English.
The important question appears to be the one which refers to whether the activities of non-conference lines fall within the frame of the code or not. In other words, the question is to whom the 20 percent share allocated by the code for the third flag carrier applies. Does it apply to the third flag conference member lines only or to the non-conference lines as well? The code appears to be ambiguous and even silent on this point. There seems to be only one relevant stipulation in the Code, namely paragraph 17 of article 2 which specifies that the provision of this article refers to the right of participation in a trade. So far, one resolution of the conference on "non-conference shipping line" stated that nothing in the convention should be constructed so as to deny shippers an option in the choice between conference and non-conference shipping lines subject to loyalty arrangements. Further, it stipulates that "in the interest of sound development of liner shipping service, non-conference lines should not be prevented from operating." There is a recommendation and resolutions although lacking legal force which would easily be satisfied as long as a conference would allow an independent line to operate within the 20 percent. So the criticism against OT Africa Line operating in trades of Togo as the third flag, not being members of the conference does not seem to be reasonable. So OT Africa Line has the right to operate within 20 percent which is a part of the total traffic generated by Togo and Great Britain. In most cases, it has been raised that this 20 percent must be allocated to the third flag conference member line. This is the difficulty which

(*1) This criticism has been raised by most of the shipping companies I visited during my job training.
Central and the West African countries are facing in the implementation of the Code.

If third flag non conference lines must share the 20 percent, it automatically leads to competition. The shippers will prefer to load on the third flag non conference line because there the freight rate is subject to be flexible, and the third flag conference line will lose because they have to respect the freight rate of the conference.

In the COWAC, it has been argued that the 20 percent is supposed to be shared by the third flag conference lines. So which criteria should be applied to the sharing of this 20 percent? By tradition, the criterion retained is "past performance"(*1) which is used in order to share the 20 percent. On 19 April, 1985, the CMB in collaboration with SECRETAMA proposed some new criteria such as adequacy, regularity and efficiency of service. But those criteria have been rejected by the argument that, the Code of Conduct has been constructed and ratified for the benefit of developing countries and not for the sake of some European lines which would then use or measure the Code shelter to claim the absolute right to participate in trade where they have shown little interest and where they would disregard old standing conference operations(*2).

So the criteria always used is only the past performance.

(*1): This criterion takes into account the amount of cargo carried in given year by each individual line following the statistics.

(*2): This criticism has been rising by Transatlantic cie.
The enumeration of these two points show how difficult it is to enforce some provisions of the Code which in some parts is completely silent.

A) SOME IMPORTANT ASPECTS NOT DEALT WITH BY THE CODE.

As previously pointed out, many of the terms of the provisions of the code are not defined fully or not at all and may be subject to ambiguous interpretations or uses. For that reason, developing countries, mainly West and Central Africa, find many difficulties in the implementation of the code. The code is silent in many points.

- Whether or not it requires states at both ends to be contracting parties.
- Nothing is implied about reallocation for cargo with conference member lines in cases where national lines undercarry or do not carry at all upon a particular trade.
- The attitudes of unions in various countries regarding the use of foreign chartered tonnage and foreign crew.
- Nothing is said about Open Registry or Flag of Convenience which is in contradiction with the principle of membership.
- The terms of transport contracts as developed countries impose the terms of transport by buying FOB and selling CIF.
- The most important questions which the West African countries are facing in the implementation of the Code are: Do landlocked countries have the right of carriage? Do they have the right to say who is to carry their right? Can a country sell its trade share? How to deal
with transhipment cargo? The answer to these questions will be dealt with in two points: the right of landlocked countries and transhipment cargo problems.

a) The Rights of Land Locked Countries

Few landlocked countries are shipowners. The most well known is Switzerland, ranked 46th in the Code list of nations as far as conditions governing entry into force is concerned. In West and Central Africa the landlocked countries(*1) are not shipowners apart from one tentative to allow them a chartering company called the Lake Saohara Shipping (*2). The landlocked countries want to benefit from the Code provisions. This is a difficulty for a coastal country like Togo, as the Code did not provide any provision for this type of countries.

According to Sturmey, the Code makes it clear that it is a cargo generating country which has the right to carry, not the countries in the port of which the cargo is loaded or unloaded, although the definition of the country of the origin or of destination is often difficult, this does not affect the principle which is quite clear. Thus, landlocked countries have the right of carrying under the Code and may be well felt that paragraph 5 of article 2 of the Code provision treat these right in a very cavalier fashion. It is very difficult to understand why a country whether land locked or not, which faces real difficulties in putting tonnage

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(*1): These Landlocked Countries in West Africa are: Burkina Faso, Niger and Mali.
(*2): S.G Sturmey, Workbook on the application of the code, opcit. page 85.
into a trade, should have no say over how its cargo is to be carried.

This opinion seems to be reasonable because the objective of the Liner Code is to enable all developing countries to participate in trade not only some of them having the privilege of being a coastal country. So article 5 paragraph (2-5) has to be amended by the words "unless the cargo generating country otherwise decides". One could also include paragraph 6 and 7 of the same article in the amendment. Until this is done or until the time of a review conference, all countries must be strict with these paragraphs.

Therefore the landlocked countries can only hope that their partners in negotiations will pay attention to the reference to paragraph 4 where the flexibility formula "unless otherwise mutually agreed" appears. So then the idea of the Lack Sahara Shipping Company duly incorporated and recognized by its governments to operate as a liner company on the trade from Africa to the rest of the world and to issue its own bills of lading could apply for membership of the conference and be accepted.

b) The transhipment problems.

Again in this important question the code is completely silent whether a cargo in transit must be shared according to the 40-40-20 principle or not. Most of the cargo coming from landlocked countries in West and Central Africa passes in transit through the ports such
as Togo, Benin, Ivory Coast, Senegal. In Europe this occurs in some ports such as Hamburg, Antwerpen, Rotterdam. According to article 2 paragraph 5 "If for anyone 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 individual member lines participating in the trade in proportion of their respective share".

According to this paragraph it is clear that the cargo of landlocked countries in transit must be considered as a carga belonging to countries without a fleet and so if these countries do not participate in the carriage of their cargo; this cargo must be shared among the conference member lines taking into account that the national lines of the ports of transit must have advantages in the sharing. But this seems to be complex. To go about this complexity one could argue that in applying the code in a trade which includes a landlocked country which as usual, does not have a fleet of ocean going ships, it should be possible for the landlocked country to say to the conference something to the effect that since their transit country "X" they wish that the lines of that country "X" should have the right to carry their share of the trade; they might add that, that share should be the same as that of "X" in its own trade or 40 per cent whichever is higher. In some conference agreements the country is not allowed to decide which line should have the right to carry its trade, so it would be the conference which would appear in the role of the good fairy best owning the gift of carriage. While the
transit country lines would probably get the same cargo quota in either case, the position of the landlocked country in order to deal with the lines of "X" and with all transit problem, would be significantly stronger if it, rather than the conference is seen as the decision maker in the matter(*1).

An interesting question is whether a country with a right to carriage arising from negotiation under the code which cannot or does not wish to carry its share can sell it? The code does not say anything about this question. In principle we see no reason why not, because the cargo sharing formula is a political right and any country can claim this right. But in practice, it could be difficult regarding to whom this right must be sold. It might be logical if this right is sold to the coastal country where the cargo is transhipped if it is a landlocked country, or the main commercial partner if it is a coastal country without a fleet.

These are some difficulties arising in the interpretation and application of the code, but there are also some difficulties coming from the international maritime environment.

SECTION II DIFFICULTIES ARISING WITHIN THE INTERNATIONAL MARITIME ENVIRONMENT.

It has been recognized that the unilateral national regulation of shipping was heading for chaos. The code by providing a set of rules for common application,

can prevent the situation of "laissez faire" which always goes beyond the interest of all parties.

The traditional supporters of the code have been voicing that the code would only serve to bring the long awaited changes into the liner trades, in lines with current international commercial and political realities. To them, the code despite any weaknesses, can provide the vehicle for a reorganisation of liner trades based on cooperation between all interested parties such as carriers and shippers in old and new maritime countries and offer a balanced protection of their legitimate interests, rather than a statue imposed by a dominant market power of a limited number of liner companies and countries to this date.(#1)

But this point of view seems to have no echo nowadays. In West and Central African countries the experience has shown that there are many difficulties arising because of the conflict of interest which exist between developed and developing countries and because of quick technological changes occurring in liner shipping.

A) THE PROBLEM OF CONFLICT OF INTEREST

The UN Code attracted much support in the developing world. In the developed world, it had no reception in the USA and had mixed reception in European countries. The USA opposed the code on several grounds, more particularly because its membership provision encourages the continuation of closed conference

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the conferences, the provisions for pooling the conference cargo, also those providing for allocation of cargo, would tend to increase cost and to reduce the quality of service in trade. The USA being the biggest cargo owner in the world, its opposition makes more difficulties in the implementation of the code. The point which must be dealt with, is the attitude of European countries mainly the EEC countries as long as they are the main commercial partners of West Africa. The position of those countries can be summarized in two points:
- The Brussels package as a response to the code.
- The bilateral agreements as an alternative to the code.

a) The Brussels Package as a response to the code.

