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THE UNITED NATIONS CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES: SOME PROBLEMS AND PROSPECTS FOR ITS IMPLEMENTATION ON THE ASEAN REGION WITH EMPHASIS ON THE PHILIPPINES

LAMBERTO V. PIA
PHILIPPINES

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The contents of this Paper reflect the personal views of the writer and are not necessarily endorsed by the University or his country

Signature:

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Supervised and assessed by: Dr. Professor A.A. Monsef
Co-assessed by: Dr. Ernst G. Frankel, Professor, Massachusetts Institute of Technology, U.S.A.
ABSTRACT

This study analyzes the nature and provisions of the Code of Conduct in order to know the obligations of the contracting parties states in the implementation of the Code. This study identifies the problems of the ASEAN countries in the implementation of the Code. For example, not all the ASEAN countries have ratified the Code of Conduct. Of the six member countries, only three have ratified the Code (Indonesia, Malaysia, and Philippines) while the other three (Brunei, Singapore, and Thailand) have not. Even the first three countries which ratified the Code of Conduct have not adopted national legislation or other administrative measures to implement the Code pursuant to Article 47. It is indispensable that an international convention that a country has ratified should be implemented on the national level. Otherwise, the said international instrument shall remain in paper. Under international law, when a country has ratified a convention it has a parallel obligation to adopt a national legislation to make it effective at the national level. The exception to this rule would be in a country in whose legal system the convention becomes automatically a part of the law of the land once the state has ratified it. This is not the case in the ASEAN region whose legal system, patterned after the Dutch (Indonesia), the British (Brunei, Malaysia, and Singapore), the American (Philippines). Thailand is the only ASEAN country not colonized by Western powers and has not ratified the Code.

This study attempts to show how regional cooperation may be possible in shipping on the ASEAN countries for code-related matters. There are options to the ASEAN
COUNTRIES, TO IMPROVE INTRA-REGIONAL LINER TRADE AND GRADUALLY EXPAND THIS COOPERATION ON AN INTERNATIONAL SCALE.

THIS STUDY CONTAINS CERTAIN RECOMMENDATIONS WHICH THE DECISION MAKERS IN THE ASEAN GOVERNMENTS WOULD LIKE TO CONSIDER. FINALLY, THIS STUDY GIVES EMPHASIS TO THE PHILIPPINE SITUATION IN VIEW OF ITS EXPERIENCE IN THE IMPLEMENTATION OF THE CARGO SHARING LAW PATTERNED AFTER THE CARGO SHARING FORMULA OF THE CODE OF CONDUCT.
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INTRODUCTION

The United Nations Convention on a Code for Liner Conferences (1) had entered into force on October 6, 1983, yet its implementation has been lagging either in the developed maritime countries or the developing countries of the world. Several factors may have accounted for the hesitancy of these states to implement the Code. This study seeks to identify these factors and to examine the specific views of these countries as regards implementation of the Code.

Knowledge of these factors and the views of the different groups of countries is the key to an effective implementation of the Code. The Code is a new international instrument and its nature and provisions should be analyzed and examined to be able to implement it to the satisfaction of all shipping interests.

Similarly, a successful implementation of the Code requires adequate information about world shipping, the market forces that influence the world liner trade, and the expected response of the shipping market to variation of maritime policies in a region or country.

Above all, the success of the implementation and administration of the Code requires sufficient knowledge of the nature of the Code, the meanings of its provisions and the appropriate role of Governments in the whole gamut of the Code implementation.

(1) The Convention is likewise known the UNCTAD Liner Code or Code of Conduct or simply "the Code". This study uses the term Code of Conduct.
OBJECTIVES OF THIS STUDY

This study seeks to accomplish the following objectives, in light of the ASEAN needs, and in particular, the Philippines shipping interests:

(1) To determine the feasibility of implementing the Code on a regional basis in the ASEAN as a group, or on a country basis, on the Philippines;

(2) To identify such legislative or any other administrative measures as are necessary and adequate to ensure that the national shipping lines of the ASEAN countries carry a fair share in the liner trade generated between their trading partners' liner traffic;

(3) To study the feasibility of pooling the resources of the ASEAN group for the purpose of organizing and operating, on a cooperative basis, a "Super ASEAN Liner Service", or a consortium, or other shipping services agreements that may be feasible within the ambit of the Code; and

(4) To identify the goals and maritime strategies of individual country in the ASEAN, and to seek for means on how to harmonize the individual country's interests, to optimally avail of the promotional provisions of the Code in international liner shipping.

METHODS OF ANALYSIS USED IN THE STUDY

The analyses in this study are calculated to
achieve the above objectives, such as:

(1) Analysis and assessment of the existing and future trends of liner shipping industry, of the rapid changing structure of the liner trade, the intra-ASEAN liner trade, the volume and pattern of trade, the classes and types of commodities, the potential of the ASEAN countries, individually or collectively as centering load for transshipment cargoes for international long haul, and the feasibility of pooling the resources of the ASEAN Shippers' Council for cargo consolidation and for Code-related matters.

(2) Review of the present competitive structure of the shipping market, the sophistication and innovations introduced in the liner trade and the highly capital intensive liner shipping industry as well as new strategy such as the round-the-world-service, the pendulum service, the fixed-day-of-the-week service in liner service;

(3) Analysis and assessment of the emerging legal, institutional, and administrative infrastructure in the world shipping which may have an effect on the ASEAN countries;
(4) Analysis of the specific provisions of the Code, the scope of the application of the Code, the approaches in the implementation of the Code, the administrative infrastructure needed to implement and administer the Code.

PREVIEW OF THE THESIS

This paper is a monograph work divided into six chapters.

Chapter 1 describes the goals and strategies of the ASEAN countries, and, for ease of discussion of the Code, identified the major Code areas considered to be of major concern to the ASEAN countries. Hence, the chapter deals with conference membership, the participation in the trade, freight rates determination, conference decision-making and consultation, and dispute settlement.

Chapter 2 deals with the development of the world liner trade and conferences. It discusses the share of liner trade in the whole seaborne trade in the world and it tries to determine the share of the liner fleet in the world fleet. This chapter lays down the characteristics of liner conferences, the criticisms by countries of the practices of the liner conferences, the advantages of the liner conference system, and the factors that led to the institution of international control and regulations of the conferences.

Chapter 3 identifies the objectives and the principles underlying the Code. It also analyzes the Code as to its structure, the status of ratifications of the Code, the impact of reservations made by EEC and the Eastern
Socialist countries, the attitudes and problems in the implementation of the Code in the ASEAN countries. Finally, the aspects of cargo allocation, reallocation, and redistribution are described to better guide the ASEAN countries in acting as a group in shipping under the Code provisions.

Chapter 4 analyzes the present situation in ASEAN as regards liner trade, conferences, and the Code. The present development in the liner trade, port infrastructure, container traffic, and economic indicators of the individual country and the region as a whole are presented. Efforts have been made to make the data on the ASEAN up-to-date, and some of the latest statistics are not available even on new editions of reference materials that this study has made use of.

Chapter 5 attempts to formulate the recommended strategy for the ASEAN. This strategy is not all-encompassing, and this study tries to clarify this strategy, taking into account the legal, administrative, and social differences of the ASEAN peoples.

Chapter 6 is devoted to the Philippines. Emphasis has been done on the Philippine case, in view of the following reasons:

(1) The Philippines had an experience in the implementation of the cargo-sharing law based on the 40-40-20 provisions of the Code;

(2) The author of this research had been directly responsible in the implementation of the law, which was better known as "The Cargo Sharing
Law" of the Philippines, embodied in Presidential Executive Order No. 769 promulgated on January 19, 1982;

(3) The Philippines is an example of a developing country which is dependent on foreign flag carriers in the carriage of its foreign seaborne trade. Attempts will be made to find out why this situation was allowed to exist in a country whose physical configuration as an archipelagic state has to rely on sea transportation.
CHAPTER 1

GOALS AND MARITIME STRATEGIES OF THE ASEAN IN LINER TRADES

This chapter discusses the goals, means, and strategies of the ASEAN group.

1.1 SHIPPING SERVICES IN GENERAL (ASEAN)

Shipping services, the ownership, and control of liner services in the ASEAN are provided by the developed maritime nations and there is hardly any substantial tonnage owned and operated by ASEAN countries. The exception is Singapore which owns and operates one of the modern containerships. Singapore is considered the most advanced country in the ASEAN region. Its importance in the grouping is very evident.

1.2 TRADE SITUATION IN GENERAL (ASEAN)

Exports are dominantly of raw materials. Manufactures and semi-manufactures constitute only a small percentage of exports. Shipping services to developed trading partners are still dominantly provided by multinational and international shipping services of developed maritime countries. Imports have grown. There is a change in the overall pattern and structure of trade, in the relative proportions of liquid cargoes, bulk cargoes, and general liner cargoes. Intra-regional trade has grown only marginally.

1.3 MERCHANT FLEET IN GENERAL (ASEAN)
There is discernible growth in liner tonnage owned by some developing countries in the Far East.

The so-called new industrializing countries (NICs), such as Taiwan, South Korea, Hong Kong and Singapore have succeeded in their industrialization, diversification and integration. They have modern liner cargo ships, fully cellular ships. They have strong export markets to US and Europe. For the rest in the South East Asia, there is a growing impatience for increased participation by developing countries in the ASEAN, primarily in the carriage of their own trades, to improve the worsening balance of payments situation, debt crises, and to save the much needed foreign currency. There is a growing consciousness of the importance in the economy of freight payments and insurance as components in the balance of payments; apprehensions regarding overwhelming dependence on foreign flag tonnage for servicing the trade. The ASEAN countries do not aspire to be world leader in liner shipping so as to compete in world liner trade against the liner fleet of the traditional maritime countries of the world. They intend to carry only a fair share in the liner traffic generated by their seaborne trade. And, this opportunity is open to them under the new maritime international order as envisioned by the United Nations General Assembly (1). The governments of the ASEAN countries are "active" in shipping although the developed maritime nations called this activism in shipping and other sectors as a protectionist policy.

1.4 GOALS OF ASEAN SHIPPING

Considering the historical development of the ASEAN countries, impact of containerization and of technology
on ports facilities, and the pressing difficulties for increasing exports and achieving a greater degree of narrowing the gap in the balance of payments deficits, present trained manpower, administrative competence, it would appear that the goals of both national and regional shipping policies in the ASEAN would be the following:

(a) Establishment of trained and efficient maritime infrastructure to include not only of the merchant marine of the country but also the effective introduction of computer system for collection of data, monitoring the developments in the market, and watching national interests, implementing and enforcing international conventions of great importance to shipping, especially those conventions adopted under the auspices of the International Maritime Organization (IMO), the United Nations Conference on Trade and Development (UNCTAD), the International Labour Organization (ILO), and other multilateral intergovernmental agreements.

(b) Gradual expansion of tonnage suitable to the country's general cargo liner trade. It is obvious that the ASEAN countries do not have the needed capital resources to invest in full-fledged containerization. Participation in international container consortia, space chartering, joint venture, may be one way out. Besides carriage in fully containerized vessels a more rudimentary methods of unitizing, e.g., palletization and preslinging should be followed.
(c) Cooperation with other countries of the region in the establishment and operation of intra-regional shipping services to carry not only the intra-regional trade, but also, transshipped cargoes from the way port, to the long line haul, and maximum participation in the liner cargo generated by their foreign trade.

(d) Strengthening the organization of the ASEAN Shippers' Council, to deal with the shipping conferences in the region, and to be an organization for consolidating the liner cargoes shipped by small shippers in the region and as focal point in data gathering, information, and analysis, to ensure that the shippers get the benefits of rationalization and economy of scale.

While it is possible to define the goals of the ASEAN countries, it is not so simple to define the means to achieve it. The above goals are by no means exhaustive, but what this study attempts is to explore the avenue for cooperation in shipping since it is only in this context that the strategy will yield better result.

In order to develop a maritime strategy for the region, it is most important to know the features of existing shipping services in the region. First of all, it is to be stated that the exports of ASEAN countries have increased in volume and in value. The rate of growth is, however, very poor compared to the growth rate of the trade between developed nations. There has also been very little growth in intraregional trade.
1.5 FEATURES OF SHIPPING SERVICES IN THE REGION

The most disturbing features of existing services in the region may be stated briefly as follows:

First, the services between the two developing countries in the region is usually a cross-trade for foreign flag vessels as part of the service on a major international trade route more commonly to another developed country, or

Secondly, a way-port on an international trade route, or

Third, a transshipment at one of the major organized transshipment ports, around the world touched at in the service on an international trade route.

Certain consequences flow from this pattern. The regularity and frequency of such services is contingent on the nature and volume of cargo offered on each occasion and the capacity or willingness of the ship to lift it.

While freight rates in direct services between developed nations or even between a developed nation and a developing country of the region may be largely governed by round-the-voyage economics, the rate in crosstrades or way port trade appear to be determined wholly on the principle of what the commodity can bear.

Furthermore, the freight rates are determined by the lines or conferences with lack of consultation or
inadequate consultation with the shippers. This is even more so in the impact of overall costs when transshipment is involved. Briefly, the pattern is not intended to serve in the true sense of the word – the intraregional trade – but as a factor contributing to the commercial viability of the major service. It is not primarily based on the rate between the countries of the region. The conferences or rate agreements confined to those engaged in the service are not fully responsive to the needs of the trade.

In the context of shipping services encompassing the region, there are broadly speaking four regions in Asia and the Pacific:

(1) The countries in the region bordering on the Indian Ocean and the Bay of Bengal, e.g. India, Pakistan, Sri Lanka, Bangladesh, and Burma;

(2) The countries in West-Asia Gulf connected with the ASEAN region directly, or touching the region described in (1);

(3) The ASEAN countries connected by shipping services to the countries described in (1) and (4);

(4) The Pacific region touching Japan, Australia, Vietnam, the Philippines, South Korea, and New Zealand regions.

In terms of shipping services, these regions are not necessarily exclusive. They are indicative of the
region in which intra-regional services need to be organized. Or, in the case of the implementation of the Code, the region is indicative of the extent of cooperation as regards allocation, reallocation, and redistribution of cargoes under the Code.

For the effective implementation of the Code, the appropriate geographical region for cooperation would be the zone covered by the conferences.

For example, the conferences serving the routes had organized the so-called "super conferences," called the Transpacific Westbound Rate Agreement (TWRA) and the Asia North America Eastbound Rate Agreement (ANERA), for the transportation of liner cargoes on the US foreign trade.

1.6 ASEAN WITHIN CONFERENCE GEOGRAPHICAL SCOPE

The geographical scope of the TWRA, as defined in the Agreement, covers points in the US and Canada to points and ports in the ASEAN, viz:

"The trade covered by this Agreement consists of the transportation of cargo moving on liner vessels and which originates at points and ports in the United States and Canada, which moves from or via ports on the Atlantic, Gulf and Pacific Coasts (including Alaska) of the United States or via ports on the Atlantic and Pacific Coasts of Canada, and which is destined to points and ports in Japan, Korea, Taiwan, Siberia USSR, the People's Republic of China, Hong Kong, Vietnam, Democratic Kampuchea (Cambodia), Thailand, Laos, the Republic of the Philippines, the Republic of
Singapore, the Federation of Malaysia, the Sultanate of Brunei, and the Republic of Indonesia (the "trade"). (Article 4, TWRA).

TWRA was filed with the Federal Maritime Commission (FMC) in 1985, as FMC Agreement No. 202-010689, with 21 Liner Operators on the route as original signatory parties.


Following the resignations of some of the contracting parties in the TWRA, the remaining members of the Agreement totalled thirteen (13). The following shipping lines had resigned from the TWRA: Barber Blue Sea, The East Asiatic Company operating as EAC Lines Transpacific Service, Evergreen Marine Corp. (Taiwan), Ltd., Hapag-Lloyd Trans-Pacific and other lines.

As noted in the contracting parties, it is the Neptune Orient Lines Ltd. of Singapore only and none of the other ASEAN countries' national shipping lines became
a party to the TWRA.

The second conference covering the liner cargoes from the Far East to US points and ports and Canada is called the "Asia North America Eastbound Rate Agreement" or briefly called the ANERA. This Agreement was filed with the Federal Maritime Commission as FMC No.202-010776 effective August 15, 1985. The geographical range of this Agreement includes the ASEAN countries, viz:

"This Agreement covers the transportation of cargo on liner vessels, whether moving in all water or intermodal service under through bills of lading or otherwise, direct or by transshipment, from (1) ports and points in Hong Kong, Macao, Korea, Taiwan, Siberia USSR, the People's Republic of China ("North Asia Range"), and (2) ports and points in Thailand, Vietnam, Democratic Kampuchea (Cambodia), Laos, Burma, the Republic of the Philippines, the Republic of Singapore, the Federation of Malaysia, the Sultanate of Brunei, and the Republic of Indonesia ("South Asia Range") to ports on the Atlantic, Gulf and Pacific Coasts of the United States (United States defined to include Alaska, Puerto Rico and the U.S. Virgin Islands) and to ports on the Atlantic and Pacific Coasts of Canada and interior or coastal points in the United States and Canada via such ports (all of the foregoing hereinafter referred to as the ("trade"). (Article 4, ANERA).

The ANERA was signed by about 20 liner shipping companies as in the TWRA, less the EAC Lines Transpacific
Service, NYK Line, and United States Line, which did not sign, but with one line, the Hong Kong Islands Line as the additional line to sign the ANERA.

It is to be pointed again that only Neptune Orient Lines is a member in the ANERA while the national shipping lines of other ASEAN countries had not become members to the Agreement.