One of the points showing that there exist conflicts of interest is the Brussels Package drawn by the EEC countries and accepted by the non EEC countries such as Norway and Sweden. In fact after several years of deliberation, and as a result of compromise, the European Community concluded that their member states should ratify the liner code but do so with a set of significant reservations, commonly referred to as the "Brussels Package". The EEC reservations conceived of a tripartite division of liner conference shipping for the purpose of the application of the code:

- First, as between the EEC member states themselves and between EEC members and reciprocating OECD states, major code provisions are not applied.

- Second, as between EEC member states on the one hand, and developing countries on the other, the provisions of the
code apply with significant reservations

-Third, as between developing states the code fully applies.

These reservations put some of the most important provisions of the code out of force in Europe. This concerns particularly the provision on membership of conferences and the provision of cargo sharing which is only allowed to operate, in relation to European Community trade with developing states, thus recognising that the latter assume the right of carriage of up to 40 percent of their trade with Europe. The confirming point is that the Brussels Package, further, defines national shipping lines for the European Community states as any vessel operating shipping line established in the territory of a European Community member state. This provision gives advantages only to the European Community Member States with significant cross-trading interests, such as Great Britain and Denmark. In these trades between European Community states and developing states where the liner code applies, shipping lines of EEC states which are conference members are considered as national lines by EEC states whose trade the conference carries. As an example, in the trade between the Federal Republic of Germany (FRG) and Togo, the conference shipping lines of Great Britain and Denmark would be considered national lines of FRG. Nonetheless, in accordance with the EEC reservations, a new entrant liner company from EEC states would have to commercially negotiate its way into the conference serving for example the trade of FRG and Togo. Once in, however, British and Danish conference member lines would have the rights identical to those of an FRG shipping line in that conference.
This one example illustrates how difficult the EEC reservations make on the implementation of the Code of Conduct for Liner Conferences. However more difficulties come from bilateral agreements.

b) Bilateral agreements as an alternative to the code.

In the context of shipping policy, bilateral agreements refer to an international agreement between two states for the purpose of sharing the carriage of their mutual trade. These agreements specify the rights and obligations of national shipping.

Bilateral agreements can be drawn individually to meet the need of each particular trade. It is noticeable that certain governments not only in Europe are keen on securing the continuation of government to government agreements signed in the past. Apart from the USA which is not member of the code and which is the promoter of bilateral agreements in some Latin American Countries such as Brasil and Argentina, one can enumerated certain other countries such as China, France and East European countries.

In fact during the adoption of the code the delegate of Poland, speaking on behalf of the non market economy countries, declared that the code would not apply to joint liner services serving the bilateral trade with the socialist countries of Eastern Europe. Similarly, The People's Republic of China which acceded to the code in September 1980 has declared that "the joint services established between The People's Republic Of China and
any other country through consultations and on a basis that the parties concerned may deem appropriate, are totally different from liner conferences in nature, and the provision of UN Code of conduct for liner conferences shall not be applicable there to".

For France, bilateral cooperation has been seen as an important tool for facilitation of rationalization in the liner trade. Nonetheless, as the liner code looms as a reality, a number of French shipping industry executives, and maritime policy officials have begun to see the merits and have become advocates of a policy of bilateral agreements to protect French shipping in advance. This view has been expressed in one interview given by Mrs Therese Lethu(*1): "The agreement of bilateral cooperation concluded with 15 African countries from the independence period are in force", and "the implementing legislations on the liner code of those countries will not apply in France".

It is remarkable that France has tried to reach a new solution according to the code and the consequence is that other individual EEC countries would not lose control of their maritime partners and they will try to apply bilateral cooperation as well. Also this bilateral agreements between France and its former colonies will tend to discourage outsiders in their French market and will of course contribute to confusion in the application of the code which is deeply affected by the technological changes in liner shipping.

(*1): Former Secretary in charged of Maritime Affaires.
B) TECHNOLOGICAL CHANGES IN LINER SHIPPING: EXAMPLE OF THE CONTAINERIZATION

During recent years many changes have taken place in liner shipping like progress in different types of liner vessels, changes in manning, changes in training and changes in the unitisation of cargo of which the use of containers is now the most important. In 1973 the basic year for the entry into force of the code, the world fleet of general cargo plus container ships was just under 73 million GRT of which 8.1 percent was only cellular ships.

Today, the figure is 15 percent and is continuing to increase annually. This technological change in the unitisation had well and truly started when the code was passed in 1974 and would become a revolutionary force. It can be seen from this inference that the containerisation has a great impact on liner shipping and from a West African point of view the code is menaced.

a) The impact of containerisation on liner shipping.

The code has little to say about technological change. The only help which the code gives is on how to deal with the technological change which is a limitation to the suggestion that "Effect 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, may be the subject of
consultation". As there is no provision in the code about technological change, a spectacular increase of containers has a great effect on the liner trade.

For developed countries, the motivation forces behind the introduction of container ships are that they believe that they would increase their profits, either by lowering costs per ton/mile or by providing a better service which would enable them to attract cargoes from rivals. This makes developing countries which are in difficulties with partly cellular ships built within the last fifteen years non-competitive in relation to fuller container ships. On the basis of the formal typical general cargo ships developing countries could reckon on being able to transport 40 percent of their trade with a fleet of a sufficient number of vessels providing unacceptable frequency of service. Now all that has changed and container ships operated by owners within the conference from developed countries are causing unfavourable impact on the shipping and trade of many developing countries.

Some developing countries particularly in West Africa fear that containers are being forced upon them because the economic benefit it brings to the shipowner is not optimally distributed and as a result an unfairly small part of the gross benefit and an unfairly large part of the gross cost may very well fall on them when the container revolution hit their trade.
b) The West African point of view on the containerisation

In January 1984 an International seminar on the containerisation of African products was held in Abidjan. At this seminar it was understood that the degree of containerisation for MEWAC in 1982 was 44 percent in the direction North-South and 71 percent in the direction South-North. For the COWAC Conference the figures were 75 percent and 30 percent respectively. Currently with the seminar, the first of a new class of fourth container ships able to carry 1,600 TU and 300 vehicles entered in the trade between Europe and West Africa(*1).

Containerization is a reality which cannot be ignored in African trade, although the Africans do not own one fully cellular container ship. In the seminar African shippers found that a container load did correspond with their commercial needs in the market. They argued that the containers had to be unpacked to reconstitute the original lots, while the volume of the container exceeded the capacity of small shippers, who were then obliged to ship through agents who could aggregate cargoes, but who exacted a price which shippers felt to be unreasonable .

It is remarquable that the Code seems to be menaced because the capacity of container services is so high that, on many routes, there will be room for only

one operator, which can result in the Code being ignored. Much the same result could be produced even if the conference continues to function since the Code’s cargo-sharing provisions are likely to be inoperative(*1). The tremendous inroads which a single non-conference operator can make on a trade illustrates the difficulties of handling the request for entry from such an operator under the terms of the Code’s criteria. As mentioned before even carrying the 40 percent on one’s own Bill of Lading in leased container slots will not serve any of the objectives of the Code.

Due to the possible failure of the Code, other alternatives have to be applied in the shipping policies of the developing countries in West Africa involved in international shipping. These alternatives will be illustrated in the following chapter.

(*1): S G stumey opcit page 159
CHAPTER IV:

AN ATTEMPT TO RESOLVE SOME PROBLEMS:
SUGGESTIONS AND RECOMMENDATIONS.

The difficulties which are surrounding the code as analysed in the precedent chapter make it clear that another alternative has to be adopted for a better implementation of the code. As advocated by some authors, the code is an attempt to regulate the conferences and because of that, must be considered as an instrument of guidelines which could be applied following a certain way in order to give satisfaction to all parties. In this regard, instead of giving up the code as has been argued, it is advisable that some solutions be found in order to deal with the difficulties.

The aim of this analysis is to attempt to make some suggestions and recommendations which may be helpful as far as the code is concerned. These recommendations will be stated at national and regional levels on the hand and at an international level on the other hand.

SECTION I SOME POSSIBLE ACTIONS AT NATIONAL AND REGIONAL LEVELS.

In May 1975, the Ministerial Conference of West-/Central African States on Maritime Transport (MINCONMAR) convened in Abidjan on the initiative of His Excellency President Felix Houphouet Boigny of the Ivory Coast. Opening the conference, the president said: "I particularly believe that, for African Nations whose participation in maritime transportation arisen from their own needs is
small, it is now essential to jointly elaborate a way to talk good sense to the foreign shipowners on which they depend and then to talk by common consent.

Thus an action at a regional level is indispensable and can be more efficient if certain measures at a national level are taken. For Togo for instance actions at a national level are urgent with a view to going about some difficulties of the code and to gaining some advantages through it.

A) THE POSSIBLE NATIONAL ACTION REGARDING THE CODE.

As mentioned earlier the maritime possibilities of Togo are not negligible and the maritime activities and maritime infrastructures are important too. It is true that Togo has adopted legislation to implement the code but there is no doubt that for a better implementation of the code some structures need to be strengthened. These bodies which seem to be strengthened are expressly enumerated in the code, i.e., the appropriate authority which is the Ministry of Trade and Transport through the maritime administration has to be revived concerning its duty vis-à-vis the liner code. The Shipper’s Council which is the administrative body of the code requires great attention in order to keep with the resolution of Unctad (*1). The national shipping line as beneficiary of the code has to be more efficient in the carriage of its 40 percent in freight. To do so, certain management measures must be taken.

According to the importance of the analysis, these

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(*1): Cf Thesis of Mr. Adiko page 135.

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recommendations will be dealt with as follows: the strength of the National Shipper's Council as an important body of the code in the view of Unctad and the revitalization of the appropriate authority through the maritime administration and the awareness of new management measures to National Shipping Line.

a) The strength of the national shipper's council as an important body of the code in the opinion of Unctad.

In West and Central Africa(*1), the shipper's council are present in at least 13 countries: the Ivory Coast, Ghana, Nigeria, Cameroon, Senegal, Guinea-Conakry, Benin, Togo, Zaire, Burkina Faso, the Central African Republic, Gabon, and Mauritania are backed up by their respective governments. The reason behind the establishment of shipper's councils in these countries is that, since cargo is composed of thousands of different consignments sent by numerous shippers scattered everywhere, individual negotiations between shippers and carriers on terms and conditions of shipment are not feasible. There is a need for collective representation for general discussions between the parties of maritime transportation and thus the shipper's council provides this function. Consultations with carriers on general subjects such as carriage conditions, i.e. frequency of sailing, adequacy of service, freight rate structure, tariff publication and proper documentation. By a creating council, shippers strengthen their bargaining power vis-à-vis a united

(*1): See annex 4; the map of West and Central Africa.
body of carriers such as conferences. Shipper organisations are aimed not only at negotiating with conferences, but also at exchanging information between shippers and at achieving utilisation and rationalization of a shipment.

Apart from these roles recognised by each council, the Shipper's Council of West and Central African Countries carried out the role of a national freight booking bureau. An integral part of the activities of the Shipper's Council in these countries complies with the cargo sharing principle contained in the code.

In Togo as in many other African countries, the shippers council is a new body. For this it is in the way of setting up. Togo shippers' council's main duty for the moment, is to participate in freight rate negotiations within the regional freight rate commission, to deliver the attestations to the importers and exporters, to follow how the cargo is shared between national shipping lines and others regularly send the statistics of the outflow of the trade to the SECRETAMA and other agencies which need it. The shippers are administrated by a president, a secretary general who has not been appointed yet and some civil servants.

Experience shows that shippers' councils in developing countries are indispensable. Certain countries like Australia, without having any ships has benefitted enormously from ocean transportation by the organization of its shippers' council. The example of Australia has been followed by some countries such as Sri Lanka, India.
and the Ivory Coast. In this regard some efforts are being made with a view to restructure the shippers' council in Togo, as a body which in the long run can have a positive effect on the balance of payments of the country. That is why, it will be helpful to make some suggestions which should help to strengthen the shippers' council.

- A nomination of a Secretary General as in other neighbouring countries such as the Ivory Coast, Benin, and Ghana. The duty of the Secretary General will be in accordance with Article 3 of Decree No. 80-8 of 9 January 1980.

- Within the shippers' council a department of Shipping Investigation Unit (SIU) must be promoted. The SIU will provide the council with information as regards voyage costs, cargo flows, efficiency among shipping lines mainly among non-conference lines. Furthermore the SIU will provide the elements of commission, stevedoring, repairs, handling charges etc. The SIU can be in charge of providing the amount of excess capacity in a vessel, anticipating the effect of freight increases and making the comparison of rate increases in other ports.

- If possible the promotion of how to import on a F.O.B. basis and export on a C.I.F. basis could be carried out by the shippers' council.

- If possible to have an independent national agents abroad to carry out the cargo sharing principle.
b) The revitalization of the appropriate authority through the Maritime Directorate and the awareness of new managerial skills of the national shipping line

The appropriate authority of the Code in Togo as pointed out earlier, seems to be the Ministry of Trade and Transport. This role is carried out by the Ministry through its Directorate of Maritime Affairs. It is urgent at this stage to illustrate that this Maritime Directorate must be considered as the highest important political and administrative body of the country regarding maritime affairs. In Togo, the Maritime Administration is a new institution whose importance is not yet very well known. The Decree carrying establishment of this institution has stated its duties as mentioned before. For the moment, its duties have not been completely carried out and actions are being taken in order to enable the Directorate of Maritime Affairs to do its job properly.

For the purpose of the recommendation, it is necessary to mention that a maritime administration in a given country must be looked upon as an indispensable institution. The experience of some developed countries such as France, Germany, Norway, Sweden and England, and some developing countries such as India, Indonesia and the Phillipines, clearly demonstrates it. These countries, mainly Norway, have survived essentially because of their maritime activities and because of their Maritime Administrations which by providing adequate legislation, by training seafarer, by providing the government with appropriate advice in such matters, has brought great incomes in foreign currency to the country leading to a
positive balance of payments.

Indeed, Togo has a short coastline but if the Maritime Administration could provide the government with appropriate tools and skills in the maritime field, there would be a transformation of the economy in this country which faces problems related to its balance of payments from time to time.

Regarding the Code of Conduct, the Maritime Administration must be given great importance. Even if the role of the appropriate authority is executed by the Ministry, there is no doubt that this is done on the advice of the Directorate of Maritime Affairs. So the Directorate of Maritime Affairs, because of its role as an advisor, must be further informed of what an appropriate authority can do and what it cannot do.

The National Shipping Line is the beneficiary of this right of 40 percent in the country. For the moment, this body has been successful because it has been almost well organised. But shipping is a complex industry (*1) So the national shipping line must be aware of the new managerial tools and skills which are being discovered. To do so it could have:

- A special service dealing exclusively with day-to-day information all over the world.

(*1): See Abel Monsef series of lectures Shipping Economics.
The National shipping line could like CAMSHIP promote its own personnel as agents in the various ports both African and abroad, to look and consolidate national cargo with first offer or priority to National Shipping Line and doing so to enable to effectively follow its 40 percent in terms of volume and freight.

It could if possible try to call certain strategic ports in Africa and not only those of Europe. In this regard the cooperation already established with some shipping lines such as SIVOMAR and COBENAM could be helpful.

Also the National Shipping Line could, because of the technological development in for example containerization promote within its structures a multimodal transportation department in order to satisfy its clients within the country and landlocked country.

These are in brief some actions which can be taken at national level.

B) CERTAIN MEASURES WHICH CAN BE TAKEN AT A REGIONAL LEVEL REGARDING THE CODE.

In the area of shipping, the coast from Port Nouadibou in Mauritania to the Port of Namibe in Angola is traditionally considered as the West/Central African shipping range by liner conferences/companies which provide common services with uniform freight rates to these ports. This range is also defined as a maritime range by the U.N Statistical Study on Shipping. This definition of the West/Central African maritime region is
recognized as such by the ministerial Conference of West/Central African States on Maritime Transport and these countries are concerned with the recommendations.

In fact the main lesson derived from the Seminar in Abidjan stated earlier, was the need for regional cooperation. This cooperation can be understood as the obligation to use regional bodies which are already established and the need to promote certain regional bodies which could enable them a better implementation of the code.

a) The obligation to use regional bodies already established for a better implementation of the code.

The 1970s have witnessed a remarkable movement towards various forms of economic integration schemes in the West/Central African region. In a recent publication (*1), it was estimated that there are as many as 32 inter-governmental organisations in West Africa alone. This trend is a recognition of the need for closer regional cooperation in the economic development of small capital deficient states.

In the shipping field specially, the great achievement in the sense of integration and cooperation is the establishment of the Ministerial Conference of West and Central African States on Maritime Transportation (MINCONMAR) in May 1975. The main

(*1): Cf Thesis of Mr Adiko page 87.
objectives of MINCONMAR is the taking of actions to bring about the enforcement of the principle of consultation prior to the setting and subsequent implementation of any increase in freight rates. The broad policy of MINCONMAR is divided into five points: Maritime Affairs, Development of Shipping Companies, Ports, Landlocked countries, Training and Information. The specialized bodies of the MINCONMAR are at the present four:

-The Union of Shippers’ Councils.

-The Regional Freight Rate Negotiating Committee.

-Ports Management Association.

-Association of African Shipping Lines.

The Union of Shippers’ Councils is made up of all the shippers’ councils of West/Central African States as mentioned earlier. This union has a Secretary General of the Ivorian Shippers’ Council as chairman.

The Regional Freight Rate Committee has been entrusted not only with the power to negotiate increases in tariffs with other maritime conferences serving the region, but also to attend to grievances, remarks and complaints of liner conferences. This Committee plays a vital role in the region and could be regarded as the most significant achievement in the regional cooperation.