The Code provides a clear definition of liner conferences, and generally it can be stated that "any" cooperative agreement, either denominated as Rate Agreement like in the above agreements, or conferences, or freight agreements, which fulfill the conditions laid down in the Code would be subject to its provisions, irrespective of the organizational form of cooperation chosen. (3)

For example, a joint service arrangement of the TRIO group - three major operators in the Europe/Far East service have entered into joint service arrangement under this name - if operated outside the scope of the presently existing conferences would, for the purpose of determining the applicability of the Code, still fall under its provisions, as it does in fact fulfill the conditions stipulated in the Code definition, i.e. a group of two or more vessel-operating carriers, provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits, has an agreement or arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates.

The Code does, in fact, apply to consortia as well.
as to any other cooperative arrangements that fulfil the conditions of a liner conference stipulated in the Code definition. (4)

1.7 STATEMENT OF THE PROBLEM

The following problems are very relevant in implementing the Code in the ASEAN context. The Code consists of fifty-four (54) articles, with annexes, but for purposes of this study, the following major areas are very substantial matters for the ASEAN countries to be concerned with:

1. Conference membership;

2. Participation in the trade;

3. Freight rates;

4. Conference decision-making and consultation; and

5. Dispute settlement.

1. First, the right to membership in conferences serving the developing countries' trade, was of great importance. With the exception of conferences serving the United States trades which are open by law (5) to all shipping lines, liner conferences have been characterized as closed cartels, membership in which required the approval of those lines already members. Shipping lines of developing countries often experienced difficulty or met refusal as they sought to join the conferences serving the trades of their states. This is very true in
ASEAN countries. The Code provides that any "national shipping line" is entitled by right to be a full member of a conference which serves the foreign trade of its country. This right is subject to some special criteria stated in Article 1, paragraph 2, as follows: "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".

For a shipping line which is not a national line in any trade of the conference concerned, in addition to the above mentioned criteria (provisions of article 1, paragraph 2) the following criteria 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 into the conference on the efficiency and quality of the conference service.
(d) The current participation of the shipping
line on the same route or routes outside the framework of
a conference.

(e) The current participation of the shipping
line on the same route or routes within the framework of
another conference.

2. Secondly, this refers to the participation in
the carriage of cargo. The Code provisions on this sub­
ject have been the most controversial and have been wide­
ly interpreted as giving to each of the trading states
the right of carriage by the national lines of up to 40
percent of liner conference cargo.

The problems that might be considered in the imp­
lementation of the Code is to what extent will the ASEAN
as a group act to exercise their rights to participate in
the carriage of the conference cargo which they generate?
Are the ASEAN countries going to buy, build, charter
ships or space? Can their rights to participate to the
full maximum of 40 percent of their liner trades be sold?

Will the allocation of cargoes be pursued along
bilateral lines or will schemes for regional cargo allo­
cation and cooperation, which may promise greater economy
and efficiency, be pursued? How can the ASEAN (6) deal
with their bilateral trading states which are not con­
tracting parties to the Code?

3. Thirdly, on the aspect of freight rates. The
Code contains a number of provisions on freight rates,
establishing the goal that they be "at as low a level as
possible from the commercial point of view and ... permit a reasonable profit for shipowners." (7) Unless otherwise agreed upon, the minimum period between general rate increases would be 15 months. Mandatory consultations may be forced by shippers, and, where possible, conferences are to provide a report from an independent accounting firm analyzing conference costs and revenues. Should consultations not lead to agreement, the matter would go to international mandatory conciliation.

The question on this aspect is whether the ASEAN countries, whose national liner fleets are fully or partially state-owned, which elect to take advantage of their carriage rights, will the emphasis be on trade promotion with "reasonable rates" and good service characteristics or on shipping sector revenue maximization? Given the virtual veto power of national lines of trading states within the conferences under the terms of the Code, such decision will be of great importance to the future of liner shipping.

4. Fourthly, relative to the conference decision-making and consultation, the Code requires that conferences' decisions be based on principle of equality of all full member lines. The Code further stipulates that decisions relating to the conference agreement and to trade between countries cannot be made without the consent of the national shipping lines of the countries involved. This provision is seen by developing countries as greatly enhancing their influence in the transportation of cargo in their trade. The Code provides for an elaborate system of consultation between the conference, on the one hand, and the shippers' organizations and shippers' representatives and individual shippers, on the other. "Appropriate
authorities" have the right to full participation in the consultations. (8)

5. The major question which may arise in relation to the consultation process is the extent to which "appropriate authorities", that is, government or semi-governmental bodies, will become involved in such consultations. In some developing countries, much of the cargo imported and exported, is generated, owned, or financed, in some way by the government; the government may be expected to look after its interests as shipper in this context. Further, rising costs, the outflow of limited hard currency in payment for shipping services, and dependence on foreign shipping lines are significant concerns in developing countries and thus invite government intervention.

According to different articles of the Code (Articles 23-46 and annex I and resolution 3) disputes are required to be settled first through direct negotiations. Should such negotiations prove fruitless, any party to the dispute is entitled to refer the matter to international mandatory conciliation as outlined in the Code.

The question on this aspect is with regard to the extent to which governmental authorities will become directly involved in dispute settlement. The parties to a dispute empowered by the Code to initiate the conciliation process are not states, but commercial entities, such as shipping lines, conferences, shippers, and shippers' organizations.

The Code, however, in other provisions, stipul-
ates for a considerable flexibility so that the parties may agree on alternative (and perhaps binding) methods of dispute settlement.

This study will attempt to answer the above-mentioned questions in the next chapters. This chapter aims only to provide the parameters for the discussion of the issues that may arise in the implementation of the Code.

It is pertinent to recall, however, that the Code provides for regional cooperation in dealing with cargo allocation, participation in the trade, and redistribution of the cargoes in those cases where the contracting states decide not to carry the maximum share of up to 40%, or where the contracting states have no national lines to carry their trades.

1.8 PROSPECTS FOR REGIONAL COOPERATION IN ASEAN SHIPPING

While regional cooperation is specifically referred to in the Code only just once, the effective scope for such cooperation is large and covers cooperative arrangements among national lines, as well as among shippers' organizations, and should also involve governments. The specific reference in the Code to regional cooperation is in Article 2, paragraph 8, which provides for national shipping lines of a region at one end of a trade covered by a conference to redistribute among themselves by mutual agreement the shares in the trades allocated to them. Under this provision, within conferences covering several countries at one end of the route, services can be rationalized by the redistribution of the cargo shares among the national lines at one end.
of the route. Such redistribution may need to take into account in particular the interests and particular problems of national shipping lines of land-locked countries. Such redistribution arrangements would help to improve the economic viability of all the lines concerned and is particularly important in the context of the increase in the scale of shipping operations arising from containerization. (9)

Cooperation enabling a rationalization of services and of loading and discharging ports can lead to improved load factors, speed up turn-round times and generally lead to more efficient and profitable services. Regional cooperation by national shipping lines in the use of common agencies at both ends of a trade can also yield substantial operational economies. (10)

There are however some drawbacks that may lead to the difficulties of regional cooperation. Every act of cooperation requires that those cooperating are willing to make compromises and to cede a measure of their sovereignty in the area of cooperation.

It can, however, be argued that the positive factors can yet lead the ASEAN countries to greater cooperation in shipping. The comparative advantage of low labour costs, administrative overheads, and available skilled manpower are present in ASEAN countries. This will be significant and generally favorable for liner shipping in the ASEAN countries, which must be considered to be intimately interested in the promotion of their countries' trades.

Regional cooperation in economic affairs, however,
has often been difficult to achieve and maintain. Nationalism, a force which has motivated developing states to assert rights in the shipping field, also serves to undermine regional cooperation when decisions must be made, for example, as to cost sharing for common services and as to the locations of regional load centers and feeder ports. (11) The Government of Indonesia, for instance, as a matter of policy, has sought to encourage direct line calls from its distant trading partners and has made clear its objection to the fact that most foreign-flag vessels serve Indonesia with feeder vessels from Singapore, Hong Kong, and Malaysia. (12) Within the ASEAN, the Federation of ASEAN Shippers Councils (FASC) has asserted that the way to take advantage of the Code is through the formation of an ASEAN "super-line" into which ASEAN cargoes would be pooled.

Reportedly, this matter was discussed by the ASEAN Economic Ministers' Meeting in Bangkok at the end of 1983. (13)

1.9 CONCLUSION

Though the Liner Code entered into force on October 6, 1983, it will be some time before its consequences are fully felt and understood. This chapter has attempted to show the importance of a maritime strategy of a country, and the relevance of the Code to the ASEAN countries.
2.1 INTRODUCTION

With the development of containerization in the 1950s and the 1960s, the shipping of general cargo began to take on an identity separate from that of dry bulk shipping. The concept of unitization has integrated and revolutionized carriage of general cargo throughout the whole transport chain over land and sea. The process of overtonnaging, which had began on many trades in the 19th century, has continued through the 20th century, maintaining the need for conferences to regulate competition in order to provide efficient and economic services. (1)

The first Section of this Study consists, therefore, of an explanation of the main features and institutions of world liner shipping in the last decade, and the crisis environment in which the ocean-liner transport industry has operated for the last 10 years as brought about by the on-going evolution of forces that are structurally transforming non-system, independent remotely deployed liner companies into even more integrated distribution systems.

2.1.1 LINER SHIPPING

In the days when ships were powered by wind and sail, operators were not able to provide services at fixed time schedules. It was only with the invention of
steamships that the vagaries of weather could be ignored sufficiently for services to be operated not just on specific routes but also, as technical advances were made in engine performance and ship design, in accordance with pre-arranged timetables. Shipping services may be divided into three broad categories - liner, tramp, and industrial - although these categories overlap between the others. (2) Industrial or private shipping services are owned by industrial companies to carry their products. These companies sometimes chartered vessels in cases where owned tonnage was not sufficient.

A Liner service is provided by a shipping line for the carriage of general cargo on behalf of anyone who wishes to make use of the service. It is normal for cargoes to be booked on the service by the line's agent at each port of call or at other ports in the region from which cargo can be fed into a port of call. The important point is that a liner service, unlike a tramp shipping operation, is open for all to use. In liner, the line deploys the same vessel, or vessels, along a specified route or routes, loading and/or discharging cargo at the same prearranged ports on each round voyage. The service is operated at a regular frequency in accordance with a published timetable. (3)

A tramp service is one which is offered by its owner for hire (charter) on the open market for one or more voyages (voyage charter) or for a fixed period of time (time charter). For the duration of the charter the vessel only carries cargoes, usually bulk commodities, designated by the charterer between any two or more ports specified by him. Once the charter has expired, the vessel reverts to the owner who then offers it for hire
again on the open market. (4) This means whereas on a single voyage the cargo on board a tramp ship belongs to the cargo owner, the cargo on board a liner ship belongs to several, perhaps fifty or a hundred, owners, because the shipping line provides its service as a common carrier.

2.1.2 LINER VESSELS

Looked at from an historical point of view, it is only in comparatively recent years that differences in design have developed within the fleet of dry cargo carrying ships. The total world fleet expanded rapidly—over 300% between 1850 and 1900—in order to meet the increased demand for seaborne transportation created by the development of mass production in Europe and North America. Yet in the one hundred years between 1850 and 1950 virtually all dry cargo vessels were built to broadly similar designs. The distinction between stowage of dry bulk cargo, which was shipped in average loads of 10,000-15,000 tonnes, and general cargo, which was at that time all shipped in break-bulk form, was not sufficient to require different vessel design. (5)

This continued to be the case until the second half of the 1950s, by which time the large volumes of some dry bulk commodities being traded by sea created the need for vessels designed to carry massive tonnages of a single commodity in one voyage. In order to reduce handling costs as well, because they were rising sharply at this time, a vessel design was developed so that the cargo could literally be poured into a large open hold, and then discharged by high-capacity grabs or some form of continuous mechanical unloading equipment. (6)
2.1.3 CONTAINERIZATION

The traditional method of shipping general cargo in break-bulk form entailed a high degree of handling during the entire journey over land and sea from the consignor to the cargo's final destination. While labor was cheap there was no particular disadvantage in this, but during the 1950s and 1960s shipping costs began to increase rapidly in the industrially developed countries and labor costs, including stevedoring, were rapidly taking up a larger share of the total. The two most promising approaches to reducing this increase were firstly to increase cargo capacity, in particular the utilization of cargo space on a given vessel size, and secondly to reduce the amount of handling required during the cargo loading and discharging process. This led to the two major innovations in the shipping of cargo which have dominated thinking on cargo stowage ever since. One was the discovery of the advantages of bulk shipping and the other was the development of the concept of unitization of smaller-scale cargo.

This latter innovation has now advanced to the point where the most successful form of unitization, the twenty-foot container, is universally accepted and dominates the general cargo market. (7)

2.1.4 LINER CONFERENCES

The development of steam propulsion for ships meant that not only were they not so much at the mercy of weather conditions but they were also able to travel at faster average speeds. Moreover, advances in design were continually enhancing cargo stowage capabilities. All of
these improvements, coupled with the growth of total fleet capacity at a faster rate than the volume of international trade, led to overtonnaging on many major trade routes. The shipowners began to lower freight rates in order to attract enough cargo to fill their vessels. Then other owners undercut them and the resulting chain reaction brought rates down to less than voyage costs. No operation can survive long by charging less than cost price, unless it is subsidized somehow, and so the only course left open to shipowners was to co-ordinate their operations on particular routes. The first organized cooperation took place on the Great Britain-Calcutta route in 1875 when a group of shipowners working that trade got together to control competition amongst themselves and present a united front to fight off rival lines. They agreed upon a common tariff which could give them reasonable profits and they allotted sailings on the route for each vessel belonging to the participating owners. This was the first liner shipping conference. As the 20th century has progressed conferences have gained in strength on most routes. The overtonnaging which has become a feature of so many liner trades during the 1970s and 1980s has made the need for some system of controlling competition and the level of freight rates essential for the lines' survival.

There were of course complaints against the operation of conferences right from the beginning. Conference rates were at first applied to all shippers irrespective of cargo volume or past relations with the liner operators, which might have included the regular granting of concessionary rates. When conferences refused to give discounts (10) to regular, large-volume shippers, the latter turned to operators outside the conferences.
who readily agreed to carry their cargoes at a cheaper rate. Since the conferences could not afford to lose good, regular customers they agreed to give discounts on their published general rates in return for a guarantee that those shippers would send all their cargo on that route exclusively on conference vessels. The first loyalty agreements was signed in 1877. Since then various forms of association and agreement have developed between liner conference operators and shippers. (11)

The Code of Conduct defines liner conference as:

"A group of two or more vessel-operating carriers which provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions with respect to the provision of liner service." (12)

The organization and scope of the conferences, of which there are about 360, vary ranging from fairly informal associations to a tightly and rigid structured organization with a permanent secretariat. The most tightly organized type of conference is the "closed" conference operating a rationalized service and pooling arrangement whereby the number of sailings and vessel types and capacities are tailored to the expected traffic volumes and thus potentially, although not necessarily in practice, minimizing the costs of providing the service but also greatly reducing the competition between member lines. On the other hand, weaker "open" conferences con-
cerned mostly with establishing freight rates, while not reducing competition to the same extent, may tend to encourage overtonnaging, low profitability and steadily increasing freight rates; rates may be much higher than under an efficient system. This is particularly important to developing countries as these may often bear most of the freight cost of both their exports and imports. However, as far as is known, no study has been undertaken regarding the relative position of rationalized and unrationlized conference operations. (13)

2.1.5 STRATEGIES ADOPTED BY LINES

Various strategies are being adopted by different lines for survival and maintenance of market share. These include:

- Acquisition of bigger vessels (for deep-sea trades - 2,500-3,000 teu) by ordering newbuildings, jumboising existing vessels, buying secondhand or chartering/leasing. This helps the line to achieve low costs/slot similar to those of Evergreen and USL, and so to cut rates to match theirs.

- Joint operations with other lines by takeovers, joint ventures, joint sailing and slot chartering agreements. These help to improve cargo catchment area while spreading the risk and keeping capital outlay low.

- Building up intermodal lines between road, rail and sea so as to offer a total door-to-door service as efficient, rapid and cheap as possible. Land transport can represent as much as 75% of total door-to-door costs on some deep-sea routes. It has
become essential for services to and from the US to offer intermodal links for containers moving inland.

- Rationalizing sea and land transport activities; sometimes diversifying investments into other activities not related to shipping or transport; sometimes selling off non-transport assets to release cash and ease capital loan repayments. (14)

2.1.6 RECENT DEVELOPMENT IN LINER CONFERENCES

At the same time as liner shipping services have been in a turmoil of change, the Liner Conference System, which aims to regulate and safeguard the operation of efficient liner services, has been under severe pressure. During 1984-85 some significant changes have taken place within the conference system as conferences have tried to secure survival into the 21st century. Although the advent of the Round-The-World Service (RTWS) on the world liner shipping market has undoubtedly accentuated some of the problems which conference members were already experiencing, the services themselves cannot be said to have been a primary cause of any of the recent developments within the conference system.

First, the most obvious development has been the formation of several large-scale new conferences, often by the effective amalgamation of two or more old ones. In October 1984, even before the Evergreen and USL RTWS were effectively operating, the three conferences covering the Europe/Scandinavia/UK trades to USEC combined together to form the North Europe US Atlantic Conference (NEAC). At the same time the three conferences covering
the same trades eastwards out of USEC also combined to form one conference - the US Atlantic North Europe Conference. In both cases, however, the amalgamation was primarily for administrative reasons. On both eastbound and westbound trades, most of the membership of one conference had been the same as that of the other two. Rather than hold three separate discussions on the same subject with the same liner operators, it would be more efficient and effective to hold just one meeting. Other administrative savings and efficiencies can be achieved by this amalgamation. Not the least advantage of one large conference, compared with several small ones, is the greater strength of the former and the more effective influence it can bring to bear upon the market. (15)

Second factor which facilitated rationalization was the US Shipping Act of 1984. This Act relaXes the application of stringent anti-trust laws to liner shipping and recognized the benefits of the conference system for seaborne trade to/from the US. As far as future expansion is concerned, NEAC would welcome a merger with conferences governing the NW Europe/Scandinavia/US-US Gulf trade, and perhaps, eventually, with conferences governing trade to the USWC so that all trade between NW Europe/Scandinavia/UK and the whole of the US could be covered by one conference. Many actual and potential problems and some legal difficulties would have to be sorted out before then, however, so the prospect of one "giant" conference for all Europe/US trade is still very far off. (16)

It was the combination of the US Shipping Act of 1984, severe overtonnaging exacerbated by the inauguration of the Evergreen and USL RTWS, and a fierce rate
war that led to the formation of two new "giant" conferences on the transpacific trades between North America and the Far East. The first to be formed was the Transpacific Westbound Rate Agreement (TWRA) which was set up in January 1985 to cover all westbound trades from the US to the Far East. At first its membership was believed to control about 75-80% of westbound traffic. Lines which joined TWRA when it was first set up included both Evergreen and USL as well as most other major operators on the trade. Partly because of the US Shipping Act of 1984, which gives conference members who serve the US trades the right to set up their own rates if they give their conference ten days' notice, and partly because of the difficulty of attracting a large number of members with conflicting ambitions, the constitution of the TWRA is much looser than that of the traditional liner conferences. Because of the lack of control over members, many TWRA member lines have made adjustments to their rates outside of conference recommendations during 1985, undercutting other conference members. (17)

It was probably the comparatively weak terms of reference and the freedom permitted to members which attracted a staunch conference opponent like Evergreen to TWRA. It may well be these same factors, considered from the opposite point of view, that prompted traditional conference lines such as BBS, EAC and ZIM to resign from TWRA within its first year of operation.

In June 1985 twenty lines operating across the Pacific from west to east set up a very similar "giant" conference called the "Asia North America Eastbound Rate Agreement (ANERA). Like the TWRA, ANERA included both Evergreen and USL, and the six major Japanese lines,
OOCL, NOL, Hanjin, Zim, BBS, APL, Sea-Land and Lykes.
ANERA is also constituted upon a very loose agreement, allowing so much room for independent action, in accordance with the provisions of the US Shipping Act of 1984, that it might be considered more as a forum for discussion than a liner conference in the traditional sense with the purpose of regulating trade, setting rates which reflect liner operators' costs. (18)

In mid-January 1986, Evergreen resigned from both transpacific conferences, to become effective in mid-March 1986. It was Evergreen's inability to accept recent conference decisions on rating and policy matters which was the immediate cause of the resignation, but it may be supposed that the traditionally independent line was never a comfortable associate of some of the staunchly conference-oriented members. Evergreen's resignation from both the TWRA and ANERA means that the liner now reverts to fully independent status on the transpacific trade. As such it poses a serious threat to rate stability and, therefore, to the very survival of some economically weaker operators on the trade. (19)

2.1.7 STRUCTURE OF CARGO IN THE LINER TRADE

The cargoes transported in liner trade are called "general cargo". It is not possible to define "liner-type" cargoes in a clear and general manner; for example, cargoes such as jute, copra, palm oil, timber, grain, rubber, and wool were all once liner cargoes whereas today they are basically bulk cargoes, although if they travel in parcels they then become liner cargoes. What counts is not the nature of the product but the commercial transactions surrounding its sale and transport. (20)
Each individual route needs to be studied in order to determine exactly which are the cargoes on that route which the liners transport. Liner cargo is usually a cargo shipped by mark or count (21), with the distinction depending not on the type of product but on the character of the shipment. (22) Further, it must be taken into account that, for example, at the harvest season a product may be loaded easily without mark or count, the characteristics of bulk cargoes, whereas in other periods of the year the products are loaded in parcels and are carried pursuant to regular (liner) service procedures. Though the Code of Conduct does not treat that kind of situation, it is obvious that the cargo-sharing key is not applicable to the category of products loaded in bulk which are specifically excluded from the loyalty provisions of the Code, although the same type of cargo carried in small quantities in liner is subject to the Code. (23)

2.1.8 THE CONCEPT OF GENERAL CARGO

The word "general cargo" stated above, covers two types of cargoes: (1) mixed (heterogeneous) cargoes, i.e. different lots in different packages coming from different shippers; and (2) homogeneous cargoes transported in relatively large quantities, sometimes filling completely the ship's space, being uniformly packed (e.g. sugar or flour in bags); they constitute complementary cargo for liner ships in cases when typical general cargoes are in short supply. Sometimes, these cargoes are called bulk cargo. (24)

2.1.9 TYPES OF CARGO CARRIED BY LINERS
There exist a great number of types of cargoes carried by liner shipping. These cargoes may be in bags, bales, cartons, drums, cases, crates, etc. In the past two decades, there appeared unitized cargoes in the form of containers, pallets, and road trailers transported by roll-on-roll off (Ro/Ro) ships and others are barges of 800 tonnes on board LASH ships. In some liner trades, the ratio of containerization is very high, particularly in the North Atlantic, and also on the Europe-Far East/Australia run, US/Far East, as well as between developing countries. (25) Overall world container volumes increased five-fold during the period 1970 to 1985, rising rapidly from 47 million MT to almost 290 million MT, at an average annual rate growth in excess of 16%; in developing countries from a low of just over one million MT, or 2.4% of world trade in 1970, to almost 100 million MT, or 32% of world trade in the mid 1980s. (26)

2.1.10 SHARE OF LINER CARGOES IN WORLD SEABORNE TRADE

Transportation in international trade is overwhelmingly dominated by shipping. In 1977 (27), shipping moved some 95% percent by weight of all international commerce and with a value over US 1.1 trillion dollars. In 1983 (28), the value of world trade was US 1.7 trillion dollars, an increase of US dollars 0.6 trillion in six years. About 50% of that trade (US dollars 0.8 trillion), was conducted among the industrial countries (approximately OECD countries); about US dollars 0.7 trillion involved the industrial countries as shipper or receiver, but not both; and about US dollars 0.2 trillion involved only the centrally-planned economies (CPE) or the developing countries. (29) The estimated aggregate of all seaborne cargoes in 1983 was 3.2 billion tonnes and
in 1987, was 3.39 billion tonnes, of which oil and major bulk cargoes (coal, iron ore, grain, phosphate, bauxite) alone accounted for 2.0 billion tonnes in 1983, and 2.1 billion tonnes in 1986. (30) In term of ton-kilometers, seaborne trade can be broken down as follows: 60% of all ocean transport is accounted for by energy raw materials such as petroleum and coal; 15% mineral products; 5% grain and other foodstuffs; and 20% are carried by liner service. The 20% carried by liner service are high-value goods and consist of manufactured products and industrial intermediates. These high-value goods accounted for 70% of the value of international trade—excluding the high volume trade in crude oil and liquid petroleum products. (31)

2.1.11 DEVELOPING COUNTRIES' SHARE IN WORLD FLEET

Ownership of world merchant fleet which stood at 664.8 million DWT in 1985 (32) concentrated on the developed market-economy and open-registry countries, with combined tonnage amounting to 73.1% of the total deadweight of the world merchant fleet in mid-1985. The share of developing countries was 17.1% in 1985 and 15.9% in 1984. Socialist countries of Eastern Europe and Asia owned 8.8% of the world merchant fleet. (33)

The participation of developing countries in the world merchant fleet continued to be considerably lower than their share of international seaborne trade. For instance, in 1985, the developing countries generated 37% of world cargo moving in international seaborne trade (exports and imports combined) but ownership was only 17.1% or 113.4 million deadweight tons of the total world merchant fleet. On the other hand, developed marketecono-
my countries, either directly or indirectly through open registry tonnage, owned 73.1% of world tonnage while generating 56% of world seaborne trade, and owned the largest share of each type of vessels. As is with other types of vessels, ownership of container ships remained concentrated in the developed market-economy countries, which owned 53.2% of number of containerships and 61.2% of their TEU capacity which stood at 942,222 TEUs in 1985. Open registry countries accounted for 18.1% and 13% in number of ships and the combined TEU capacity, respectively. (34)

2.1.12 RELATIONSHIP OF TRADE AND SHIPPING

The relationship between trade and shipping (liner or tramp) services is somewhat circular. New shipping services are not likely to develop unless there is sufficient trade or trade potential to make the services profitable, but trade may not develop without reasonable shipping services. As the trade of developing countries has traditionally been conducted on developed countries, more extensive services are usually available on these trade routes. In some cases, trade between developing countries is carried as transshipped cargoes via developed countries. In other cases, the trade between developing countries is carried only as part of a service linking a developing region with a developed region. In some of these and other trades, limited cargo volumes mean that advantage cannot be taken of the economy of scale from larger vessels or the high capacity utilization achieved which could reduce relatively high freight rates. There is strong evidence that the "ad valorem" incidence of transport costs on trade among developing countries is higher than on trade with the developed
world. (35) While it is often noted that the demand for shipping is dependent upon the demand for goods abroad, it is also true that the availability, reliability, adequacy, and costs of transportation may be significant factors in the economic competitiveness of goods from a particular source, especially low-value basic commodities that account for a large segment of the exports of developing states. Shipping costs also add to the prices developing states must pay for the goods they must import and, in view of their worsening balance-of-payments problems, freight costs have become a growing matter of concern. The proportion of freight costs to c.i.f. import values for developing countries continued to be approximately twice as high as that for developed market-economy countries which is 9.8% and 5.1%, respectively. (36)

Services such as shipping, insurance, and banking are referred to in the jargon of international trade as "invisibles" as distinguished from "visibles", which include tangible goods, products, or commodities. The term invisibles indicates that the costs of services needed to conduct international trade are less apparent to the novice than are costs associated with the purchase of visibles. As a Brazilian diplomat with experience in maritime affairs notes, the developing states intended to concentrate immediately after independence on increasing productivity, industrializing, and diversifying their export products. Little attention was paid to either the costs or the consequences of invisibles. (37)

Attention to shipping questions on the part of developing countries was stimulated by the problems these states confronted as they attempted to establish or expand their own merchant fleet. In so doing, they encour-
tered the obstacles of closed liner conferences and the more general problems of acquiring cargoes and financing fleet acquisition and expansion, this despite the fact that third world states collectively generate a substantial part of the world's cargo. (38)

2.1.13 DEVELOPING STATES' PERCEPTION OF LINER CONFERENCES

The developing countries' perception of liner conferences is quite different. While they see merit in the conference system, they also see some very significant deficiencies in the way in which the system operates in practice. Among the complaints of developing countries regarding conferences has been that conference rates and services are altered either without any consultation or without adequate consultation with the affected shippers. The secrecy practiced by shipping lines and conferences in their decision-making processes has been a major source of concern for developing countries. Because of the dominant role played by western shipowners in the liner trades of the developing states, conference practices are not seen merely as exploitative in nature but as a very important aspect of neocolonialism. For newly independent states, often marked by shaky economies and fragile political egos, this situation is intolerable. Intimately related to the general desire for consultation is the substantive concern over freight rates. A small difference in shipping cost, other things being equal, can translate into a significant drop in demand for a state's commodities unless the exporting state itself absorbs that costs and accepts a lower price for what it sells. This is precisely what a number of developing countries must do. As aptly put by one writer (39), "... the demand schedules facing a given developing
country are likely to be very elastic unless the country is an important source of supply and the commodity has no close substitutes. This, coupled with inelastic supply, means that developing country exporters normally bear the major burden of freight costs, and any increase in freight may be expected to produce equivalent declines in net export receipts."

The second concern has been that liner conferences have refused membership to the shipping lines of developing states whose trade is being served. Even when allowed to join, these lines sometimes were allocated so small a share of the trade for carriage that the developing country fleet could not operate profitably. Generally, developing states observed that the goods they sold to developed states were sold on a free on board (f.o.b.) basis while the goods they bought were sold to them on costs, insurance, and freight (c.i.f.) terms. Typically, the choice of the transporting vessel in both cases was out of the hands of the developing state, thus allowing continued developed country dominance of the transport network.(40)

Third, as a consequence of the first two concerns, and in the light of the relatively weak bargaining position of the majority of the shipping interests in Third World states, many such states have insisted on an important role for their governments in shipping matters. A governmental role is seen as imperative for the protection of vital national economic interests. This role envisages government participation in the consultation process and the possibility of requiring, by governmental or intergovernmental action, the reservation to national shipping lines of some "fair" share of cargo generated by
that state. This latter action has implications in the matter of fleet acquisition by developing states for it is generally believed that once cargoes are assured the financing of a ship will be more easily secured. Initiatives by the developing countries to reserve cargo for national-flag ships hinge mainly on cargo allocation schemes.

2.1.14 THE CONFERENCE SYSTEM.

Considering the very long history of shipping, conferences are of relatively recent developments, originating about one hundred and twelve years old today. There are hundreds of conferences existing at present regulating the movements of general cargo on trade routes throughout the world. Since 1875 shipping lines have been coming together voluntarily as "Conferences" to provide regular cargo services in designated "liner trades", controlling through self-regulation such questions as membership, levels of freight, sailings, routes, division or pooling of cargoes/revenues, and "tying" loyalty arrangements with shippers at discounted and/or rebated rates to oust "non-conference" (outsiders) competition. A third of all conferences are, however, regulated by national statute: for example, in all US liner trades, inwards and outwards. (41)
This Section of this Study outlines the characteristics, the organization, and the practices of the Conference System. The advantages and disadvantages of the Conference System are also listed. (42)

2.1.14.1 Characteristics:

(1) General cargo. The conferences confined their transport activity to what is known as "liner trade in general cargo" alone, as opposed to tramp cargoes. The basic principle underlying the concept of "general cargo" as already been mentioned above, is that it is carried in parcels and not in shiploads. Thus teak, jute, textiles and machinery are not bulk commodities, and cannot fill a ship, come under the category of general cargo, along with parcels of iron ore, foodgrains, fertilizers, etc. which when carried in shiploads are essentially tramp cargoes.

(2) Fixed sailings and freight rates. The liner service of a conference system works on a pre-announced schedule of sailings and fixed freight rates, which are altered after due notice and after lapse of long periods, in contrast to tramp voyaging which works without a schedule and with freight rates changing from day to day depending on each fixture.

(3) Organized monopoly. The conference works on a close collaboration of all shipowners who are members of this well-knit private international organization, which often resorts to pooling and rationalization of services and, to keep its monopol-
istic position, works on deferred rebates and dual rates, which are unknown to the tramp world, remaining a special feature of the conference system.

(4) Shippers' weak bargaining position. Since conference trade is fully organized, the determination and regulation of its freight structure over periods is a matter of grave concern to shippers, and for this reason, of export promotion the developing countries of the world are equally interested in conference fixing of freight rates. Thus a conference, though a non-governmental body comprising private interests, is nevertheless negotiating with shippers as a strong unbending monopoly, and also with sovereign States, assuming a footing of equality. The tramps are in no such position, and in fact no other mode or method of sea transport has been able to work up its way to a position of vantage in relation to the shipper and his State to the same extent as has the conference machinery in the shipping world of today.

2.1.14.2 Organization:

The organizational structure of shipping conferences varies from conference to conference, but there are certain similarities in the organization of many of them which may serve as a pattern for the purpose of this description.

(1) Source of employees. Since a conference is an association of firms, its personnel must be authorized to act on behalf of the member firms.
Some of these authorized persons are employees of the member lines while others are directly employed by the conference. Each firm may appoint several employees to act in conference matters with varying degrees of employee responsibility. These representatives of the member lines and the conference employees direct the day-to-day affairs of the conference. Usually the traffic departments of the member lines provided for this representation.

(2) Administrative officer. Most of the conferences appoint a permanent administrative officer, usually called a chairman, who directs the activities of the conference staff and who is generally responsible for managing and coordinating conference affairs. While the power and authority of the chairman vary from conference to conference there are common duties performed by virtually all permanent chairmen. The chairman directs the normal business operations of the conference and supervises the work of the conference employees. When the conference uses a dual rate and deferred rebate system, his staff usually administers the contracts. The magnitude of this task varies but in some trades the conference office may be administering several thousand contracts. However, the most essential aspect of the chairman’s prerogative is the direction and coordination of the conference ratemaking. In this ratemaking capacity, the permanent chairman makes the agenda and calls the meeting at which representatives of the member lines discuss and vote on proposals for rate revi-
sion. He presides at the meetings and often leads the discussion since he is the person to whom most of the proposals for rate changes are directed initially.

(3) Committees. Many conferences (especially those having a large membership) delegate work to committees. These committees may be permanent fixtures in the conference organization, or may be constituted on an ad hoc basis to deal with limited problems. The most common type of standing committee is a rate committee which is responsible for preliminary work on proposals for change in rates. Membership on rate committees is normally rotated among the member lines. Special rate committee may also be used when a conference determines that an upward revision of its rate structure should be made.

2.1.14.3 PRACTICES.

(1) Entry into conference. New lines can be admitted to a conference on the unanimous vote of all members. Entry of a new member depends on his individual bargaining power. In the post-war situation, where developing nations have established national shipping companies, conferences serving the trade of such nations have, as a general rule, admitted to the conference. It is difficult to assess this policy because the meetings of conferences are never publicized.

(2) Voting Procedure. Conference rules on voting are usually stated in the basic conference agree-
ment and may specify that a qualified majority is needed to approve a rate proposal (or that a two-thirds or three-quarters majority is required), and in some cases a unanimous vote is necessary to approve action on rates. Unanimity is also commonly required on non-rate matters such as admission of new members, amending the basic agreement, etc. If the required majority votes in favor of a proposal are obtained, the decision is generally binding on all the members. The vote itself may be a voice vote, or the chairman may call for a show of hands, or the matters may be resolved by secret ballot. The manner in which votes are cast depends on the matter under consideration and frequently on various inter-conference relationship.