The Ports Management Association is an inter-governmental regional economic grouping created in 1972 by the UN Economic Commission for Africa (E.C.A). The
association is primarily concerned with improvement and modernisation of ports and shipping administrations in member ports.

The Association of African Shipping Lines is made up of national lines operating within the liner conferences serving the region.

If these bodies already established, could be fully used such as the Regional Freight Rate Committee, there is no doubt that the Liner Code could be really implemented and the shipping activities in this region could be stimulated.

b) The need to promote new integrated structures in the region for a better implementation of the Code.

By promoting new integrated maritime structures, as a link in one body of an existing structures in order to obtain better exploitation and rationalization of shipping activities in this region. The reason is that shipping is a capital intensive industry (*1) with a great complexity. Nowadays, shipping is getting more and more complex because of the technological changes. If countries with smaller amounts of foreign trade, aggregated their exports and imports to their regions, they might find economical methods to develop a common merchant marine.

(*1): See Abel Monsef; series of lectures in Shipping Economics.
Almost all the coastal states in the region of West Africa except Sierra Leone, have owned tonnage. With the exception of Nigeria and the Ivory Coast, most of the lines have been over represented. This suggests that stringent implementation of the UNCTAD Code where the countries' share of traffic is tailored to the cargo generated, would cause problems to some countries whose vessels are presently over-represented on the route compared to the cargo traffic.

Thus, a form of regional arrangements would be required to safeguard the continued participation of most of the national lines. This can be achieved:

- By the establishment of regional cargo pools with the participation of individual lines.

- If cargo pools are in operation in this region, it can be shared between E.E.C. countries on the 50-50 basis.

- Another suggestion could be the establishment of a regional shipping line. This means that the national lines which are over represented in the general cargo traffic and whose national cargo can not support regular liner services come to a joint venture agreement among themselves. The establishment of such a regional shipping line could respond to the objectives of ECOWAS (*1).

Apart from this, certain actions must be taken in international levels.

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(*1): ECOWAS = Economical Community of West African Countries.
SECTION 2: THE ACTIONS WHICH CAN BE TAKEN AT AN INTERNATIONAL LEVEL

The recent attempts of how to solve some of the difficulties of the code come from a few developed countries. The idea of this attempt is to apply the cargo sharing provision of the code in a rather different fashion from what the drafters of this instrument has attempted (*1). Instead of expecting the developing countries to establish and or to develop their own national fleets for the carriage of their reserved cargoes, it might make some sense for cargo to be physically carried by container vessels built by developed maritime nations which presently have the necessary technology and the capital required and thus a share of the revenue from this trade would be allocated to the developing countries in each relevant trading route. But this proposal has the effect that it would be to convert the convention of the code from a magna carta for third world fleet into a specific taxation regime.

Thus, it seems that at an international level, now a days, certain rational actions have to be taken. For the proposals, it is clear that, from country to country or from a group of countries to the other, the promotion of the joint ventures between nations in the spirit of the Caracas Declaration could respond to the objectives of the code. Also the review Conference on the Code of conduct which is supposed to be held in 1988 could be an important occasion to update the Code taking into account the difficulties surrounding it.

A) THE PROMOTION OF JOINT VENTURES BETWEEN NATIONS IN THE SPIRIT OF THE CARACAS DECLARATION COULD RESPOND TO THE OBJECTIVES OF THE CODE

In addition to regional cooperation mentioned earlier, the other alternative can be joint ventures. A joint venture is a business enterprise with more than one equity participant. For example, an agreement between a German firm and a U.S. firm to jointly capitalize a new factory in Venezuela.

There are already encouraging developments in the direction of joint ventures. Since 1977, several new joint ventures have been reported. As an example, the joint venture between Nigerian and Indian interest, resulting in the establishment of the Equatorial Carriers Limited in Nigeria; Another example is the joint venture between Tanzania and the People Republic of China.

Thus, joint ventures can be seen as the solution to the current problems of the Code; it could significantly improve the possibilities of new comers in shipping such as West and Central African Countries. But these joint ventures must correspond to the spirit of the Caracas Declation.

a) The joint venture could be seen as a solution to the current problems of the code and could significantly improve the possibilities of West and Central African countries.
Most of the national lines of West and Central African countries have entered into some form of shipping arrangements with European lines. For example, the National Shipping Line of Senegal is directly or indirectly managed by France liner Company Delmas Vielgieux; the Compagnie Maritime Zairoise (CMZ), the National carrier of Zaire, is influenced by the Belgian Line Company (CMB). The Delmas Vielgieux of France influences the national shipping line of Benin, whereas the national shipping line of Gabon is influenced by the Société Navale de l'Ouest (SNO). The German Africa Line (Woerman) manages from time to time the affairs of the Togolese National Shipping Line (SOTONAM). The Nigeria Shipping Line (NNSL) is in conjunction with Palm, Elders and Hoegh line.

These alliances are convenient. However, these alliances could be more suitable if they were transformed into joint services. Such a solution might bypass the current nationalism in the industry of shipping. Following the view of Ademuni Odeke (*1) that kind of joint ventures between developed and developing countries would differ, both quantitatively and qualitatively from the existing liner conferences and other western-oriented transnational shipping corporations. In this context, the most important criteria which must be considered is the ownership and not the management. The alternative would be to include joint ventures between interest from the developing countries on the one hand and developed countries on the other. A qualification must, however, be added: only enterprises where interests from develop-

(*1): Ademuni Odeke is the author of the Book "Protection and the Future of shipping"
ping countries hold more than 50 percent of the rights or can exercise a veto power, or where interests from the developed countries hold less than 50 percent of the equity, should be permitted in respect of the basic decision of the enterprise.

The advantage is that the joint ventures could significantly improve the possibilities of the West and Central African countries. In fact, all the countries of West and Central Africa have recently become independent and emerge out of colonial economic structures. In the area of shipping, these countries are newcomers. Many advantages for a newcomer can be seen in the shipping industry when co-operating with an established owner in one of the traditional maritime countries. Such cooperation such as joint ventures would improve the possibilities for newcomers like these countries to finance their joint venture. The assumption is, of course, that these countries need to gain experience in various areas of shipping, be it ship management, ship operations or chartering. Much of such experience can be gained by working closely with people who have long tradition in these areas and there is no doubt that those people would be interested in transferring their know-how to the newcomers, both in technical management and operation of chartering.

However, for any joint venture in West African countries, to be successful, the following important consideration should be kept in mind:

- The joint venture should give both partners benefits.
- There should exist political support from the home countries of the partners and in this connection an adjustment of shipping policies of the two countries.

- These requirements for a successful joint venture lead to the summary that any promoting joint venture must correspond to the spirit of the Caracas Declaration.

b) The promotion of joint ventures in West and Central Africa must correspond to the objectives and principles of the Caracas Declaration.

Maritime experts from the EEC known as the traditional maritime nations have started fact-finding studies in developing countries at the prospect of successful joint ventures in shipping. The aim is to convince the developing countries that shipping operations should be based on free market principles rather than government interventions or protectionism. The project was launched by the Sea Transport Commission of the International Chamber of Commerce (ICC) under the terms of the Caracas Declaration of September 1981. This Declaration has the merit in being more rational by the way it is underlining how any joint venture must be promoted.

The objectives and principles of the Caracas Declaration can be summarized in such a way. Against a background of increasing politicisation, both at national and international levels, which was believed to be a restraint of trade, the ICC held its Fourth Shipping Con-
ference in Caracas: Venezuela, in September 1981. The mood was that the world business community should give the lead in trying to find a new approach. The participants in the conference codified their beliefs in the Caracas Declaration. Thus the conference mapped out a programme for a mutually beneficial cooperation with developing countries in promoting their fleets. Its objectives are:

- A full examination of the condition necessary for successful joint ventures.

- A detailed consideration of the most appropriate methods for the transfer of shipping technology, including the enhancement of technical and managerial skills.

- Sustained activity to ensure the existence of viable national maritime codes supporting taxes and labour regimes.

- A serious research for innovative financial mechanisms for fleet development.

The main element of the Caracas Declaration are clearly explained by Ademuni Odeke. According to him, the heart of the declaration is joint ventures, the concept is not one of charity from developed to developing countries, but mutual selfhelp, business to business, in the absence of government regulation or pressure. The main elements of the declaration are:

- The element of risk which the parties must recognize their mutual interdependence and that there are no short
-There must be a suitable environment which facilitates joint ventures which would cover the legal and political areas.

-The parties must know their business, but from developed country, this does not inevitably mean that the partner should keep all his expertise. He must be prepared to pass it one.

-The input and interests of the parties must be essentially complementary. A joint venture must not be one sided, with one party doing all the work.

-There must be mutual trust between the parties.
-And finally there must be a clear central body for decision making and the management of vessels.

Apart from this, the Review Conference which is supposed to be held in 1988, can be an important occasion to update the code in a way to help for its better implementation.

B) THE REVIEWING CONFERENCE ON THE CODE OF CONDUCT AS AN IMPORTANT OCCASION TO UPDATE THE CODE TAKING INTO ACCOUNT THE DIFFICULTIES SURROUNDING IT.

Article 52 of the Convention provides for a Reviewing Conference to be convened by the depositary five years from the date the convention come into force. Con-
sequently, such a Reviewing Conference should be in late 1986.

Article 52 paragraph 2 calls on the depositary to seek, four years after the entry into force of the convention, the views of all states entitled to attend the Review Conference and on the basis thereof to prepare and circulate a draft agenda as well as amendment proposed for consideration by the conference.

Regarding the article 52 it is now time to prepare for an agenda for Reviewing Conference. Thus, following the difficulties stated regarding the implementation of the code in West and Central African countries in general and in Togo in particular, it seems urgent that the Reviewing Conference should settled these difficulties in understanding basis. It is indispensable for the Reviewing Conference to consider that the future good deal in shipping could depend upon on a better restructuration of the UNCTAD department in charged of shipping matters.

a) The difficulties surrounding the code should be discussed and settled on understanding basis in the Reviewing Conference.

The debate in the Reviewing Conference on the Code manifest itself very difficult. Until now, no real proposals have yet been submitted. Only some countries indi-
vidually (*1) have addressed to UNCTAD secretariat about the difficulties they are facing day to day with the code. However, there is no doubt that all parties on the convention, both developed and developing countries, in the Reviewing Conference, will agree on the need to the Code to exist and to be amended. The parties will recognize that the Code is an indispensable instrument which is full of ambiguities and is menaced by the technological changes in liner shipping such as containerization and multimodal transportation. But when it will comes to update the Code by settling those difficulties, the divergences might remained. The parties will try to propose solution without forgetting their interests. Developed countries could argued that shipping must be a "mare librium" enterprise and at the same time developing countries should raised that protectionism is the only good solution for them to participate in ocean transportation.

Nevertheless an understanding solution has to be found. This is an urgency because, both, developed and developing countries are interdependant. The recent crisis has demonstrated it. Since IMF(*2) started to impose drastic conditions to developing countries in view of the improvement of their economy, these countries are not able to buy from developed countries which are facing now a stagnation in their industries. If developing countries do not have any chance in ocean transportation, i.e. in invisible transactions, they will always face the problem of foreign currency and so will not be able to buy from developed countries. The immediate effect is that, as

(*1): These are EEC countries, Norway, Sweden, Finland and Cameroun.
(*2): IMF= International Monetary Fund.
shiping is a servant of trade(*1), there will not be cargo for a developed shipowner to carry from his country to developing countries. From this example, it is clear that there will be stagnation in ocean transportation.

Thus, it is urgent and indispensable to reach an understanding solution in the Reviewing Conference bearing in mind that all parties should get at least small benefit in ocean transportation. Some issues that hopefully will be discussed are:

- Clearly specify in the convention the matters on which shipper organizations in the country of export shall consult with conferences and those on which shipper organizations in the country of import shall consult with conferences.

- The 40-40-20 sharing formula should be the whole of liner trade rather than to conference-controlled trade; this in order to enable developing countries to effectively participate in trade.

- The question of the landlocked countries. They should have the right to sell their 40 percent in order to enable them to get at least a small part in the invisible transactions.

- The important problem of transit trade.

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Cf Abel Monsef: Series of lectures on shipping economics.

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The convention should clearly indicate an international institution which should be entrusted with implementing the sharing principle.

Amendments to the provisions relating to freight rates and settlement of disputes, with a view to making them more compatible with commercial practice and to simplifying the relevant procedures.

The problem of non-conference lines.

The problem of containerisation and multimodal transport.

Apart from these points which are relating to the code, some points should be included. These are:

- How to make USA support the code. Because, being a big commercial partner in the world with the first outflow of trade, it can make a sense if USA support the code by giving some amendment on it instead of being against it.

- Reviewing the agreement relating to Brussels Package.

- How to conclude bilateral agreements in the sense of joint ventures not in the way to benefit only one party.

This is what should be taken into consideration in
the Reviewing Conference without ignoring that the UNCTAD department of shipping has a great role to play. So then it has to be restructured

b) The UNCTAD department dealing with shipping has to be restructured in order to go about the difficulties of the Code

UNCTAD is a UN organ dealing partially with shipping matters. So it has a department which is concern with commercial side of shipping.

Shipping nowadays is becoming more and more complex of the technological changes in ocean transportation. Thus it is necessary to change the structures of UNCTAD shipping department in order to enable it to be more efficient. So, instead of setting only proposals and recommendations, UNCTAD shipping division could be a kind of international body assisting governments to harmonize the interpretation and enforcement of instruments whenever they are accepted by the parties. The experience in the implementation of the code has shown that each party is interpreting it only in his advantage.

Indeed, the code has entered into force. The parties which ratified it and tried to implement it have faced many difficulties as stated before. If there was an international body recognised as such to follow the implementation of the code, it is clear that the egoistic interpretation of individual country could be avoided.
For the Reviewing Conference, it should be better to allow the administrative and the disputes settlement role to UNCTAD division for shipping. So this division should be as follows:

- The application of the code in each country and besides so it could give authoritative statements and advice.

- Assist in settlement of disputes such as those arising in international level as those relating to the problems of the cargo covered, undercarriage and overcarriage.

To sum up, the role of UNCTAD division of shipping should be clarified in the Reviewing Conference in particular and to what extend it should act as an International Shipping body.

This seems to be the appropriate proposals as far as the Reviewing Conference is concerned supposed to be held in 1988.
SUMMARY AND CONCLUSION

The Liner Code of Conduct is a great attempt to regulate international shipping. It is a complex document which has been the subject of much study, comment and speculation. Carriers, shippers, labour organisations and representatives of governments have widely expressed varying opinions of what the code means and how it will work.

Most developing countries such as Togo have strongly supported the code. Being a coastal country and having established its maritime infrastructure, Togo has seen the code as an instrument to enable it to gain experience in shipping. This position is shared by every West and Central African country. Thus, they have adopted the legislation and taken certain measures for the implementation of the code. But due to the fact that the code contains some ambiguities and uncertainties and the traditional maritime nations are not ready to completely accept the provisions of the code, and that technological changes have occurred lately such as containerisation, the implementing legislation and the measures taken by these countries for the enforcement of such an important instrument, have no chance to succeed. This last remark was raised in the Abidjan seminar which has been stated earlier.

Because of that, alternative solutions have to be adopted. This has been agreed at national and regional
levels as well as at an international level.

- At national and regional levels, the strength of existing maritime infrastructure, mainly the shipper's council, is indispensable in any given individual country. The exploitation of some regional organisations already established and the promotion of a regional shipping company can be a success in ocean transportation for West and Central African countries.

- At an international level, the joint venture seems to be a better way of co-operation. The promoting joint ventures can be seen as a solution to many problems which the code is facing today. Those joint ventures must be established taking into account the spirit of the Caracas Declaration. The Reviewing Conference seems also to be an important occasion to find rational solution to the problems of the code at an international level.

Instead of looking at the code as an instrument condemned to be useless, the code must be considered as a framework treaty rather than a detailed and definitive set of rules. In this context, the reviewing conference which is supposed to be held in 1987 should update the code taking into consideration the difficulties which are surrounding it. By taking into account the stated difficulties, and the proposals which
have been made and will be made, in understanding way, the code could not only be an instrument of rationalisation of ocean transportation, but also an instrument of linkage between developed and developing countries, in other words an instrument of peace in international shipping.
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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, and, upon request, the participation of appropriate authorities;

(f) The principle that conferences should make available 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

The term or conference

A group of two or more vessel-operating carriers which provide international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which have an agreement or arrangement, whatever its nature, within the framework of which they operate uniform or common freight rates and any other 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 the conference;
   (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 to membership 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 readmission 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 participate 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 share.

6. If the national shipping lines of one country decide not to carry their full share of the trade, that portion of
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. Whatever 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 150 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.
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 con-
demed 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
located 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
inclusive regarding shares of trade among individual
shipping lines or groups of shipping lines, pooling or
pro分享 agreements shall be reviewed by the confer-
ce 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-
ience as soon as possible after entry into force of the
current 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 fulfill 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
then, in the absence of a pool, there exists berthing, sailing
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
agree 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
things 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
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
covered 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
endeavors 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-
ce 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 defense
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.
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 arrange­
ment;

(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
to the appropriate authorities 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 dispen­
sation 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, with­
out 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 amend­
ments thereto shall be made available on request to

shippers, shippers' organizations and other parties concerned
at reasonable cost, and they shall be available for examina­
tion 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 shipper 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' organiza­
tions, action taken regarding complaints, changes in
membership, and significant changes in service, tariffs and
conditions of carriage. Such annual reports shall be submit­
ted, on request, to the appropriate authorities of the
countries whose trade is served by the conference con­
cerned.