(3) Inter-conference relations. A conference chairman often maintains close relation with other conference chairmen, particularly the chairmen of conference operating out of competing gateways. They are aware of the relationship between the actions of their own conferences and the actions of other conferences. One aspect of this practice is the exchange of information on rate actions. For example, it is common for chairmen to exchange tariffs so that conferences can remain aware of the state of rates and practices in other conferences.

(4) Deferred rebates and dual rates. Each conference has agreements with shippers. Such agreements have usually a dual form, designed both to secure the continued customs of the shipper and to
prevent the entry of outside competition. The first is known as the deferred rebate system. Under this system, the shipper who has not employed a non-conference ship for a specified period of time receives, at the end of the period, a refund of a percentage of his freight payments. In most cases, the deferred rebate system constitutes a more substantial tie than is desirable because the deferment of the rebate makes the entry of the new shipping line into service quite difficult. It should be noted that in the United States the system of deferred rebate was outlawed by the Shipping Act of 1916, as amended. The second and newer type of tie is the contract or dual rate system.

Under this system the shipper enters into a contract with the conference, under which he agrees to send all his shipments by the trade with lower rate. It is also noteworthy that the total liner fleet is about 40% of the tonnage of the world fleet. The importance and power of the shipping conference as an effective instrumentality for the carriage of world seaborne trade cannot, therefore, be over-emphasized.

2.1.14.4 ADVANTAGES:

(1) Stability. The conferences are voluntary organizations of shipping lines which regulate competition among their members serving a particular group of ports. The measure of stability provided, by establishing freight rates and uniform shipping practices, may improve the operating ability of
individual lines. Through this type of organization, shippers are assured of a regular scheduled service and rate stability.

(2) Security of investment. By limiting competition and preventing over-capacity of tonnage on shipping routes, conferences secure the large capital investment necessary for a successful operation of shipping lines, and are in a position to introduce modernization of fleets and new devices for the safe and efficient transport of cargoes.

(3) Quality of service. Under the conference system, a contracting shipper is, as a rule, assured by the conference of the carriage of his cargoes, as compared with shippers not under contract with the conference. The stability of rates and regularity of services permit shippers to serve their foreign markets more effectively. In return, the conference carrier is assured of cargo on a more regular basis than would be the case if he operated as an independent. Since the conference carrier is protected against rate competition from the other members of the conference, he is able to concentrate his efforts on furnishing a higher quality service to his shippers.

2.1.14.5 DISADVANTAGES:

(1) Higher rates. Within individual conferences, competition among member lines may vary considerably. If there is enough cargo for all to earn adequate returns, competition will not be as keen. On the other hand, if the conference agreement
provides for the pooling of earnings among members, there may be little incentive to divert cargoes from one member to another. When cargoes are scarce, the self-interest of individual members may cause them to violate the agreement through concealed rate cutting. (If competition becomes too intense the conference may disband.) However, even though there may be some competition among and within shipping conferences, it is generally agreed that they often succeed in keeping the level of rates above what they would if there were price competition.

(2) Inefficiency. Critics of shipping conferences often attribute the growth of the conference system to their maintenance of rates at the highest level that traffic will bear, in order to maximize profits. Also, the international shipping cartel device permits shipowners to minimize their commercial risks. The conference arrangement may in some trades reduce the incentive for efficiency, modernization, and innovation.

(3) Rate disparities. Though shippers do gain one type of advantage from stable rates, they lose another if they have to pay higher than competitive rates. The maximum rate depends upon what the trade can bear, moderated by the actual or potential competition conference members face from outside the conference. Since on some trade routes there is much and others relatively little competition from independent operators, there may be different rates for shipping the same commodity over similar routes. The essential economic impli-
cation of shipping conferences is that they would have no "raison de'etre" if they did not succeed in keeping the level of liner rates above what they would be under more competitive conditions.

This Section of this Study will discuss the changing environment of the ocean liner shipping in the last five years. The changes were the result of severe competition in the liner service and the different methods of consolidation of liner operators either to maintain their market share or for survival. The present degree of over-tonnaging inevitably means rate-cutting in order to attract as much cargo as possible. Most liner operators feel that once customer loyalty is lost it is extremely difficult to win back. Many different methods of consolidation and survival are being adopted by liner operators. These vary according to the character and background of the operating company and the nature and circumstances of the trade in which the service is provided. Section 1.6 of this chapter had already mentioned them but some of the most significant ones are summarized below:

1) Intermodalism: The utilization of different transport modes (by sea, rail and road) to form an overall transport operation has become increasingly important during the mid-1980s. Many of the major lines on the transpacific and transatlantic trades are now investing as much, if not more, on land-based operations. These will link up with seaborne operations to provide a fully comprehensive door-to-door service.

During 1985 APL spent 60% of its 265 US million dollars capital development budget on improvements to its domestic rail and road services. Sea-Land has also been
investing heavily on inter-modal links within the US. Foreign lines such as NYK, MOL and Evergreen have also been securing agreements with US rail operators, for the provision of intermodal services connecting ports of call in USWC with the major industrial and consumer markets of the mid-west and eastern states.

The growth of intermodal services in Europe and other industrialized markets which have sophisticated inland transport systems is certain to follow.

As it does so the relative importance within the transport chain of the seaborne leg will decline. Already it probably represents, for instance, only 25% of the door-to-door cost of transporting a container between Europe and US. (43)

2) Joint Service Agreements: These can take a variety of forms but the chief purpose of all of them is to create a broader cargo catchment area for a comparatively low capital outlay. At the same time they spread the financial risk between two or more operators. Straightforward amalgamation of two services may involve the takeover of one by another or it may be achieved by less obvious means. The integration of the ScanCarriers N. Europe/ANZ service into BBS’ RTWS operation is in effect an amalgamation brought about by Wilh. Wilhelmsen, which is a major shareholder in both operations. OCL’s purchase of 50% of TFL’s shares is a discreet way of gaining a place within the North Atlantic market, which OCL has wanted to do for a long time. (44)

Joint venture and consortium agreements have existed between liner companies for many years, but there
has been an increase in such deals in 1985 and many more can be expected in 1986-87. The formation of a joint venture or consortium, however, involves two or more companies combining to form a new operation with its own investments for the sake of which all differences in outlook and conflicts of individual ambition must be resolved. If this is too heavy a commitment, the less permanent slot-chartering and joint sailing agreements will prove useful to each party, but can be ended without the upheaval and financial loss which the break-up of a consortium or joint venture might involve. (45)

A joint sailing agreement is simply a decision by two or more operators to schedule the movements of their separate fleets as if they were one service fleet. A slot-chartering agreement is a device by which a liner service operator leases part of the capacity as his own. Usually the parties to such an agreement will each deploy their own vessels on the same route under a joint sailing schedule, and slot-charter capacity on each other’s vessels. Sometimes, however, a service operator may provide a service entirely by slot-chartering, without deploying any ships of his own on the route. Some examples of the many joint ventures and slot-chartering agreements concluded in 1984-85 include those between 'K' Line and OOCL/NOL on the Japan/U.S.E.C trade; Y-S Line and OOCL/NOL on the Japan/F.E/U.S.W.C route; Japan Line and Evergreen on both U.S.E.C and U.S.W.C routes; OCL and KMTC on the F.E/U.S trade; B.B.S and Nedlloyd on the U.S.E.C/Middle East trade; and C.T.E and Coasta Armatori on their new Med./U.S Gulf service. There are so many other examples. (46)

3) High Capacity Vessels. One of the leading advantages which Evergreen and U.S.L possess in the ope-
ration of their RTWS is that all the vessels deployed are large. In fact the USL vessels, at 4,258 teu each, are the largest containerships ever built. The operational cost per box slot of these vessels is lower than that of most of the vessels deployed on competing services. This factor, together with other design features which reduce vessel operating and voyage costs, enables Evergreen and USL to offer shippers rates which are significantly lower than those of rival lines. OOCL, NOL, Lykes, Yangming, éK’ Line, Y-S Line, MOL and Hanjin all have containerships of 2,500-3,000 teu on order at end 1985. Most of this new capacity is intended for deployment on the transpacific trades where the level of overtonnaging is worse than on any other deep-sea trade. High-capacity vessels with their low costs per slot are, in the opinion of many operators on the trade, becoming the key to survival. However, while freight rates are low and revenues depressed the burden of repayments of newbuilding loans can be heavy. When there is little prospect of improvement in rate levels, and even a likelihood that they will fall lower, this burden may eventually prove too much to endure. Some liner operators are, therefore, pursuing the goal of higher capacity tonnage by other means. For instance, SeaLand and Hapag-Lloyd have not ordered series of large newbuildings, they have jumboized vessels which they have owned for several years. The cost of such an operation is slight for the extra capacity gained, by comparison with the cost of newbuildings. An alternative way of acquiring larger tonnage is to charter or lease it. In the depressed market of end 1985/early 1986 this represents a much cheaper option. If the need for this tonnage is not urgent, the operator might be well rewarded for biding his time and waiting for charter rates to sink down further. (47) Developments in the liner ship-
ping market have been taking place so rapidly. The world’s shipping lines are fighting over a volume of cargo which is insufficient to support them all.

2.1.15 THE EMERGING LEGAL ENVIRONMENT

This concluding part of this Chapter pertains to the emerging legal environment affecting the liner shipping industry. The emerging legal environment in the international liner shipping industry will have an impact on the ASEAN countries and in the Philippines. In this context, the legal measures have been adopted by (a) developed countries, (b) developing countries, and (c) jointly by developed and developing countries. (48)

(A) Measures adopted by developed countries. The most important legislation adopted by developed countries for the ocean-liner industry are (1) the US Shipping Act of 1984 and (2) the decision to include liner shipping within the European Community’s Treaty of Rome. There are many other legal instruments such as (3) Lomé III and (4) Note to Annex A of the Code of Liberalization of Current Invisible Operations (CLIO), as well as (5) quasi-legal instruments which result from US/Consultative Group (CSG) discussions.


This Act is more than just another national law for four reasons: first, approximately two-thirds of all liner vessels call at US ports and, therefore, must comply with its requirements; second, the new tools it creates for the industry: service contracts, time-volume rates, independent action, extension of anti-trust immu
nity to intermodal combinations and rates, shippers nego-
tiating directly with lines, not via conferences, and
shippers’ associations – are supportive of the market,
service and technological forces which are restructuring
the industry; third, lines may now respond rapidly to
changes in trade demand, as all agreements filed with the
Federal Maritime Commission (FMC) – other than assessment
agreements – become effective 45 days after filing, un-
less the FMC seeks injunctive relief; and fourth, many
countries, such as Canada with the proposed revision of
its Shipping Conferences Exemption Act, are studying the
experiences of the Act in the light of modifications to
their own legislation.

The specific provisions of US Maritime Legislation
which are of interest to ocean-liner companies are Sec-
tions 13(b)(5) of the US Shipping Act of 1984 and 19 of
the Merchant Marine Act of 1920, respectively, providing
the FMC with broad powers. The regulations for these sec-
tions permit the FMC to institute proceedings on its own
motion or upon the filing of a petition.

The regulations for section 13(b)(5) of the Ship-
ping Act of 1984 are found at 46 Code of Federal Regula-
tions (CFR) 587 and enumerate conditions which are consi-
dered to unduly impair access of US vessels to trades
between non-US ports, including any intermodal movements
related thereto, and establish procedures under which
liner operators may apply to the FMC for relief. However,
any limits, restrictions or requirements placed upon US
vessels for participating in non-US trades will not be
subject to FMC review unless a US liner operator is not
commercially able to enter the trade in question.

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As was noted, the enforcement of section 13(b)(5) is limited by section 13(b)(6). Nonetheless, 46 CFR 587.2 enumerates a wide range of conditions which are defined as unduly impairing the access of a US flag vessel to non-US trades. The two areas of fundamental interest for the ASEAN and their liner operators are those related to subparagraph (b):

"Reservation of a substantial portion of the total cargo in the trade to national-flag or other vessels which results in a failure to provide reasonable competitive access to cargoes by U.S. flag vessels,"

and to the inclusion of intermodal movements in such transport operations.

The regulations for section 19 of the Merchant Marine Act, 1920, are found at 46 CFR 585 and define conditions resulting from actions of governments or from competitive methods or practices which are unfavorable to shipping in the foreign trade of the US. The definition of these conditions are quite similar to those of 46 CFR 587.2 and create two areas of interest to ASEAN and ASEAN liner operators. The first is found at 46 CFR 585.3(b) and relates to conditions which:

"Reserve substantial cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States."

This subparagraph would seem to recognize implicitly the
validity of national cargo reservation regimes, if such regimes provide, on reasonable terms, for effective and equal access to such cargo by other vessels in the foreign trade of the USA. It seems to indicate that only if cargo reservation regimes fail to or do not make such provision would they be considered an unfavorable condition in the foreign trade of the US. Of course, what constitutes "equal access to such cargo" is left to the FMC to define. In the present, chronically-overtonnaged market a mathematically exact equal access could result in no liner operator having a large enough load to justify economically a voyage. It should be highlighted that this section of the Act has been given renewed vigor and applied to the cargo reservation schemes of the Philippines and Venezuela, and the FMC is currently studying cross-trader access to the trades between the US, and Argentina and Brazil. (49)

(2) Liner shipping within the European Community's Treaty of Rome.

For many years the principal focus of transport activities of the Commission of the European Communities was related to road, rail and waterway cargo movements between member countries. At that time, maritime transport was considered to be a national matter governed by member states' laws, conference agreements and the market. However, in response to numerous factors such as non-commercial competition, overtonnaging, national cargo reservation regimes and the United Nations Convention on a Code of Conduct for Liner Conferences, various member states adopted the Code of Conduct together with Council Regulation 954 of 1979, better known as the Brussels Package, and this became the first pronoun-
cement of a shipping policy for the EEC. Current efforts to include shipping within paragraph 2 of article 84 of the Treaty Establishing the European Communities, better known as the Treaty of Rome, are a partial response to the above factors as well as an expression of EEC support for the US Shipping Act of 1984. The decision recently considered by the Commission and member countries as elements of a common shipping policy are: (50) (1) diplomatic action and countermeasures against third countries protecting their fleets by reservation or bilateral agreements; (2) freedom to provide shipping services by all EEC nationals, with a transition period of five years for international trades and 10 years for cabotage; (3) consultation procedures between EEC members and third countries; (4) criteria for defining a national shipping line within the Code of Conduct; (5) application of the Rules on Competition, found at articles 85-90 of the Treaty of Rome, to shipping in order to counter various practices defined as unfair; and (6) fines against shipowners who charge unfair prices in EEC liner trades.

An EEC common shipping policy has numerous facets, but the major impact for the ASEAN would be its position on cargo reservation regimes. By means of the Code of Conduct and the Brussels Package the EEC has recognized the right of all countries to divide trade shares, as well as for regions to reserve certain aspects of their trade relations for themselves. Of the above, the first contains measures which might be used against cargo reservation, but many EEC member countries have such regimes. As examples, France reserves the import of oil from Algeria for national vessels, Greece reserves its inland trade to national vessels, and the other EEC members, while not having a formal cabotage regimes, imp-
licitly limit access to domestic cargo movements. So important are these reservation schemes that they have become the major obstacle to the adoption of a common EEC policy for shipping. As a result, it appears that cabotage will be eliminated after the transition period. (51)

(3) Lome III.

Beginning in 1964 the EEC has governed its trade development and investment relations with former dependent overseas countries and territories by means of conventions which are negotiated every five years. With the addition of new member states to the EEC, the number of former dependent overseas countries and territories becoming contracting parties to each successive convention has continually increased. For example, during negotiations between the EEC and the United Kingdom for its entrance into the EEC, Mauritius asked to accede to the trade convention in force at that time and was permitted to do so on 30 June 1973. Other countries wishing to accede to the convention led to the adoption of Protocol 22, annexed to the Acts of Accession to the EEC of the United Kingdom, whereby the EEC offered to 21 Commonwealth countries of Africa, the Caribbean and Pacific an opportunity to negotiate their future relations within the framework of this trade and investment convention.

The fifth trade and investment convention, known as Lome III, was signed between 65 African, Caribbean and Pacific (ACP) states and the EEC on 8 December 1984. The financial package of this Convention totals 7,400 million European Currency Units (1 ECU=US dollars 1.02) and provides ACP states access to EEC markets for products such as bananas, rum, sugar, etc. and sources of financial and
technical assistance for projects and programmes in areas which range from trade promotion to transport and from environment to industry. With the entry of Portugal and Spain into the EEC on 1 January 1986 a number of questions arise concerning the desirability of a protocol, similar to number 22 mentioned above, which would permit Latin American countries to accede to Lome III.


The OECD was established by a Convention signed at Paris, on 14 December 1960, and currently has 24 market-economy developed nations as members - Australia, Canada, 19 European nations, Japan, New Zealand and the US. This Convention provides that the OECD shall promote various economic growth and trade expansion policies, and in order to achieve these policies its members agree: "to pursue their efforts to reduce or abolish obstacles to the exchange of goods and "services" and current payments and maintain and extend the liberalization of capital movements." To carry out the above agreement, on 12 December 1961 OECD member countries adopted CLIO. Transport services within the scope of CLIO are enumerated at Part C of Annex A, while Note 1 provides guidelines for the liberalization of all international maritime transport services and related freight charges. Note 1 contains only three sentences, but they have a large potential impact on the US initiative to include all services, which encompass maritime transport, within the framework of the General Agreement on Tariffs and Trade (GATT). The first sentence provides that residents of one OECD state have an unrestricted opportunity to avail themselves of the international maritime transport
services offered by residents of another OECD state. This is followed by a requirement that international maritime transport services "should not" be hampered by measures such as exchange controls, preferential flag treatment or clauses in trade agreements, to ensure that normal commercial considerations "should alone" determine the method and flag of shipment. Finally, the third sentence provides that: "The second sentence of this Note does not apply to the United States". (52)

(5) US/Consultative Shipping Group (US/CSG).

It will be remembered that the US Shipping Act of 1916 gave liner operators complete immunity from anti-trust laws of that country for any activity covered by an agreement on file and in effect at the FMC. However, a series of US court decision in the 1950s and the 1960s eroded that immunity. Liner operators in Europe and the US became increasingly uncertain as to whether an agreement on file with the FMC was sufficient to protect them from an anti-trust violation. The US/CSG discussions were an outgrowth of the uncertainty surrounding anti-trust immunity of the 1916 Shipping Act. In recognition of the need to clarify this situation, an important feature of the Shipping Act of 1984 was to explicitly indicate that anti-trust immunity includes not only those activities in agreements on file with the FMC but also for those entered into pursuant to such agreements. The CSG members include Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Italy, Japan, the Netherlands, Norway, Sweden and the United Kingdom. Participating at meetings are representatives of those countries, as well as representatives from the EEC and the US. As a result of the positive US/CSG contribution to the harmo-
nization of European and US ocean-liner policies for antitrust immunity, discussions have continued to be held to ensure that other elements of such policies are compatible. The current focus of US/CSG discussion is related to policies which safeguard and promote competition in all sectors of ocean shipping. At the last review of the Code of Conduct regarding the extension of its scope to include non-conference operators. In the light of US/CSG activities to coordinate their shipping policies to achieve common goals, one might ask if ASEAN and other Far East countries should do the same to preserve their national shipping policies?

(B) Measures adopted jointly by developed and developing countries.

The major legislative efforts of developed and developing countries encompass four conventions negotiated under the auspices of the United Nations Conference on Trade and Development (UNCTAD) - a Code of Conduct for Liner Conferences, the International Multimodal Transport of Goods, the Carriage of Goods by Sea (the Hamburg Rules), and the Conditions for Registration of Vessels, as well as the discussion currently taking place at the GATT concerning the inclusion of services within its framework. In the light of the market, service, technological and legal forces which are restructuring ocean-liner transport, three areas are of fundamental importance:

1. liability regimes for the carriage of containers;

2. possible topics for the 1988 review conference for the Code of Conduct; and
(3) the initiative to include services within the GATT framework.

At this juncture, it is pointed out that the next succeeding chapter of this Study will elaborate on the Code of Conduct, including number 2 above.

(C) Measures adopted individually by ASEAN countries and other developing countries.

This will be reserved for discussion also in the next chapter of this work.

2.1.16 CONCLUSION

It is, however, relevant to mention that the majority of merchant fleets of developing countries were established on the basis of the continued supremacy of two important pillars, that is, cargo reservation regimes and the liner conference system. The fundamental question is not whether cargo reservation regimes have assisted in the establishment and operation of such fleets, as they most certainly have, but whether the present structure of such regimes is appropriate in the light of changes which have taken place and are occurring in the industry. It will be recalled that the Philippines and Indonesia have cargo reservation regimes prepared and adopted before the entry into force of the Code of Conduct.
CHAPTER 3

THE CODE OF CONDUCT
AND ITS IMPLEMENTATION

3.1 Background

The Code of Conduct, celebrating its 4th anniversary on 6 October 1987, the date when it entered into force on 6 October 1983, could mark the beginning of a new era of international and regional cooperation in ocean liner shipping.

The Code had been adopted by the United Nations in Geneva on 6 April 1974, under the auspices of the United Nations Conference on Trade and Development (UNCTAD), as an international convention by a substantial majority of 72 votes with 5 abstentions and 7 negative votes including those of the United States and Switzerland. (1)

The Convention, in accordance with its article 48, was open for signature from 1 July 1974 until and including 30 June 1975. Since that date the Convention has been open for accession.

As of 1 June 1986, 67 countries had made definitive signatures (s), approved (app), accepted (acc), ratified (r), or acceded (a) to, the Convention. The countries, arranged in chronological order, are found in Annex 1.

As noted earlier in this study, implementation of the Code has been lagging in developing as well as advanced market-economy countries. Those countries which abstained in the voting eventually ratified the Code. The US, however, has been openly opposed to the Code as in the American opinion the Code was opposed to free trade while the
Western European countries saw the Code as necessary to come to terms with least developed countries. Japan, which had signed the Convention, has not yet ratified the Code; since the question in the case of Japan was not on whether to ratify the Cope or not, but as to whether to ratify it under the terms of the Brussels Package. (2)

3.2 The Objectives and principles of the Code.

The broad spectrum of subjects and problems which the Code is addressing and the principles that are governing its regulations are best illustrated by the introductory preamble on objectives and principles which, because of their importance are quoted below in full:

(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 foreign trade of any country;

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

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

3.3 Structure of the Code.

The Code deals with four major groups of subjects, namely:

(a) The relationship between the member lines of a Conference (chapters on membership, participation in trade, decision-making procedures, sanctions, self-policing, conference agreements);

(b) the relationship between shipping conferences and shippers (chapters on loyalty arrangements, dispensation, availability of tariffs, annual reports, consultation machinery);

(c) freight rates (chapters on criteria of freight rate determination, conference tariffs, general freight increases, promotional freight rates, various kinds of surcharges);

(d) provisions and machinery for settlement of disputes.

3.4 Definition of a conference

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

3.5 Flexibility.

At a number of points, flexibility is reflected in Code provisions indicating that certain steps be taken "unless otherwise mutually agreed" or "unless otherwise provided", as shown in Article 17(2).

The Code is a set of guidelines for the conduct of liner conferences offering a considerable degree of built-in flexibility for the parties concerned to deviate from the guidelines by mutual agreement. This fact is often overlooked by those who criticize the Code for being an instrument of government regulation. (3) A number of authors (4) found the Code stipulations providing for flexibility. It was the flexibility (rather than the ambiguity) offered by the Code which strongly contributed to its acceptability to the EEC. (5)

3.6 Membership (Article 15).

The chapter dealing with membership in shipping conferences is closely connected with the guidelines in chapter 2 on participation in trade. Under the Code it will be difficult for a conference to take a one-sided decisions on the question of accepting or not accepting a member.

The Code opens the conference for "national lines"
of those countries whose trade is served directly by the conference. The criteria for membership of national lines are fairly reasonable. Applicants would, as a rule, be able to cover these criteria. As far as the admission of "third flag lines" is concerned, the Code contains some additional but realistic criteria such as the existing volume of the trade and its prospective growth, the adequacy of shipping space and the probable effect of admission on efficiency and quality of the conference service. The views of shippers and shipper organizations are also to be taken into account. Naturally, admission of a third flag line would be a bit more difficult than admission of a national line.

The conference could, however, decline admission only by giving convincing reasons. Moreover, the applicant would have a right to ask for international conciliation if his application has been declined. Even without such remedies, experience has proved that a strong and efficient outsider has in the past and will also in the future be able to force entry into a conference if he so wishes. But a more "closed" type of conference curtails the high rate of fluctuations and gives a better chance for freight rate stability and service efficiency, especially if a high degree of rationalization is combined with a pool agreement. The Code thus represents a compromise between the two extreme positions prevailing so far, viz. the completely open conference system sponsored by the US legislations and the closed conference practised in most other areas.

3.7 Participation in Trade (Article 2).

Article 2 of the Code has time and again been misconstrued as government-imposed cargo sharing on a
strictly 40:40:20 formula. In actual fact, traffic rights or sailing agreements are to be negotiated among the member lines and not by agreements. The lines have discretion to agree among themselves on whatever shares they consider reasonable. In case of disagreement the Code offers guidelines of which the centerpiece is paragraph 4, which reads as follows:

"... unless otherwise mutually agreed:

(a) The group of national shipping lines of each of the 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 the conference,

(b) Third-country shipping lines, if any, have the right to acquire a significant part, such as 20 per cent, in the freight and volume of traffic generated by that trade."

As a consequence trade normally comprises more than two countries and thus constitutes a multilateral venture, each national flag will participate under consideration of the freight and volume of its national trade and of the ability and capacity of the carrier to perform such a service.

If more than one national carrier of a country are participating as members of a conference it is a matter between those carriers to agree among themselves upon the apportionment of their total national share. If there are no third-country lines, third flag shares are to be borne jointly by the national carriers of both sides of the trade and usually in proportion of their individual con-
ference shares. The enormous sums required for modern transport systems, like container and ro/ro services, normally exceed the financial capacity of single company and lead of necessity to stronger cooperation among shipping lines of different nationalities. Without such international cooperation, most of the conference container and ro/ro services that are now operating worldwide, would have not materialized, and ocean transport costs would have gone up much more steeply during the last 10 years. Taking into account that a modern container vessel replaces 4 to 5 conventional vessels in capacity, a single operator normally would not have been able to continue with sufficient frequency to meet the requirements of the trade without producing over-capacities. They were thus forced into joint ventures with other competing lines to keep supply of and demand for services in balance. Rationalization and coordination here enabled transport costs to be kept low. It is only logical that under such premises no single carrier would be prepared to give up his independence without the financial safeguards which are offered by a pool or cargo sharing agreement. (6)

But a pool agreement is no life insurance for inefficient lines. In most conference pools, what are known as "performance clauses" stipulates the number of sailings evenly spread over the year each line has to perform within the range of ports of their trading section as well as the quantity of cargo in cheaper categories to be carried in order to ensure that a carrier is not concentrating only on high-traffic categories. If lines repeatedly under-perform, their pool-shares are reduced proportionately for the next pool period. (7)

The Code also establishes in Article 2 (item 16)
that in any conference pooling agreement, a conference shall provide for appropriate measures to cover cases where the cargo has been shut out by a memberline for any reason except late presentation by the shipper. It stipulates "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." The cost advantages of full rationalization are so obvious - take just the potential savings in fuel consumption as one of the major cost items - that international liner trades can no longer afford to continue without such cooperation if they want to keep pace with other competing markets.

3.8 Decision-making procedures (Article 3).

Article 3 contains two important provisions as follows:

(a) voting rules must not hinder the proper work of the conference and the service of the trade, and

(b) decisions cannot be taken on matters relating to the trade between two countries without the consent of the national shipping lines of those two countries.

3.9 Self-Policing (Article 5).

This article constitutes an important part of the self-regulating principle by establishing a number of guidelines how to combat and control malpractices. It calls in particular for provision of effective self-
policing machinery by conferences through neutral bodies, enlisting the full cooperation of shippers and shippers' organizations for the purpose of curtailing such irregularities. On request, 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, are to be informed on the action taken.

3.10 Loyalty Arrangements (Article 7).

Shippers' loyalty contracts have to serve two purposes: firstly, they should grant loyal shippers a premium for having shipped their cargo during the contract period exclusively with the conference lines. This financial inducements on the other hand offers conference lines the advantage of regular customers, without which they would be unable to commit themselves in a particular trade with high qualified tonnage in a long term. Secondly, the contractual rebate also means a fair compensation to the loyal shipper vis-a-vis his competitors who prefer to retain the liberty of taking each chance on the market whether inside or outside the conference. Since an outsider is never committed to the trade in total but always tries to skim off the best part on a temporary basis, only to disappear the moment this market has lost its attraction, conference lines have in contrast to behave like responsible partner to the trade and, therefore, need some sort of protection against these inroads. A conference line is in fact much more vulnerable, since with their employment of tailor-made types of ships much more money is at risk. One cannot expect from them a long-term commitment to the trade if the trade in turn is not prepared also to show its loyalty for this financial engagement. Loyalty can, therefore, never be a one-way traffic. (8) The Code fully
recognizes the necessity for effective loyalty arrangements without restricting the commercial parties too much in their discretion to agree among themselves on the forms of contracts.

3.11 Dispensation (Article 8).

This article establishes guidelines for the proper arrangements within a conference to release a shipper from his loyalty obligations if within a specified period no conference tonnage can be offered from or to a conference port.

3.12 Consultation machinery (Article 11).

Article 11 on consultation machinery constitutes one of the principal elements in the Code, being the centerpiece on self-regulation between the commercial parties which has time and again proved superior to any form of government regulation.

Consultation has a different meaning and purpose than negotiation. Consultation shall be confined to matters of common interest between a conference as a whole and shippers' organizations, which means subjects of over-riding significance.

Item 2 of this article mentions several matters, which among others, may be the subject of such consultations, of which only the most important are repeated below:

(a) changes in general tariff conditions and related regulations;

(b) general freight rate increase and changes of
rates for major commodities;

(c) imposition, and changes of, surcharges;

(d) form of loyalty arrangements and their changes;

(e) procedure for the timely supply of necessary information by shippers on the expected volume and nature of their cargoes.

The purpose of consultation is best reflected in item (6) of this article which reads:

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

3.13 Criteria for freight rate determination (Article 12).

The Code restores discretion for commercial lines to determine their freight rates although establishing some reasonable guidelines. Its basic principle is reflected in paragraph (a) which reads:

"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."

Not only the costs but also the market dictate the
final decision on rate levels, which time and again has proved the most stringent barrier against an unreasonable tariff policy. Without intimate knowledge of the market, no effective rate-fixing is possible, a requirement which no government agency is able to meet. Their freight rate regulations must, therefore, always be an arbitrary exercise.

3.14 General freight increases (Article 14).

This is one of the most controversial articles in the Code. In our inflationary times a notice period of not less than 150 days is an unrealistic time span, since at least another month or two will be required by the conference secretariat and the principals before any decision can be taken. This is certainly one of the provisions that need to be amended during a review conference. What the critics, however, have overlooked is that alternative stipulation in this article which states “or according to regional practice and/or agreements.” Regional practice may mean 30 or 90 days in respect of non-dual rate and dual rate conferences, respectively, in the US trades. In other areas the current calendar month plus the ensuing two months or 90 days notice constitute regional practice and could likewise continue if the commercial parties on both sides of the trade so agree. Item (5) stipulates that if no agreement is reached within 30 days of giving notice in consultation on the level of freight rates, the matters shall be submitted immediately to mandatory international conciliation, again unless the parties agree on another method of settling disputes. Item (6) stipulates that a general freight rate increase may be implemented by a conference pending the conciliators’ recommendation. With the high percentage of fixed costs and out-of-pocket expenses lines cannot, of cour-
se, afford to wait a further couple of months in a pending dispute until they are able to recover their increases costs. It is only natural that both parties will always strive to come to an agreement and thereby to avoid any such time-consuming procedures.

3.15 Promotional freight rates (Article 15).

In conferences with developing countries it has been a common practice in the postwar period to grant shippers in such countries what are known as "promotional freight rates" on application. These are conceded for new products in order to assist efforts to establish new industries or to introduce new crops with the aim of putting national economies on a more stable basis. This is more valid to the ASEAN countries, especially the Philippines. The Code reflects and encourages such a freight policy.

3.16 Surcharges (Article 16).

This article covers special surcharges such as fuel adjustment factors, port congestion surcharges, or other charges imposed by a conference to cover sudden or extraordinary increases in costs or losses of revenue on a temporary basis, except currency adjustment factors (CAFs) which are dealt with in Article 17. Normal charges in costs are recouped by conference lines once or thrice a year or at even longer intervals by a general rate increases. The high fixed costs of liner operation as well as the considerable amount of out-of-pocket expenses, which liner operators have to cover during each round-voyage give conference lines no chance of absorbing sudden extraordinary cost increases like the pending escalation of fuel prices out of normal freight tariffs if these are to be kept at a reasonable level. Such extraordinary cost
developments, therefore, have to be recouped promptly by means of surcharges, a principle that is also acknowledged by the shipping community as the only recourse for keeping tariff levels low.

In six paragraphs the Code provides under what circumstances surcharges may be imposed. In paragraph 3, it says that notice should be given and there shall be consultation, upon request, in accordance with the procedure of this Code, save in those exceptional circumstances which warrant immediate imposition of the surcharge. Even in these latter cases consultations shall be held as soon as possible thereafter, when requested. Prior to such consultations conferences are to furnish data which in their opinion justify the imposition of the surcharges. Surcharges too are subject to mandatory conciliation although the final decision rests with the shipowning side as only they bear the financial risks.

3.17 Currency changes (Article 17).

The Code provides for currency changes which are similar to those for surcharges in general. Here again the method and form of adjustments as a result of exchange rate changes, leading to changes in the aggregate operational costs and/or revenues of the shipping lines, is to be agreed upon between the commercial parties by way of consultation.

3.18 Fighting ships (Article 18).

The only reference to outsiders in the Code - not to be confused with third flag carriers - is Article 18 prohibiting the use of fighting ships by conference against outsiders, analogous to the provisions of the US Shipping Act. Conferences are required under the Code to
publish their tariffs and conditions of carriage and to adhere to them for given periods, to give notice of alterations or increases far ahead etc. Certain similar rules will have to be applied on outsiders as well as in order to enable governments to judge as to whether or not an independent liner operator is following the principle of fair competition on a commercial basis.

3.19 Adequacy of service (Article 19).

No part of the Code more fully reflect the new spirit of close cooperation between all parties concerned, in order to ensure an optimal conference liner service at economical rates. It is also underlines the universal rule and responsibility of conferences in the new liner regime, which, on the other hand, they can only accomplish if they can count on the full loyalty of the trading community as well.

3.20 Provisions and machinery for settlement of disputes — international conciliation (Articles 23-46).

Another source of serious criticism has been that Part on the provisions and machinery for dispute settlement. Its importance has certainly been emphasized. The critics have also failed to propose better and workable alternatives, suitable for inclusions in a Code with such world-wide application. A very important and laudable aspect of the conciliation rules in the Code is the fact that parties to a dispute are free to agree on any other dispute settlement procedure. No party is bound to the conciliation machinery in the Code where the use of some other dispute settlement system, including commercial arbitration, is mutually agreed.