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 appro­
priate 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 consulta­
tions, 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 require­
ments 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:

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(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 repuety, including, where the requesting parties accept it as one of the bases of consultations, an aggregated analysis of
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 shall 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 dates 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 ports of a conference trade shall accept, and not unreasonably refuse, a fair share of cargo for which a 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 member lines 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 consultations, save in those exceptional circumstances which warrant immediate imposition of the currency adjustment factor or freight-rate 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 fulfilment 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;
(b) 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
teleprinter or has been served on it within the time-limits
specified in article 24, paragraphs 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 (e), (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 co-operate 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 the 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 of 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 chairmen of the conciliators so far chosen. If such request is allowed, the chairmen 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 judgment 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 recommendation;
   (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; may also publish the grounds for rejection given by any other party unless such other party has already published 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 all 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 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 40;

(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 depositary, 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 shall 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 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
REVIEW 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.

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, 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, 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 made 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 therefor, 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 salutary 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 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 judgment such evidence merits.

(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 weight 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 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

Whenever a period of days for the doing of any act is provided 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 noting 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; and

(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 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.8

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

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8 For the text of this proposal, which was subsequently sponsored also by the Group of 77 and by France, see alternative I to paragraph 54 of the Code in United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences, L.1, Reports and other documents (United Nations publication, sales No. E/76.D.11), part four, sect. 1.
disputes and, if so, which subjects should be considered appropriate for local 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.

*9th plenary meeting
6 April 1974*
Chronology of events leading to the adoption of the Convention

May 1970
The Committee on Shipping, having considered the report by the UNCTAD secretariat entitled The Liner Conference System, agreed that further improvements in the liner conference system would be in the common interest of shippers and shipowners, and decided to transmit the report to its Working Group on International Shipping Legislation (WGISL) for further consideration.

February 1971
The ministers of Transport of Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Italy, Japan, the Netherlands, Norway, Sweden and the United Kingdom forming the Consultative Shipping Group, at a meeting in Tokyo drew up guidelines for a code of practice for liner conferences. They requested their shipowners, in consultation with the national shippers’ councils of Europe, to elaborate a code of practice. This code, subsequently known as the CENSA Code, was accepted in late 1971 by CGS Governments, now joined by Spain, as fulfilling their request.

April 1971
The Committee on Shipping recommended the inclusion of liner conferences in the agenda for the third session of UNCTAD.

November 1971
The second ministerial meeting of the developing countries members of the Group of 77, held in Lima, recommended the preparation of a draft code of conduct for consideration by UNCTAD at its third session.

January 1972
The WGISL met for its third session. It had before it the report The Regulation of Liner Conferences and also the text of the CENSA Code. At the end of the session two preliminary drafts for a code of conduct were submitted to the WGISL, one by the developing countries of Africa and Asia and the other by the developing countries of Latin America. The WGISL decided to transmit the two drafts to the third session of UNCTAD, as there had been insufficient time at the session to produce a single draft code.

April 1972
The developing countries, at the third session of UNCTAD held in Santiago, Chile, submitted a unified draft code.

May 1972
The third session of UNCTAD requested the United Nations General Assembly, at its twenty-seventh session, to convene a conference of plenipotentiaries to adopt a code of conduct for liner conferences, and to establish a preparatory committee to prepare a draft text for the plenipotentiary conference.

December 1972
The General Assembly, in its resolution 3035 (XXVII), adopted with 96 votes for to none against, with 28 abstentions (developed and socialist countries), requested the Secretary-General of the United Nations to convene a plenipotentiary conference to consider and adopt a convention or any other multi-lateral legally binding instrument on a code of conduct for liner
conferences and established a 48-member preparatory committee to prepare a draft code for submission to the plenipotentiary conference.

January 1973
The Preparatory Committee held its first session.

June 1973
The Preparatory Committee met for its second and final session.

At the end of the second session, the Preparatory Committee had a proposed text of a code of conduct, covering (1) the objectives and principles, (2) the substance of the Code and (3) provision and machinery for implementation, for submission to the plenipotentiary conference. The proposed text reflected wide agreement with regard to the subjects to be covered in the proposed international instrument, but revealed wide difference on a number of fundamental issues, including participation in trade, the role of governments and dispute settlement procedures.

November/December 1973
The United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences was originally scheduled to end its work on 14 December 1973. On 7 December 1973, following informal negotiations, the President of the Conference was able to recommend a number of principles to the Conference for its consideration. This "Package Deal" as it came to be known is reproduced as an annex to the resolution 1 and attached to the Code. However, the breaking of the deadlock came too late for the work to be completed. So the session became the first part of the Conference which was adjourned to be reconvened in 1974.

March/April 1974
The Conference of Plenipotentiaries held its second part. On 6 April 1974, the Conference adopted the Convention by a roll-call vote of 72 to 7, with 5 abstentions. It also adopted two resolutions, one on non-conference lines and the other on local conciliation.

II. Ratifications and entry into force

The Convention entered into force on 6 October 1983, following ratifications by Germany and the Netherlands on 6 April of that year, which enabled the tonnage condition for entry into force to be satisfied; the condition concerning the number of countries had been satisfied much earlier. At 6 April 1983, the following 59 countries had become contracting parties to the Convention:

South and Central America

Barbados
Chile
Costa Rica
Cuba
Guatemala
Guyana
Honduras
Jamaica
Mexico
Peru
Trinidad and Tobago
Uruguay
Venezuela

Africa

Benin
Cape Verde
Central African Republic
Congo
Egypt
Ethiopia
Gabon
Ghana
Guinea (Conakry)
Ivory Coast
Kenya
Madagascar
Mali
Mauritius
Morocco
Niger
Nigeria
Senegal
Sierra Leone
Sudan
Tanzania
Togo
Tunisia
United Republic of Cameroun
Zaire

Asia

Bangladesh
China
India
Indonesia
Iraq
Jordan
Lebanon
Malaysia
Pakistan
Philippines
South Korea
Sri Lanka

Others

Bulgaria
Czechoslovakia
German Democratic Republic
Romania
Union of Soviet Socialist Republics
Yugoslavia

EEC

Germany, Federal Republic of
The Netherlands
ORDONNANCE N° 44

autorisant la ratification de la Convention relative à un Code de conduite des Conférences Maritimes, signée le 25 Juin 1975.

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LE PRÉSIDENT DE LA RÉPUBLIQUE,

Sur le rapport du Ministre des Affaires Étrangères et de la Coopération,

Vu l'ordonnance n° 1 du 14 avril 1967 ;

Vu l'ordonnance n° 15 du 14 avril 1967 portant désignation du Président de la République ;

Le Conseil des Ministres entendu,

ORDERMEE : 


ARTICLE 2. La présente ordonnance sera publiée au Journal Officiel de la République Togolaise et exécutée comme loi de l'État.

FAIT A LOME, LE 10 OCT. 1971
DECRET N° 60-8

Portant organisation et statuts du Conseil National des Chargeurs togolais.

LE PRESIDENT DE LA REPUBLIQUE,

Sur rapport du Ministre du Commerce et des Transports
Vu l'Ordonnance n° 1 du 14 Janvier 1967
Vu l'Ordonnance n° 15 du 14 Avril 1967

Le Conseil des Ministres entendu

D E C R E T E :

Article 1er. - Le Conseil National des Chargeurs togolais regroupe les Chargeurs togolais visés par l'article 5 de l'ordonnance n° 19 du 9 Janvier 1967, susvisée, le Président de la chambre de Commerce d'Agriculture et d'Industrie de Lomé, le Directeur Général du Port Autonome de Lomé, les Directeurs ou Chefs des Services Publics ayant dans leurs attributions le commerce extérieur et les transports, le Directeur des Douanes et le Directeur des Chemins de Fer togolais.

Article 2. - La présidence du Conseil National des Chargeurs togolais est assurée par le Directeur de l'Administration des Affaires Maritimes. Le vice-président du comité exécutif supplée le président en cas d'absence ou d'empêchement.

Article 3. - Le secrétariat du Conseil National des Chargeurs togolais est assuré par un fonctionnaire de l'Administration des Affaires Maritimes désigné par son Directeur ou par un agent contractuel rémunéré par le Conseil National, engagé par le Comité exécutif sur proposition du président.

Article 4.- Les armements togolais peuvent après avis du Conseil National des Chargeurs togolais assurer des transports de marchandises n'entrant pas habituellement dans le trafic des conférences maritimes.

Article 5.- Il est institué un Conseil National des Chargeurs togolais regroupant l'ensemble des personnes physiques ou morales exerçant au Togo leur activité et ayant conclu ou manifesté l'intention de conclure un accord avec une conférence ou une compagnie maritime en vue du transport de marchandises avec un titre privilégié.

Article 6.- Le Conseil National des Chargeurs togolais à pour objet de représenter les intérêts des Chargeurs et des armements togolais.

A cet effet il donne des consultations sur toute question relative au transport maritime et participe aux négociations avec les conférences ou compagnies maritimes et signe au nom de ses adhérents les accords de fidélité dans les conditions prévues aux articles 7 et 11 de la Convention susvisée du 25 Juin 1975.