This Section of this Chapter will deal with the
implementation of the Code, as the title of this chapter suggests.

3.21 Implementation of the Code and Role of Governments

(Article 47).

According to article 47, "Each Contracting Party shall take such legislative or other measures as may be necessary to implement the present Convention." Implementation of the Code, therefore, presupposes certain series of juridical acts. First, the state must first be a Contracting State to the convention, either by definitive signature, approval, acceptance, ratification, or accession, of the Code. Secondly, the Contracting Party State shall take such legislative or other measures as may be necessary to implement the Code, pursuant to Article 47. Thirdly, the commercial parties shall implement the Code pursuant to the general framework of the national legislation and the Convention. Apart from providing the framework within which the commercial parties can play their proper role in administering the Code, Governments can directly participate in the administration in the widest sense through taking part in the consultation and conciliation procedures, albeit as observers not having a decisive part to play in the decision-making process.

3.22 Two approaches in the administration and implementation of the Code.

There are at least two approaches to the question of administration and implementation of the Code that appeared to evolve from various Contracting Parties to the Convention:

(a) Approach by majority of developing countries.

The majority of developing countries envisages re-
latively active government involvement in the implementation of the Code. As part of the initial adjustment process, and using article 47 as a basis, the appropriate governmental authorities initiate the adjustment process by convening conference shipping lines in their trades and shippers' organizations to ensure that the various agreements conform to the applicable requirements of the Code as required by article 22. This supervision can either be carried out by the "appropriate authority" designated pursuant to Part One, Chapter I of the Convention or through shippers' organizations which, in turn, are either a subordinate authority to the relevant ministry or responsible to the "appropriate authority." Inherent in this approach is the need to take into account the fact that these agreements affecting national trades also affect at least one other country, i.e. the trading partner in each trade. Thus, Governments may wish to consult and are indeed consulting with the appropriate authorities of each trading partner in implementing the Code pursuant to this approach in order to avoid the application of conflicting measures.

(b) Approach by developed market-economy countries.

The second approach is preferred by developed market-economy countries Contracting Parties to the Convention. In this approach it is left to the parties involved (shipping lines, conferences, shippers, and shippers' organizations) to adjust their relations to conform to the provisions of the Code. Inherent in this approach is the need to create private remedies for aggrieved parties in the event that a conference agreement, trade participation agreement, or loyalty arrangement does not conform to, or is not implemented in conformity with, the provi-
sions of the Code and the dispute is not resolved during the prescribed conciliation procedures. Thus, Contracting Parties could fulfil their obligations under article 47 by providing the right for aggrieved parties to have recourse to national institutions where the Code confers legal rights or obligations on parties in the event that the conciliation proceedings have either been unsuccessful in resolving the dispute or where not applicable. Depending on the judicial and administrative system of a particular country, the national remedies created could either be in the form of providing access to the legal court system or the establishment of a special court or administrative tribunal for Code-related disputes. As far as the developed market-economy countries are concerned, the former approach of providing access to the legal court system has generally been chosen. (10)

3.23 National Legislation.

To-date, few Contracting Parties have adopted enabling legislation to implement the Code, although some developing countries have adopted national legislations intended to implement the cargo sharing provision of the Code. There are variety of reasons why many contracting states have not yet implemented the Code, including the reason that many states are not clear as to their obligations under the Code. On the other hand, the UK, which had not ratified the Code until the last quarter of 1985, adopted such national legislation in 1982 (Merchant Shipping "Liner Conferences" Act of 1982). The Code’s lack of precision and the limited governmental experience in many developing states in liner conference operations may well provide an opportunity for the UNCTAD Secretariat and the Registrar of the Code, to influence the evolution of the Code regime. The reality is that
many governments, having become party to the Code, do not know what action they are permitted or required to take. Yet it is through national implementation, legislation, administrative rules, and day-to-day practice that the Code's ultimate character and details will be determined. (11)

3.24 Activity prior to the entry of the Code.

The Code did not enter into force for some ten years after its drafting and adoption by diplomatic conference in 1974. During the interim period from 1974 to 1983, various actions have been taken by a number of states, typically with the implicit or explicit belief that such actions would be sanctioned by the Code. This anticipatory practice is likely to color subsequent practice. Several countries which have ratified the Code had earlier acted to reserve liner cargo for their national lines in anticipation of the Code's entry into force. Included in this group are the Philippines, Indonesia, and Malaysia.

(a) The Philippines. On January 19, 1982, a Presidential Executive Order No. 769 which would implement the cargo sharing formula of the Liner Code, directed the Maritime Industry Authority (MARINA) to issue regulations, reserving at least 80 per cent of the export and import liner trade not covered by the earlier decrees (Presidential Decree No. 1466, 1978), relating to government-impelled cargoes.

The implementation of this executive order will be discussed in more detail in Chapter 6 of this Study. It is stated, however, that this order was one of the most controversial national legislation that received a chorus
of protest from US, Japan, Western European countries, although it was initially implemented in the Philippine-US export and import liner trade only, until its suspension in May 1984.

(b) Indonesia. Presidential Decree No. 18, issued in 1982, reserved for Indonesian-flag vessels the carriage of all cargoes, imports and exports, financed by the Indonesian Government or by state-owned or state-financed companies. The objective of this action seemed to be to reserve all such cargo so that only the remaining cargo would be subject to 40-40-20 allocation. As a result, it appeared that the Indonesian shipping lines could increase their carriage to over 50 percent of the total trade of Indonesia. This decree was protested immediately by ten OECD countries jointly and by the United States and Japan individually. (12)

(c) Malaysia. In Malaysia, an ASEAN member which ratified the Code like the Philippines and Indonesia, the Ministry of Transport has given some thought to cargo reservation, but an official of the Department of Trade indicated that Malaysia was "unlikely to rush in without looking at the effects, and particularly how this would affect Malaysian trade". This cautious attitude is reflected in the establishment by the Malaysian government of a task force for the purpose of drafting legislation implementing the Code. (13)

(d) Thailand. In Thailand, the chairman of the new shippers council has cautioned that it is questionable whether Thailand should have a merchant marine and urged that careful and factual assessment be made in this regard. This type of attitude is reflected in government
considerations in Thailand as the Director of Sea Transport, Economic Division, Office of Merchant Marine Promotion, has stated that governmental policy is to encourage exports as much as possible. (14)

(e) Singapore. Singapore is one of the three ASEAN countries (Brunei and Thailand the others) which has not ratified the Code. Singapore is essentially a transshipment port for cargoes to/from Thailand and Indonesia. Its national shipping line, Neptune Orient Lines (NOL), is mainly a cross-trader in liner shipping.

In 1983, Singaporean-registered shipowners were advised to enter into a joint venture with the Korean or American shipowners in the wake of the Code’s entry into force, to avoid them to be left out in the cold. It would seem that Singapore will not ratify the Code on commercial reason, because of the reasons stated above, but may do so for political or ASEAN unity. As stated, Brunei, which became an ASEAN member in 1984 after its independence on December 31, 1983, has not ratified the Code. Brunei has the highest per capita income of ASEAN countries and is a net exporter of crude oil products.

3.25 Reservations.

A number of states which have become parties to the Code have done so subject to significant reservations which serve to modify their legal obligations in their treaty relations with other parties to the Convention.

(a) EEC. The best-known of the reservations is embodied in the "Brussels Package" already stated in the previous chapter of this study, the provisions of which must be included in the instruments of ratification of
the member states of the European Community in accordance with the decision taken by the EEC Council on May 15, 1979. This set of reservations, which was also copied by the Scandinavian countries (Denmark, Finland, Norway, and Sweden) is far reaching whereby it excluded the application of major articles of the Code on cargo sharing, conference decision-making procedures, dispute settlement, and the time span between general freight rate increases from both trade within the EEC and from trade between the EEC and OECD states willing to act on the basis of reciprocity. These reservations are of great significance, as their application will result in eliminating most of the liner trade of the EEC from the application of the main provisions of the Code, since most of the liner trade of the EEC is conducted with developed states of the OECD. According to one estimate, the application of the EEC reservations will leave some 75% of the world liner cargo free from the allocation scheme suggested by the Liner Code. (15) In European Community trade with developing states, the developing state trading partner will be entitled to carriage of up to 40% of the conference cargo in that trade, while the remaining 60% will be thrown into a common pool available for carriage by conference member lines of European Community states, reciprocating OECD states, and other developing third-flag states, on the basis of commercial considerations.

(b) Eastern European Accessions. The East European states of Bulgaria, Czechoslovakia, the German Democratic Republic, and the USSR, have all indicated that the Code will not be applied to jointly-operated lines created by inter-governmental agreements for joint conduct of bilateral trade. Given this reservation and, of course, the reality that liner conferences do not ope-
rate in the East European trades, the Code, to all intents and purposes, will have no direct impact on liner shipping in these trades. Accordingly, one cannot but wonder why these states bothered to become parties to the Code. (16)

In actual fact, however, East European accession and reservations to the Code will have limited importance from the perspective of the developing world as a whole—since Eastern Europe is not a major trading partner with developing states. Because of the importance of trade relationships of the developing states and the developed market-economy states, it is essential that agreement on shipping arrangements in these trades be settled.

3.26 The Scope of the application of the Code.

The scope of the application of the Code may be viewed from two elements:

(a) The application of the provisions of the Code taken specifically, and

(b) The application of the Code itself taken generally.

With respect to the first, the first part of this Chapter had dealt with the specific provisions of the Code.

In respect of the second, the application of the Code taken generally, can be seen from the following senses:

i) Application of the Code to Contracting States
Parties to the Convention;

ii) Application of the Code to Liner Conferences only;

iii) Application of the Code to inter-governmental agreements;

iv) Application of the Code to land-locked countries;

v) Application of the Code to cooperative shipping agreements outside conferences; and

vi) Application of the Code to multimodal transport.


It would appear that the Code as such is applicable only between Contracting States Parties to the Convention based on the Code itself, and under Article 34 of the Vienna Convention on the Law of Treaties. (17)

Assuming, however, that the Code is implemented between the liner trade of the two Contracting States, all entities operating in that particular trade will be covered, regardless on whether their country is a contracting state of the Code. In this case, the Code is considered "nationality blind", for otherwise, the purposes of the Code could not be accomplished. (18)

ii) Application of the Code to liner conferences.
There are two views as to whether the Code is applicable to whole liner trade of the country whose trade is served by the conference or to the liner cargoes carried by the conference only.

One interpretation preferred by the developed market economy countries is that the Code applies to the cargoes carried by the conference only, especially with respect to participation in trade. The other interpretation held by majority of developing countries is that the Code applies to whole liner trade and not merely to the cargoes carried by the conference. The above views have significant impact due to the weakening of the conference system and the strengthening of the outsiders where in some trades the outsiders carried more than 40 per cent of the liner trade. If the 40 percent carried by the outsiders are excluded from the cargo sharing law, the 40-40-20 cargo sharing provision of the Code will apply only to the 60 percent liner cargo carried by the Conference. Several developing countries have taken the view that, in their opinion, the provisions of article 2 on "Participation in Trade" applies to the entire liner trade. The later view has been supported by some authorities of note. Sturme (19) expressed his opinion as follows:

"Article 2, in its paragraphs 1 to 16 inclusive, applies to the conference member lines and to the conference in its pooling or other sharing of the trade carried. Paragraph 17 catches the other trade and provides that the participation of nonconference lines in the carriage of the trade should also be covered."
Article 2, paragraph 17 reads as follows:

"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."

Sturmey argued that the sense of paragraph 17 is that all liner trades are, or can be, if the authorities at either end of the trade so wish, brought within the scope of 40:40:20. Thus, non-conference lines, provided they are third-flag carriers, can be ignored so long as the overall share of the third-flag group does not exceed "such as 20%", while if such non-conference lines are national flag carriers, they can be ignored so long as the flag state agrees that their carryings are counted as part of the national quota, as in West Germany. Once the non-conference incursion in a trade is such, as is so often the case today, that these easy options are not open, the matter cannot be ignored and control measures need to be applied, if possible.

He (Sturmey) makes a major point of the fact that (1) when the Code was being drafted, the words "carried by the conference" were deleted from Article 2(17). He noted that the records of the conference (UNCTAD) do not indicate the reasons for the removal of these words but the soundest interpretation of this omission, according to some authors (20), is that the qualifying phrase was removed because it was implicit and therefore redundant; (2) otherwise, foreign lines could simply opt out of the conferences, be free of Code stipulations, and, accordingly, maintain their dominance in liner shipping; and
The acceptance by the Group of 77 (21) of measures for the protection of the position of outsiders (non-conference lines) was based on a tacit agreement to the effect that such measures could be allowed to have no adverse effects on the rights of cargoes granted by Article 2.

Sturmey cited as an example, the route between Calcutta and Australia. He said that in 1981, the outsiders were not present in this trade, but carried 37 per cent of the cargo in 1982. Also, in Bombay, in 1982, 68 per cent in the export and 49 per cent of the containers in the import trades, were carried by foreigners. As the Indian writer puts it, "while it may be the essence of Hindu philosophy to contemplate and concentrate on zero, "shoonya", when, talking of liner cargoes. Or, to put it another way, forty per cent of zero is exactly zero. If the non-conference lines end up carrying all the cargo "shoonya" would provide the only consolation left to the conference members. (22)

The OECD and EEC totally rejected Sturmey's interpretation as being invalid and inconsistent with both the legislative history of the Code and its wordings. From a policy perspective, EEC made it clear that the continued role of independents (outsiders or non-conference lines) are a primary check on the operation of closed conferences. In the case of EEC, the relevant competition law under the Treaty of Rome would forbid the elimination of outsiders from the European Community liner trades. In the case of OECD, they definitely want outsiders to remain in the liner trades and view the right of outsiders' continued operation as obvious and implicit under the wordings of the Code. OECD maintained the view that
they would become party to the Code provided that non-conference lines observed the principle of fair competition on a commercial basis. This was necessary to ensure that a conference did not acquire monopoly positions and to ensure a maximum choice for shippers. (23)

At the same time, a number of developed and socialist countries have the interpretation of the Code to be applied on conference-controlled trades only and do not cover the activities of non-conference shipping lines. They believed that limiting the activities of non-conference liners would lead to a limitation on the freedom of the shipper in choosing the ship. They declare that "non-conference shipping lines are not to be prevented from operating as long as they compete with conferences on a commercial basis, while adhering to the principles of fair competition". Some developed countries consider that the interpretation of the scope of application to cover all liner trades would affect their anti-trust laws. A unified statement has been taken by OECD countries, under the "concept of coordinated resistance", for retaliation steps against countries restricting outsider competition.

iii) Application of the Code to Inter-Governmental Agreements.

There are different views as to whether liner shipping services established on the basis of inter-governmental agreements fall under the scope of the Code. This is very important to the ASEAN group if these countries organize and operate an ASEAN liner service under an agreement between their Governments.

The wordings of the text of the Code definition contained in Chapter One should include joint shipping
services under a bilateral agreement between Governments. The Code definition refers to a group of carriers providing a liner service "has an agreement or arrangement, whatever its nature, within the framework of which they operate...". This language, particularly with the use of the expression "whatever its nature" and "within the framework", certainly includes situations where government-owned lines themselves have concluded the bilateral agreement; rather it just states "a group of...carriers". The agreement could thus be one imposed on them by Governments. The French text, on the other hand, would not appear to support this latter interpretation, in that it refers to "un groupe...qui a conclu un accord". In other words, reference is made to the "group" concluding the agreement, thereby making it more difficult to argue that an agreement concluded by Governments and imposed on individual carriers is one that the carriers as a group "concluded". The argument could, however, be made that the carriers constructively adopted the agreement by operating pursuant to it. Certainly, in the case of a government-owned line where the Government concluded a bilateral agreement, it would appear reasonable to say that the agreement was concluded on behalf of, and in the name of, the line. (24)

A number of countries, however, have taken the view that liner shipping services established on the basis of inter-governmental bilateral agreements do not constitute "liner conferences" as defined in the Code and consequently not subject to its provisions. (25) The latent conflict between such bilateral agreements and the Code becomes apparent when one considers the provisions on trade participation of such agreements which tend to provide for 50:50 cargo sharing and thereby could infringe on
third-flag lines' right "to acquire such as 20 percent" established under the Code.

iv) Application of the Code to land-locked countries.

National shipping lines of land-locked countries have the right, under the Code, to participate in the carriage of their own national foreign trade. In order to secure such rights, the national shipping lines of a Contracting State which is a land-locked country and which is within the geographical scope of the conference, should ensure that the port/s used by such land-locked country is included in the geographical scope of the cargo sharing arrangements of the Conference concerned, taking into account the provisions of Article 2(17). If the land-locked country (or specifically its port situated in another country used by the land-locked country as its own port) is outside the geographical scope of the conference itself, the Government concerned should negotiate with the conference to have the geographical scope of the conference extended to include its territory (or port/s), in order that the rights of its shipping lines and of the shippers are protected in accordance with the provisions of the Code. (26)

For practical purposes, the implementation of the Code provisions on trade participation, requires determination of the origin and ultimate destination of the cargo. It may not always be clearly recognizable where the cargo originates where the port of loading is a transshipment port. This is also true to cargo whose ultimate destination goes beyond the port of the country of discharge. It is only in those cases where the bills of lading or multimodal transport documents (Combidoc) are issued naming the actual origin and/or final
destination of the cargo, that the origin/destination of the cargo is possible.

The provisions of Article 2 (8), which provide for the possibility of redistributing cargo shares among national lines of a region at one end of a conference trade by mutual agreement, would be relevant in this context. Difficulties in determining the actual origin/destination of cargo for purposes of allocating shares may be resolved by redistribution arrangements negotiated among the national lines concerned.

The above considerations relating to the determination of cargo shares of land-locked country/ies would apply to all transshipment cargoes, irrespective of whether the country of ultimate origin or destination is a land-locked country. (27)

v) Application of the Code to cooperative agreements.

A typical form of cooperative agreement is the consortium. The advent of containerization has brought about new forms of cooperation among the shipowners designed to share the financial burdens, the risks, and the economies of scale. The Code provides a rather clear definition of liner conferences, and generally it can be stated that any cooperative agreement which fulfils the conditions laid down in the Code would be subject to its provisions, irrespective of the organizational form of cooperation chosen. For example, a joint service arrangement of the "TRIO" type - whereby three major liner operators in the Europe/Far East route have entered into a joint service agreement under this name - if operated outside the scope of the presently existing conference would, for the purpose of determining the applicability
of the Code, still fall under its provisions, as it does in itself fulfill the conditions stipulated in the Code definition to be classified as a liner conference. The Code does, in fact, apply to consortia as well as any other cooperative arrangements including rate agreements that fulfill the conditions of a liner conference stipulated in the Code definition, i.e.

"A group of two or more vessel-operating carriers; Provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits; Has an agreement or arrangement, whatever its nature, within the framework of which they operate; Operates under the uniform or common freight rates."

vi) Application of the Code to multimodal transport.

The question of the application of the Code to multimodal transport relates more to issues of shippers/carrier relations, level of freight rates and dispute settlement machinery rather than to questions of trade participation.

The Code in Article 11(1) (Consultation Machinery) states that there shall be consultations on matters of common interest between a conference, shippers' organizations, shippers' representatives, etc. This involves also multimodal through rates established by the conference. Under Article 11, any conference decision affecting shippers' interests appears to be subject to consultation and thus to the provisions of the Code.

3.27 Reallocation and redistribution of cargo shares.

The Code, in Article 2, provides rules covering
three cases of redistribution:

i) One of the countries whose trade is carried by the conference has no national shipping lines participating in the carriage of that trade (Article 2(5));

ii) The national shipping lines of one country decide not to carry their full share of the trade (Article 2(6));

iii) Neither of the two countries have national shipping lines participating in the trade (Article 2(7)).

With slight differences in wording in each case, the Code provides for the uncarried trade to be divided between the lines participating in the trade "in proportion to their respective shares". The national group which is not carrying its full share is given no say in how the part it cannot carry is to be distributed. (28)

As regards reallocation of the third-country share, the Code, in Article 2(3), provides that the criteria for the entry of third-country lines "shall not be applied so as to subvert" the provision of Article 2 on participation in trade. Article 2(4)(b) (which uses the expression "shall"), this must surely mean that from the outset, and even if no third-country lines are engaged in the trade, provision must be made to make it possible for such lines "to acquire a significant part, such as 20 per cent" of the trade. Even if they are not already carrying such a part, such a part must first be allocated to the third-country line group and then reallocated as appropriate.
At the first review of shares, depending on the criteria specified in the conference agreement, the third-country share may be reduced or even eliminated if non third-country lines have been admitted or the existing third-country lines have not increased their carryings. But initially, a specific "significant part" must be reserved for third-country lines, and provision must be made for the two groups of national shipping lines to give up a part of their share, up to a specified level, in the event that third-country lines obtain admission to the conference. (29)

In the absence of national lines in a trade, their share shall be redistributed among the lines participating in the trade in proportion to their respective shares. Where both groups of national lines do not exist, their shares shall be allocated between the participating member lines of the third-flag countries by commercial negotiations between those lines. It should be noted that in such situation there is no provisions in the Code for the Government of a Contracting Party to determine which lines shall carry its national lines' entitlement. (30)

Once the allocation and the reallocation procedures are completed, "the national shipping lines of a region ... at one end of the trade .... may redistribute among themselves by mutual agreement the shares in trades allocated to them" (Article 2(8)). This redistribution does not affect the allocation made with respect to the three groups at the conference level. It does not provide that within any conference covering several countries at each end of the route, services can be rationalized by trade-offs between lines. For countries served by conferences which cover other adjacent count-
ries as well, the possibility of a regional redistribution of cargo shares should always be borne in mind. (31)

3.28 CONCLUSION

The Code was elaborated prior to the structural changes brought about by containerization, and, prior to the market, service i.e., round-the-world service, pendulum service, fixed-day-of-the-week service, technological, and legal forces which are currently restructuring the liner shipping industry. This is not to indicate that the Code is not a useful instrument, but merely that it, like many other legal regimes, has been largely overtaken by changes in the industry it seeks to regulate. Thus, the questions facing all Contracting States Parties are what changes are needed to bring the Code up-to-date and how can those changes as well as the Code be structured to ensure that it will not be rapidly overtaken again by future events?

In this context, it is considered that some of the areas which might be discussed at the 1988 Code Review Conference could include individual proposals by developed and developing countries, as well as those made jointly. With reference to the first, developed countries might propose (a) the elimination of article 2 - participation in a trade, and (b) the right of economic communities to become contracting parties to the Code. With respect to the second, developing countries could propose (a) the allocation of cargo shares by governments rather than conferences, (b) the inclusion of outsiders or non-conference lines within the scope of the Code, (c) a definition of the role of load-center ports, intermodal
landbridges services, large-scale vessels and their relation to the fleets of developing countries. Both groups of countries might make proposals related to (a) the separation of containers from other liner cargoes and their transport by chartered vessels, (b) the broker activities of conference, (c) uniform interpretation of the Code, and (d) changes to the structure of the Code which might permit easier and more frequent modification. But whatever be the changes of structural form, the dialogue between transport operators and shippers, which the Code provides for, needs to continue. Even if the traditional conference were to be displaced by consortia, single operators or multimodal transport operators, there will be a need for consultations between shippers, operators, and Governments. Similarly, the need for principles of participation in liner trades by national lines and third-country lines will remain.

The Code Review Conference would be the opportunity for countries to re-examine the provisions of the Code in the light of the changes that are continuing to take place. Under the provisions of Article 52(1), the Review Conference is to be held five years after the Code comes into force, i.e. in the autumn of 1988. However, it is only through implementation of the Code that its nature and character will take shape. Due to the lagging implementation of the Code by both developed and developing countries, the Review Conference has no implementation experiences to rely on their works.
CHAPTER 4

THE ASEAN PRESENT SITUATION
WITH REGARD LINER TRADE, CONFERENCES
AND THE CODE

4.1 BACKGROUND

ASEAN was formed in 1967, with the aim in view to provide active collaboration and mutual assistance in the economic, technical, scientific and administrative fields, amongst member countries - Indonesia, Malaysia, Philippines, Singapore, and Thailand. Starting 1984, Brunei was admitted as the sixth member of the ASEAN. Up to 1976, there were few economic achievements. However, an ASEAN organization was established and personal intergovernmental contacts developed. Furthermore, a major report, prepared by a United Nations (UN) team between 1970 and 1972, provided a theoretical and policy basis for cooperation, notably in the field of industry. (1)

In 1976 (2), the Heads of Government concluded the Treaty of Amity and Cooperation, a general framework agreement; the Declaration of ASEAN Concord, which contained some fairly detailed economic and other provisions; and an Agreement on the establishment of the Declaration Secretariat in Jakarta. The economic part of the Declaration contained four main elements. These were: (1) cooperation in basic commodities, particularly food and energy - member states would give one another priority in periods of shortage; (2) industrial cooperation, specifically to establish large-scale ASEAN industrial plants; (3) preferential trading arrangements; instruments for this would include tariff preferences, long term con-
tracts, preference in government procurement, preferen-
tial financing and reduction in nontariff barriers; and
(4) joint efforts to improve access to markets outside
ASEAN and joint approaches on international economic
issues. (3)

4.2 TRADE AND SHIPPING POLICIES IN THE ASEAN

1) TRADE. Differences in trade policies from country
to country influence intra- and extra-ASEAN foreign
trade. The following trend in trade policies are deve-
loping: (4)

- Indonesia: complementary, sometimes protective,
  strategies of both import substitution and export
  promotion.

- Malaysia: dependent on world market for key
  products, import substitution promotion.

- Philippines: since 1960s, shift from import subs-
titution towards export promotion, encouragement
to process domestic raw materials.

- Singapore: highly import-dependent and export-
  oriented, liberal policies aimed at increased
  exports and export role, hardly any domestic
  industry protection.

- Thailand: export-oriented, but value still short
  of filling the trade gap, import substitution
  gaining in importance.

- Brunei: newly independent state, oil producer,
and net exporter of crude oil and petroleum products.

2) SHIPPING. There is no common shipping policy for the region. There are, however, national shipping legislations on a country basis but affecting trade and shipping in the region. This includes cargo reservation schemes, cargo sharing, cabotage, shipping licensing, and port controls. In addition, there are institutional and practical arrangements among the ASEAN countries. Regional shipping cooperation in shipping dates back to the formation of the ASEAN in the 60s. In terms of institutional and practical arrangements: (1) since 1973, annual meetings of the permanent committee on shipping; (2) since 1974, the foundation of the Federation of ASEAN Shippers Councils (FASC); (3) since 1975, the formation of the Federation of ASEAN Shipowners' Associations (FASA); and (4) since 1976, the establishment of the ASEAN Port Authorities Association (APAA). All five countries (5) now dispose of legal instruments to protect their national shipping interests. Actual enforcement varies widely. Regional and national interests are not always compatible. Though the first steps towards regionalism of shipping therefore still await formalization, the institutional preparations are comprehensive. According to a plan now being carried out, each partner country will report on advisable action in main problem areas, namely: the Philippines – joint intra-regional services; Indonesia – ship financing; Thailand – conference membership; Singapore – ship design and newbuilding. Until further, most attention is directed towards deep-sea export of key commodities. (6)

4.3 INTRA-ASEAN TRADE
Singles (7) carried a medium scale study of intra-regional shipping in ASEAN between 1977 and 1978 for the ESCAP. Analyzing the intra-regional liner transport from the 1975 data, the study found that intra-ASEAN seaborne dry cargo trade totalled 6.4 million tonnes, of which 1.5 million tonnes were transshipment traffic. Nine groups of primary products accounted for 75% of this volume of intra-trade, as follows: rubber 12%; logs 14%; timber 4%; rice 5%; maize 9%; animal feed 8%; cement 15%; oil products 4%; and fertilizers 2%.

Combined shares by country in cumulative loadings and unloadings including transit cargoes were: Thailand 13.3%; Malaysia (+ Brunei) 12.1%; Singapore 38.6%; Indonesia 31.3%; Philippines 4.5%. This annual total level of 6.4 million tonnes is expected to remain relatively steady at least up to 1985, with only minor shifts in the composition of specific commodities. A vast majority of this intra-ASEAN trade is composed of what has become known as "neo-bulk" commodities, such as rubber, logs, sawn timber, rice, maize, fertilizer, cement, and oil-bearing seeds that can be shipped as a single homogeneous cargo or as part of a break-bulk shipment. The emphasis on bulk and neo-bulk cargoes has meant that most intra-ASEAN voyages have distinct heavy and light legs, which shipowners had great difficulty of balancing. (8)

The ASEAN countries and Vietnam, Hong Kong, China, and Taiwan, are among the world’s leading traders. Under these circumstances regional services are difficult to keep regional. From a shipowner’s point of view, it makes much better sense to use the triangular shipping route - Hong Kong - Manila, Sandakan - Kota Kinabalu - Hong Kong (which crosses interisland, regional, and extra-regional
shipping routes) than to undertake a series of two-way voyages with distinctly heavy and light legs. The expansion of national fleets without the rationalization of services among nations would be of little use to ASEAN as a group. Yet the concern of individual ASEAN shipowners engaged in the intra-ASEAN trade is the replacement of existing tonnage. There are around 250 ASEAN flag vessels of around 40,000 DWT operating in the regional trade. An estimated 65% of these vessels are less than 2,000 DWT, and nearly all of them are 15-20 years old. It is estimated that Singapore alone has 320 coastal vessels of which 270 regularly ply the intra-ASEAN routes. If the entire fleet were to be replaced, the price tag would amount to something 400 million US dollars, but this figure could be substantially cut by the purchase of secondhand vessels. (9)

4.4 RATIONALIZATION OF INTRA-REGIONAL TRADE

It is difficult to envision either a rationalization of shipping services or any major changes in the maritime relations of the ASEAN states. Thailand, Indonesia, Malaysia, and the Philippines are all net importers of shipping services, and only Singapore a net exporter of shipping services. The majority want the balance redressed. However, should ASEAN collectively desire to submerge individual aspirations for the development of a more efficient service for the group as a whole, several courses of action could be taken: (10)

(i) The conventional procedure is the establishment of bilateral shipping agreements between individual nations. This is already happened with the agreement between Indonesia and Singapore, Indonesia and the
Philippines. Such bilateral agreements could contain provisions on commodities, sailings, and flag composition. Knowing approximately what level of trade is to be expected, shipowners could plan their fleets accordingly. These shipowner-shipowner arrangements could be made under the auspices of FASA. However, these bilateral agreements are not likely to be comprehensive enough and often are designed for the preservation of trade rather for its promotion.

(ii) Nearly all the interisland shipping companies and intra-ASEAN shipping companies ply routes that take their ships outside their national boundaries. For this reason, the problem of rebuilding an interisland fleet or an inter-ASEAN fleet is one and the same. As the various cabotage laws illustrate, Indonesia, Malaysia, the Philippines, and Thailand are not interested in being dominated by Singaporean shipping services. They do not want either a European monopoly for international trade or a Singaporean monopoly for the regional services. ASEAN nations are net importers of Singaporean shipping, aggravated by the 1 - 1.5 million metric tonnes transshipment traffic that passes through the port and by use of Singapore's shipyards. But the problem is to find sufficient items to trade intra-regionally.

(iii) The most straightforward means to rationalization would be the formation of an "ASEAN Shipping Line" designed to serve intra-ASEAN routes or long routes. The political and economic obstacles to the formation of a regional line are formidable, but it has been done before. The Pacific Forum, a regional grouping composed of small Pacific Island nations, Australia, and New Zealand. A regional shipping fund was established and the
three new Ro/Ro vessels that went into service in 1979 were part of an aid scheme and were registered in Tonga, Samoa, and New Zealand. The company lost US$ 9 million in its first two years of operation. The problem was severe. The dilemma of trying to serve two masters — profits and politics — is threatening to sink the world's first regional shipping line in a sea of debt. (11)

In the case of ASEAN, the problems would be much the same. The routes are difficult and politics would undoubtedly play a major role, but the problems are not insurmountable. If each ASEAN country registered four vessels into an ASEAN company that operated on a profit-sharing basis, this would provide a solid foundation for building regional shipping and ultimately trade. The advantage that these vessels would have over other lines would be their efficiency based on routes. Shipping services in a limited regional setting constitute a "commons" of sorts, because all the group shares in the use of the vessels to promote regional trade and development. Conceptually, like a commons, it should be managed by a corporation in which the owners (ASEAN states) have a clearly defined share, for instance, equity capital. The benefit derived from international shipping, such as improved balance of payments, might be strengthened with improved services at the regional level.

4.5 SHIP FINANCE.

For regional or individual fleet expansion, finance is a problem. Traditionally, the main sources of ship finance are the shipowners' own funds, national shipping development funds, export credits, commercial lenders, bilateral assistance, grants, donations, and internation-
nal lending institutions. Financing small shipowners operating on the intra-ASEAN routes is difficult for most commercial lenders for a variety of reasons. Generally, the ASEAN shipowners are small, privately owned (frequently family) operations with little collateral than the ship itself. Often the cash flow situation for such operation is precarious, because the companies are greatly dependent on the success of their particular trade routes. They can be easily disrupted by protective legislation or bad harvests. The actual cost of new small vessel (general cargo) is modest in comparison with the cost of tankers or LNG Carriers, but the cost in dollars per deadweight ton is very high, often exceeding 1,000 US Dollars for small general cargo vessels. This places an inordinately high risk value on small vessels for the commercial lender looks at the exposure risk of a country (country risk) and the fiscal responsibility that the country has shown. ASEAN generally has done quite well, but bankers are still cautious about lending to Indonesia and the Philippines, both of which need funds for shipping. (12) Institutional lenders like the World Bank (WB) and the Asian Development Bank (ADB) respond to government programs rather than to individual shipowners. Since this has the tendency to promote "national carriers", these lenders appear to be more interested in nation-building. The World Bank in 1974 loaned the Philippine Government 20 million US Dollars for the development of its inter-island fleet and facilities, and Indonesia received a number of loans in the early 1970s designed to build up its inter-island fleet. (13)
4.6 ASEAN Present Situation. The foreign trade indicators of the ASEAN countries in 1985 are shown below:

<table>
<thead>
<tr>
<th>Country</th>
<th>Imports (USD Mio)</th>
<th>Exports (USD Mio)</th>
<th>Total (USD Mio)</th>
<th>Foreign Trade as % GNP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia</td>
<td>10,259</td>
<td>18,590</td>
<td>28,849</td>
<td>45%</td>
</tr>
<tr>
<td>Malaysia</td>
<td>13,987</td>
<td>13,917</td>
<td>27,904</td>
<td>87%</td>
</tr>
<tr>
<td>Phils.</td>
<td>5,261</td>
<td>4,544</td>
<td>9,805</td>
<td>35%</td>
</tr>
<tr>
<td>Singapore</td>
<td>26,285</td>
<td>22,817</td>
<td>49,102</td>
<td>34%</td>
</tr>
<tr>
<td>Thailand</td>
<td>9,244</td>
<td>7,122</td>
<td>16,366</td>
<td>46%</td>
</tr>
</tbody>
</table>


The liner trade of the ASEAN countries are discussed in the following section, on a country to country basis, starting with Indonesia (I), Malaysia (M), Philippines (P), Singapore (S), and Thailand (T).