Il veille au respect des accords conclus et prend toutes directives pour y parvenir.

Il adhère à l'Union de Conseils Nationaux des Chargeurs Africains et participe au Comité de Négociation des taux de fret.


Article 8.- Le décret mentionné en l'article précédent détermine les modalités de fixation et de recouvrement des cotisations des chargeurs togolais nécessaires au budget de fonctionnement du Conseil National.

Article 9.- Les Chargeurs adressent au Conseil National les renseignements et documents nécessaires à l'accomplissement de son objet, conformément aux directives de son comité directeur.

Article 10.- Nul ne peut procéder dans un port togolais à un chargement sans avoir justifié de son adhésion au Conseil National des Chargeurs togolais.

Des cartes de chargeur sont délivrées aux adhérents dans les conditions fixées par le décret mentionné en l'article 7.

Article 11.- Tout navire transportant du fret excédant la part de trafic réservée à son armement par un accord de fidélité ou pratiquant un tarif excédant le taux du fret fixé par les accords et moloqué par arrêté conjoint du Ministre des Transports et du Ministre de l'Économie, peut se voir refuser ou retarder l'accès aux ports togolais si son armement ne justifie pas d'une dérogation obtenue dans les conditions fixées par l'article 8 de la convention susvisée au 25 Juin 1975.

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Article 12.- L'accès des ports togolais peut être refusé aux navires dont l'armement n'assure pas le service régulier et efficace convenu par l'accord de conférence auquel il est engagé.

Article 13.- Tout manquement aux dispositions de la présente ordonnance, à celles des accords conclus en application de la convention susvisée du 25 Juin 1975 expose l'armement fautif aux sanctions prévues à l'article 4 de ladite convention.


Article 15.- Le Directeur de l'Administration des Affaires Maritimes, Président du Conseil National des Chargeurs togolais peut faire appel des jugements n'ayant pas suivi des conclusions.

Il peut renoncer aux poursuites si le chargeur fautif accepte une transaction dont le montant est versé au Trésor, compte spécial du Conseil National des Chargeurs.

Article 17.- La présente ordonnance sera publiée au Journal Officiel de la République Togolaise et exécutée comme loi de l'Etat./*
Ordonnance n°20-116

Portant répartition du trafic maritime et création d’un Conseil National des Chargeurs togolais

LE PRESIDENT DE LA REPUBLIQUE

Sur rapport du Ministre du Commerce et des Transports
Vu l’Ordonnance n°1 du 14 Janvier 1967
Vu l’Ordonnance n°15 du 14 Avril 1967
Vu la Convention relative à un code conduite des conférences maritimes signée le 25 Juin 1975 dont la ratification a été autorisée par ordonnance n°44-77 du 10 Octobre 1977.

Le Conseil des Ministres entendu.

ORDONNE :


Article 2.- Les importateurs et exportateurs exerçant leur activité au Togo doivent réserver en priorité leur fret maritime aux armements Togolais jusqu’à concurrence de 40% du trafic total.

Article 3.- Chaque fois que les armements togolais ne sont pas en mesure d’assurer la part de trafic qui leur revient en priorité, ils doivent, après avis du Conseil National des Chargeurs togolais, répartir le solde de cette part sur les navires des armements étrangers faisant partie des conférences maritimes liées par les accords de fidélité et à défaut sur les navires des armements appliquant les taux de fret homologués.
L'assemblée approuve le budget de fonctionnement du Conseil t donne quitus au Comité exécutif après avoir examiné son rapport d'activité annuel.

Article 5.- L'assemblée générale se réunit en Décembre pour voter le budget de l'exercice à venir et en Mars pour approuver les comptes de l'exercice écoulé.

Elle est réunie en outre à chaque fois que le Comité exécutif souhaite recueillir son avis, ou à la demande du tiers au moins des chargeurs cotisants.

Une première réunion de l'assemblée générale sera convoquée dans le mois de la publication du présent décret pour l'élection des représentants des chargeurs au Comité exécutif, le vote du budget prévisionnel du premier exercice et la mise en place des organes du Conseil National des Chargeurs.

Article 6.- Les convocations à l'assemblée générale sont adressées par le secrétaire selon les instructions du Président, au moins dix jours avant la date de réunion. Elles mentionnent l'ordre du jour.

Article 7.- L'assemblée ne peut délibérer valablement que si la majorité de ses membres cotisants se trouve présente ou représentée.

Tout membre cotisant peut se faire représenter par un autre membre cotisant.

Si le quorum n'est pas atteint, une seconde réunion est fixée dans la quinzaine et l'assemblée peut alors délibérer quel que soit le nombre des présents ou représentés.

Article 8.- Les décisions de l'assemblée sont prises à la majorité des suffrages exprimés, la voix du président étant prépondérante en cas de partage.

Article 9.- Les délibérations de l'assemblée sont consignées sur un registre tenu par le secrétaire. Chaque procès verbal est signé par le Président et le secrétaire.

Article 10.- Le Comité exécutif est chargé de l'exécution des délibérations de l'assemblée générale. Il prépare le budget annuel, et le programme annuel d'activité du Conseil.

Il autorise les dépenses et marchés de fournitures ou travaux, excédant la somme d'un million de francs.

Il crée des commissions spécialisées pour réaliser les études et actions entrant dans son objet.

Article 11.- Le Comité exécutif est ainsi composé:

Président- le directeur de l'Administration des Affaires Maritimes
Membres : le directeur général du Port Autonome de Lomé,
le directeur des Chemins de Fer Togolais,
le directeur des Transports Routiers,
le président de la Chambre de Commerce, d'Agriculture et d'Industrie de Lomé

trois représentants des chargeurs du secteur public
ou semi public,

Les représentants des chargeurs sont élus lors de l'assemblée générale par scrutins distincts ouverts à chacune des deux catégories représentées. Leur mandat d'une durée de deux ans est renouvelable.

Article 12.- Le Comité exécutif élit parmi ses membres un ou plusieurs vice présidents pouvant recevoir des délégations du président et le remplaçant en cas d'absence ou d'empêchement.

Article 13.- Le Comité exécutif peut s'ajouter pour avis toute personne qualifiée.

Il peut appeler dans les commissions spécialisées des chargeurs non membres du comité.

Article 14.- Les délibérations du Comité exécutif sont consignées dans un registre tenu par le secrétaire et signé par le Président.

Article 15.- Les cotisations des chargeurs togolais sont fixées au prorata de la valeur en douane des marchandises qu'ils importent ou exportent.

Le taux en est fixé par décision de l'assemblée générale homologuée par arrêté conjoint du Ministre des Transports et du Ministre des Finances et de l'Economie.

Les marchandises bénéficiant d'une admission en franchise sont pas prises en compte pour l'assiette de la cotisation.

Article 16.- Les cotisations sont recouvrées en même temps que les droits de douane et portées à un compte spécial du Trésor au profit du Conseil National des Chargeurs.

Article 17.- Le Trésor peut faire des avances sur recettes pour règlement des dépenses du Conseil National des Chargeurs.

Article 18.- Les dépenses du Conseil National des Chargeurs sont données par son président et payées par le Trésor sur le compte spécial.

Le secrétaire peut recevoir délégation pour ordonnancer les nues dépenses. Il tient la comptabilité des dépenses engagées.
Il peut déléguer ce pouvoir de représentation à des membres du Comité exécutif pour accomplir les actes particuliers visés dans la délégation et autorisés par le Comité.


Il annule toutes décisions contraires à la loi ou aux statuts.

Il peut s'opposer à toute décision qui lui paraît contraire à l'intérêt général, dans la quinzaine du jour où il reçoit copie de la décision en cause émanant de l'assemblée générale, du Comité exécutif ou du président.

Toutefois la nullité ne peut être opposée aux tiers de bonne foi.

Toute décision du Comité exécutif et de l'assemblée générale doit être communiquée en copie au ministre de tutelle dans le huitaine à la diligence du secrétaire.

Article 21. — Les cartes de chargeur visées à l'article 10, de l'ordonnance n° 64-11 du 9 janvier 1964, susvisée, sont délivrées par le président du Conseil National des Chargeurs togolais sur présentation de la carte d'importateur exportateur.

La demande de carte de chargeur précise la conclusion de l'accord de l'intéressé avec une conférence ou compagnie maritime ou l'acceptation de tout accord à conclure par le Conseil National pour le compte des Chargeurs togolais.

Article 22. — Chaque carte comporte un numéro d'ordre qui doit être rappelé dans tous documents adressés par le chargeur au Conseil National.


Article 24. — Le ministre des Transports et le ministre des Finances et de l'Économie sont chargés, chacun en ce qui le concerne de l'application du présent décret qui sera publié au Journal Officiel de la République Togolaise.
Vu la Constitution, notamment ses articles 17, 20 et 21 ;
Vu le décret no 80-184/PR/MCT du 26 juin 1980 portant définition des attributions et organisation du Ministère du Commerce et des Transports ;
Vu le décret no 083-114/PR/MEF du 13 juin 1983 portant attribution et organisation du Ministère de l'Economie et des Finances ;
Vu la Convention de la CNUCED, relative à un Code de Conduite des Conférences Maritimes ;
Vu l'ordonnance no 77-40 du 10 octobre 1977, portant ratification du Code de Conduite des Conférences Maritimes ;
Vu l'ordonnance no 80-11 bis du 9 janvier 1980, portant répartition du trafic maritime et création d'un Conseil des Chargeurs Togolais ;
Vu le décret no 80-8 du 9 janvier 1980, portant organisation et statuts du Conseil National des Chargeurs Togolais ;
Vu l'arrêté interministériel no 004/MEF/MCT du 19 février 1981 portant réglementation du trafic maritime au Togo ;
Sur rapport du Directeur des Affaires Maritimes ;

A R R E T E N T :

CHAPITRE PREMIER : DISPOSITIONS GENERALES

Article 1er.- Il est fait application au Togo des modalités de répartition de cargaisons prévues par les dispositions du Code de Conduite des Conférences Maritimes sur la base de la règle 40 - 40 - 20, exprimées en tonnage, en unité payante et en valeur de fret.

Article 2.- La répartition des cargaisons se fera sur la base des trois niveaux de priorité suivants :
- Les importateurs et exportateurs togolais, personnes physiques ou morales réservent priorité leur fret aux armements nationaux togolais jusqu'à concurrence de 40 % du trafic engendré par le commerce extérieur du Togo.
Article 3.- Les armements bénéficiaires de la préférence dans la réservation du fret sont tenus d'assurer une desserte régulière de leurs lignes respectives.

Les chargeurs sont dégagés de toute obligation, vis-à-vis des armements qui ne respectent pas les calendriers de mise en charge, le retard admissible étant de sept (7) jours francs entre la date d'expiration de l'offre et la date d'arrivée du navire au Port de chargement.

CHAPITRE II
DELIVRANCE D'ATTESTATION DE RÉSERVATION
DE FRET ET DE DISPENSE

A - Dans le sens des exportations

Article 4.- Dix (10) jours avant la date prévue de mise en charge au Port de Lomé ou dès réception des ordres de réservation de fret, les chargeurs adressent leurs offres de cargaisons au Conseil National des Chargeurs Togolais sur les imprimés fournis par le dernier.

Article 5.- Lorsqu'un armement national togolais est en mesure d'assurer le transport de ladite cargaison sur un navire disponible à la date indiquée par le chargeur ou dans les sept (7) jours qui suivent la date prévue pour le chargement, le Conseil National des Chargeurs Togolais délivre une attestation de réservation de fret que le Chargeur joindra à sa déclaration en douane.

Article 6.- Dans le cas où l'offre de cargaison n'est pas acceptée par un armement national togolais, une dispense de réservation de fret est délivrée par le Conseil au chargeur, qui peut alors prendre le navire de son choix sous réserve des dispositions des articles 1 et 2 du présent arrêté.

La dispense de réservation de fret doit être également jointe à la déclaration en douane. Cette dispense expire sept (7) jours francs après la date prévue d'embarquement.

B - Dans le sens des importations

Article 7.- Toutes importations au Togo de marchandises par voie maritime devront être accompagnées d'une attestation de réservation de fret ou d'une dispense délivrée au Port.
Les agents portuaires de la SOTONA à en Europe sont chargés provisoirement de la délivrance des attestations et des dispenses de réservation dans le cas où des accords bilatéraux n'existent pas.

Article 8.- Des avis préciseront au fur et à mesure aux chargeurs, les zones pour lesquelles les attestations de réservation de fret et les dispenses devront être produites à la Douane.

CHAPITRE III
CONTROLES ET SANCTIONS

Article 9.- A l'importation comme à l'exportation et sous peine d'irrécevabilité, une déclaration en douane doit être obligatoirement accompagnée des documents prévus aux articles 5, 6 et 7 ci-dessus.

Article 10.- Toutes irrégularités concernant les dispositions du présent arrêté, notamment les infractions à l'article 7, exposent le navire contrevenant au paiement d'une pénalité égale à 50% du montant du fret de la marchandise irrégulièrement transportée, calculée sur la base du taux de fret en vigueur.

L'Etat Togolais se réserve le droit d'exiger le paiement de cette pénalité avant le départ du navire contrevenant du Port de Lomé.

Si l'irrégularité est commise par un exportateur togolais, le Conseil National des Chargeurs Togolais retirera au contrevenant sa carte de chargeur pour un an. En cas de récidive le retrait de la carte sera définitif.

Article 11.- Le retrait de la carte de chargeur se traduira notamment par le refus motivé par le Conseil de délivrer l'attestation ou la dispense de réservation de fret.


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LE MINISTRE DE L'ECONOMIE ET DES FINANCES

LE MINISTRE DU COMMERCE ET DES TRANSPORTS
SECRETAMA

This stands for Secretariat Maritime Commun (joint Maritime Secretariat). SECRETAMA is a Company specialized in Secretariat and Management of all kinds of Agreements both public and private concluded in the field of World Shipping.

When it was created in 1954, SECRETAMA was designed to establish a Maritime Conferences Secretariate in France and has since then gradually extended its scope and office space in order to offer all services required for running Agreements that have been either partially or entirely entrusted to it.

This brochure is being published for SECRETAMA's thirtieth anniversary and is intended to describe its activities and how it works. It is an opportunity for people to familiarize themselves better with the various management skills required by Maritime Conferences and similar Agreements.
The General Assembly of Associates is convened as a rule once a year.

The Assembly appoints Directors and ensures under their responsibility that the Company's financial standing is sound and that there is neither loss nor profit in the ledgers.

The Director General is in charge of all management matters and supervises all activities. He also answers to Directors for the Company's accounts.

Qualified and experienced executives and staff members total eighty on a permanent basis, but this figure can vary depending on temporary missions or variations in work load.

Staff are assigned as follows:

- GEOGRAPHICAL SECTORS, for certain activities requiring their own means: e.g. North Africa, West Africa, Indian Ocean...
- FUNCTIONAL SERVICES, where specific tasks are managed and grouped together: pools, controls...
- JOINT ADMINISTRATIVE services, general administration, EDP systems.

SECRETAMA's Head Office, General Management and main Services are located in Paris where the Company has several offices, meeting rooms, reprography facilities, computers, telex machines in addition to all modern equipment.

There is a big area office located in Marseilles in charge of covering service requirements for the Mediterranean. This office has its own meeting room, computer, telex machines etc...

Other branch offices can be found:

- in all major French ports such as Dunkirk, Rouen, Le Havre, Bordeaux (in charge of all French Atlantic ports) and Bastia.
- in various countries where the work load requires them, such as Morocco (Casablanca), Tunisia (Tunis), Ivory Coast (Abidjan).

A network of correspondents working along the same principle of neutrality as SECRETAMA provides comprehensive services for the European Continent.

On several occasions and on request, SECRETAMA has set up offices or provided temporary delegates in various countries. In the same way, local or port based Conference Committees are often to be found at either ends of the trade and thus assure representation or relay services.

The Company also calls upon outside specialists for some point operations such as studies, advices or for special technical surveys (legal advices, translations...).
SECRETAMA based its activities on specific legal statutes, rules of behaviour, and working concepts that have ensured it has become an adapted organization at the service of maritime operators.

**A NON EXCLUSIVE SERVICE STRUCTURE**

Unlike most Maritime Conferences that have their own special Secretariats, SECRETAMA is quite open to all kinds of Agreements, both public and private, irrespective of the scope and the work load they involve.

Agreement Members obviously benefit from the experience gained in various areas and SECRETAMA has therefore become a privileged forum for exchanging ideas and methods.

This approach also involves another positive factor which is the scale savings that can be made by pooling staff and equipment.

This principle only implies one reserve: the Company undertakes quite understandably to avoid any conflict of interest.

In the same line of thought, each matter is followed quite independently from others, and no interference is possible in organizing activities.

**COMPREHENSIVE AND COMPLEMENTARY SERVICES**

The skills of SECRETAMA are very specialized, yet they are likely to cover and satisfy all their users’ requirements. A list of the services provided is given in the pages to come and shows quite clearly that such multiple services enable each activity to benefit from others in view of their complementary nature.

Together with providing various forms of management, this working concept makes for a high degree of adaptability to organization and operating problems likely to occur, and still contributes to lowering costs via rationalizing methods and procedures.

**APPROPRIATE LEGAL STATUS**

SECRETAMA is a SOCIETE CIVILE (civil company) under the French Law, which cannot make profits or sustain losses. Associates do not therefore take any advantage from the Company and restrict their role TO ENSURING THAT A SOUND FINANCIAL BALANCE IS ACHIEVED without intervening in the Company’s policy.

Such an original legal standing affords users:

- a NEUTRALITY and CONFIDENTIALITY that are indispensable in view of the specific nature of services rendered;

- contributions limited to cover expenses incurred, this rule being also synonymous with a main concern of sound financial control.