4.6.1 INDONESIA. The Indonesian economy is overwhelmingly geared to the production and export of crude oil, petroleum products and natural gas, the mineral fuels sector of the foreign trade accounting for some 180% of the total export traffic. Indonesian import is very much dominated by capital equipment in the basic manufactures and machines/transport equipment categories—iron and steel, metal manufactures/structures and parts, construction/mining machinery switch-gear and other electrical distribution machinery, lorries/trucks, etc. Containerized
imports still very much predominate with 80% of the overall traffic, although containerized export cargoes which presently consist mainly of agricultural products such as tea, coffee and even rubber have progressively increased in the recent past and are likely to continue to expand in the near future as oil-based economic growth increases the quantity of industrial products manufactured and exported. Table I-1 shows Indonesia's international trade from 1983 to 1985 (1st Sem.) and Table I-2 shows the type of service:

(Table I-1)

<table>
<thead>
<tr>
<th></th>
<th>1983</th>
<th>1984</th>
<th>1985 (1st Sem.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Export)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dry cargo</td>
<td>13,829</td>
<td>18,139</td>
<td>7,245</td>
</tr>
<tr>
<td>Liquid cargo</td>
<td>1,588</td>
<td>6,533</td>
<td>2,629</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Import)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dry cargo</td>
<td>84,906</td>
<td>114,091</td>
<td>36,978</td>
</tr>
<tr>
<td>Liquid cargo</td>
<td>66,011</td>
<td>95,677</td>
<td>28,960</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>98,740</td>
<td>132,230</td>
<td>44,223</td>
</tr>
</tbody>
</table>


A breakdown of the above according to the type of service is shown in Table I-2:
FLEET COMPOSITION. A breakdown of fleet composition of Indonesia as at end of 1983 is shown in Table I-3:

<table>
<thead>
<tr>
<th>Type</th>
<th>Number</th>
<th>G/T</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>General cargo</td>
<td>678</td>
<td>1,044,093</td>
<td>53.55</td>
</tr>
<tr>
<td>Tankers</td>
<td>144</td>
<td>371</td>
<td>19.07</td>
</tr>
<tr>
<td>Bulk carriers</td>
<td>11</td>
<td>205,768</td>
<td>10.55</td>
</tr>
<tr>
<td>Containerships</td>
<td>4</td>
<td>58,937</td>
<td>3.02</td>
</tr>
<tr>
<td>Passenger/cargo</td>
<td>16</td>
<td>46,477</td>
<td>2.38</td>
</tr>
</tbody>
</table>


Indonesia's largest port is Tanjung Priok. At present, about 90% of all Indonesian container cargo is handled at Tanjung Priok, for transshipment to other destination points. Djakarta Lloyd, the national line, now owns and operates three-fully cellular 1,152 TEU vessels as well as a number of newly delivered semi-containerships in the 200/550 TEU size ranges on the
trades to Western Europe, the USA, Japan and the Middle East. Other Indonesian lines, including Admiral, Gesuri, Samudera, Trikora, etc., have also deployed a similar mix of fully and semi-cellular vessels and, in the case of Gesuri Lloyd, Ro-Ro units, on much the same pattern of routes. Indonesian container shipping activity is likely to continue to expand markedly in the medium term. As can be seen in Table 1-3 there are currently over half a million deadweight tonnes of general cargo shipping without TEU capacity within the existing fleets, much of which is deployed on domestic inter-island trade. (14) Table 1-4 shows the Tanjung Priok Containerized Throughput Volumes, 1982/1986:

( Table 1-4 ) (Containerized Cargo Throughput at Tanjung Priok)

<table>
<thead>
<tr>
<th>Year</th>
<th>1982</th>
<th>1983</th>
<th>1984</th>
<th>1985 (Jan.-Jul)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulk cargo</td>
<td>1,441</td>
<td>1,765</td>
<td>1,358</td>
<td>1,695</td>
</tr>
<tr>
<td>Bags cargo</td>
<td>1,600</td>
<td>2,032</td>
<td>1,930</td>
<td>2,400</td>
</tr>
<tr>
<td>Containerized cargo</td>
<td>1,246</td>
<td>1,298</td>
<td>1,585</td>
<td>1,792</td>
</tr>
<tr>
<td>General cargo</td>
<td>4,360</td>
<td>3,643</td>
<td>3,489</td>
<td>3,185</td>
</tr>
<tr>
<td>Liquid cargo</td>
<td>505</td>
<td>562</td>
<td>783</td>
<td>638</td>
</tr>
</tbody>
</table>


In addition to Tanjung Priok, Surabaya and Belawan also handle limited volumes of container traffic at pre-
sent, general cargo berths being utilized by self-sustaining vessels in the main. All other ports are being prepared for significant container traffic. (15)

FLEET SHARE IN THE LINER TRADE.

Indonesia has four national flag carriers, one of which, Djakarta Lloyd, is a state-owned. The company operates a fleet of more than 20 vessels totalling 180,360 DWT to Europe, North America, the Far East, and Australia. In 1977, the national fleet share of the Indonesia-Europe traffic was 50 percent; in the Hong Kong-Indonesia service it was 55.3 percent. In the Indonesia-Singapore traffic, it was 55:45 cargo split, and the figure is reversed on the opposite direction according to the agreement between Singapore and Indonesia. In the Indonesian-Philippine trade, on a 50-50 basis between the Port of Davao (Philippines) and Manado (Indonesia).

In 1982, Presidential Decree 18 reserved for Indonesian-flag vessels the carriage of all cargoes, imports and exports, financed by the Indonesian government or by state-owned or state-financed companies. The objective of this action seemed to be to reserve all such cargo so that only the remaining cargo would be subject to 40-40-20 allocation. As a result, it appeared that the Indonesian shipping lines could increase their carriage to over 50 percent of the total trade of Indonesia. The impact of the decree on foreign shipping in Indonesia could be enormous because the government has a hand in a large number of the imports and exports. It is estimated that it will directly affect 40% of the imports and 10% of the exports. These figures do not include shipments of crude oil and petroleum products, which are largely shipped on foreign-flag vessels. (16)
4.6.2 MALAYSIA. As net oil exporter Malaysia is a fairly well developed middle income country. Export of raw materials - crude oil, rubber, timber, tin ores, and concentrates, vegetable oils, etc., still predominate, but exports of processed basic manufactures and industrial products are increasing steadily, many of which are suitable for container transportation. Imports of capital goods (particularly machines/transport equipment) and basic manufactures (iron and steel, etc.) predominate, foreign trade representing no less than 87% of Malaysian GNP in total. Trade in 1981 with Japan was 21.7%; EEC 12.3%; and the USA 13.0%. (17)

A 1980 study from the Prime Minister’s Department underlined a growing concern for the diversion of Malaysian cargo through Singapore: in 1978 an estimated 25 percent of Malaysian exports by value went through Singapore. This included approximately 30 percent of Malaysian rubber, 50 percent of its timber, almost 100 percent of canned pineapples and 18 percent of its palm oil. To recapture much of this traffic the report suggested a wide range of development options for Malaysian ports including new container berths at Penang, the construction of a new port at Pulau Lumut near Port Kelang, the further development of Johore, etc. Whether or not significant diversion of trade can result without a wide ranging and restrictive regulatory framework is of course an open question. (18)
Table M-1: Breakdown of Malaysian Foreign Seaborne Trade as a throughput in two Major Ports Kelang/Penang.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Vol. of cargo (1,000 F/T)</th>
<th>Total Vol. of liner (1,000 F/T)</th>
<th>Total Vol. Containerized cargo (1,000 F/T)</th>
<th>Containerized Ratio %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>9,888/6,225</td>
<td>7,375/3,175</td>
<td>2,375/7,790</td>
<td>32.3/24.9</td>
</tr>
<tr>
<td>1982</td>
<td>10,544/6,225</td>
<td>7,740/3,494</td>
<td>2,523/1,024</td>
<td>32.6/29.3</td>
</tr>
<tr>
<td>1983</td>
<td>11,534/7,643</td>
<td>8,541/3,895</td>
<td>3,046/1,392</td>
<td>35.7/35.7</td>
</tr>
<tr>
<td>1984</td>
<td>12,357/7,961</td>
<td>8,666/4,371</td>
<td>3,836/1,604</td>
<td>44.3/36.7</td>
</tr>
<tr>
<td>1985</td>
<td>12,462/7,446</td>
<td>8,360/3,985</td>
<td>4,165/1,704</td>
<td>49.8/42.8</td>
</tr>
</tbody>
</table>


MALAYSIAN LINER FLEET. The national flag carrier, Malaysian International Shipping Corporation (MISC), was founded in 1968. MISC is 51 percent government-owned, with another 10 percent held by various government agencies; the remaining 39 percent is privately held. The principal aim of MISC was to provide enough national tonnage to carry its foreign trade and thus save foreign exchange and to provide shipping service that could show
an operational profit. The ultimate aim of the company and the Malaysian shipping was to provide enough tonnage to secure 40 percent of its trade, in keeping with the 40-40-20 cargo sharing provisions in the UNCTAD Liner Code. (19) The company has been very successful in building up its fleet. After only six years of operation the fleet had fifteen vessels of 420,000 DWT, and by the end of 1982 it had expanded to forty-four vessels of 1.4 million DWT. Under the Fourth Malaysian Plan, the fleet is scheduled to expand to ninety vessels of 2.5 million DWT by 1985. With the launching of the new state shipping company, Perbadanan National Shipping Line (PNSL), this ambitious target might be met. (20) As of the end of 1985, Malaysia's containership fleet operating on international routes totalled five vessels (7,306 TEU), an increase over the year before in terms of TEU of roughly 8.5% (574 TEUs). A breakdown by route is 76% on Far East/Europe route and 24% on Australia/New Zealand route. The number of containerships operating in Far East trade is six (3,058 TEUs), accounting for 29.5% of Malaysia's total capacity. All of the above containerships are owned by the state shipping company, Malaysian International Shipping Corporation, BHD.
4.6.3 THE PHILIPPINES. The item-wise breakdown of the principal exports and imports of the Philippines in 1984 is shown in Table P-1 (US Mil. Dollars).

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Value</th>
<th>%</th>
<th>Commodity</th>
<th>Value</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coconut Products</td>
<td>727</td>
<td>13.5</td>
<td>Elec. Mach.</td>
<td>427</td>
<td>7.0</td>
</tr>
<tr>
<td>Sugar &amp; its Prod.</td>
<td>279</td>
<td>5.2</td>
<td>Non-Elec. M.</td>
<td>420</td>
<td>6.9</td>
</tr>
<tr>
<td>Forest Products</td>
<td>271</td>
<td>5.0</td>
<td>Transport M.</td>
<td>98</td>
<td>1.6</td>
</tr>
<tr>
<td>Metal Ore</td>
<td>266</td>
<td>4.9</td>
<td>Wheat</td>
<td>131</td>
<td>2.2</td>
</tr>
<tr>
<td>Fruits &amp; Vegetables</td>
<td>133</td>
<td>2.5</td>
<td>Chemicals</td>
<td>617</td>
<td>10.2</td>
</tr>
<tr>
<td>IC &amp; Electric Mach.</td>
<td>329</td>
<td>6.1</td>
<td>Textile</td>
<td>158</td>
<td>2.6</td>
</tr>
<tr>
<td>Textile</td>
<td>603</td>
<td>11.2</td>
<td>Iron/steel</td>
<td>186</td>
<td>3.1</td>
</tr>
<tr>
<td>Cooper Ingot</td>
<td>111</td>
<td>2.1</td>
<td>Crude Oil</td>
<td>1,647</td>
<td>27.2</td>
</tr>
<tr>
<td>Other non-industrial</td>
<td>438</td>
<td>8.1</td>
<td>Consumption</td>
<td>367</td>
<td>6.0</td>
</tr>
<tr>
<td>goods</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sintering Iron Ore</td>
<td>105</td>
<td>1.9</td>
<td>Others</td>
<td>2,017</td>
<td>33.2</td>
</tr>
<tr>
<td>Others</td>
<td>2,024</td>
<td>37.5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>5,391</td>
<td>100.0</td>
<td>Total</td>
<td>6,070</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Source: Central Bank.

The major trading partners of the Philippines are shown in Table P-2: Value of Trade by Nation (1984)

<table>
<thead>
<tr>
<th>Nation</th>
<th>USS (mil.)</th>
<th>%</th>
<th>Nation</th>
<th>USS (mil.)</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.A.</td>
<td>2,003</td>
<td>37.2</td>
<td>U.S.A.</td>
<td>1,629</td>
<td>26.5</td>
</tr>
<tr>
<td>Japan</td>
<td>1,043</td>
<td>19.3</td>
<td>Mid-East</td>
<td>887</td>
<td>14.6</td>
</tr>
<tr>
<td>E E C</td>
<td>680</td>
<td>9.6</td>
<td>Japan</td>
<td>815</td>
<td>13.4</td>
</tr>
<tr>
<td>Asean</td>
<td>516</td>
<td>9.6</td>
<td>ASEAN</td>
<td>728</td>
<td>12.0</td>
</tr>
</tbody>
</table>

Source: Central Bank.
The Philippine flag vessels' participation in the country's foreign seaborne trade is shown in table P-3 below.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Exports</td>
<td>20,568</td>
<td>22,637</td>
<td>23,506</td>
<td>20,586</td>
<td>20,540</td>
<td>20,069</td>
</tr>
<tr>
<td>Imports</td>
<td>14,078</td>
<td>14,598</td>
<td>15,378</td>
<td>15,715</td>
<td>14,184</td>
<td>12,920</td>
</tr>
<tr>
<td>Total</td>
<td>34,646</td>
<td>37,235</td>
<td>38,884</td>
<td>35,301</td>
<td>34,724</td>
<td>32,989</td>
</tr>
</tbody>
</table>

Philippine flag share

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>19.4</td>
<td>20.6</td>
<td>24.4</td>
<td>21.3</td>
<td>25.9</td>
<td>30.3</td>
</tr>
</tbody>
</table>


Philippine-registered overseas fleet are predominantly employed in tramping over the world. Data for the period 1975 to 1980 show that vessels engaged in tramping in 1975 comprised 55.0% of the entire fleet, compared with 27.0% in liner operations and 18.0% in semi-liner trade. These proportions had not changed significantly by 1985.
## Containership fleet as of January 1987.

<table>
<thead>
<tr>
<th>Name</th>
<th>Capacity (TEU)</th>
<th>Age</th>
<th>Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Galaxy</td>
<td>224</td>
<td>2</td>
<td>Phil.-Japan</td>
</tr>
<tr>
<td>Comet</td>
<td>138</td>
<td>5</td>
<td>Phil.-Japan</td>
</tr>
<tr>
<td>Challenger</td>
<td>224</td>
<td>1</td>
<td>Phil.-Japan</td>
</tr>
<tr>
<td>Jupiter</td>
<td>214</td>
<td>10</td>
<td>Phil.-Japan</td>
</tr>
<tr>
<td>Ragna</td>
<td>672</td>
<td>2</td>
<td>Worldwide</td>
</tr>
<tr>
<td>National Dignity</td>
<td>650</td>
<td>6</td>
<td>Phil.-US West Coast</td>
</tr>
<tr>
<td>National Honor</td>
<td>650</td>
<td>6</td>
<td>Phil.-US West Coast</td>
</tr>
<tr>
<td>National Pride</td>
<td>650</td>
<td>6</td>
<td>Phil.-US West Coast</td>
</tr>
<tr>
<td>National Leader</td>
<td>650</td>
<td>6</td>
<td>Chartered Out</td>
</tr>
<tr>
<td>Nat.Integrity</td>
<td>650</td>
<td>6</td>
<td>Chartered Out</td>
</tr>
<tr>
<td>National Trust</td>
<td>650</td>
<td>6</td>
<td>Chartered Out</td>
</tr>
</tbody>
</table>

**Total**  5,372


The Philippine container fleet accounts for 3.1% of the ASEAN containership fleet in terms of gross tonnage, and 10.4% in terms of number of ships. The "National" vessels is owned by the National Shipping Corporation of the Philippines (NSCP) which is designated by the Federal Maritime Commission as government controlled ocean common carrier under the U.S. Shipping Act, 1984. The "National" ships are operated independently in the Philippine-United States (west coast only) liner trade on a forthnightly interval. For US-bound voyage, 20 percent of the "National" vessels TEU capacity is loaded in Manila, consisting mainly of foodstuffs, furnishings, and leather goods. A further 40% is loaded in Taiwan's strong export market,
and the remainder in Hong Kong and Busan (Korea). NSCP carriage share in Philippine-US liner trade was estimated at 15% of value and volume in West coast only. No service is provided by water to the US East coast by NSCP. The two other liner operators, namely: Eastern Shipping Lines and Cresta-Monte Shipping corporation are privately-owned. Both provide one to two monthly semi-container services on the RP-Japan route. Until its demise in 1981 Philippine container shipping was dominated by the Philippine International Shipping Corp. (PISC). The five container/bulk carriers operated by PISC on the Europe/Far East trade, with a total 290,000 DWT, provided a container capacity of some 5,000 TEUs, roughly 45% of the country’s container carrying capacity at the time. The traditional Filipino deep sea liner operator, Maritime Company of the Philippines (MCP), ceased operation in the middle of 1984. Until its bankruptcy in 1984, MCP operated 10 break-bulk conventional 12,000 DWT cargo vessels on the Philippine-Europe route and Philippine-U.S. Liner route. With the demise of MCP, deep sea container operations are dominated by the National Galleon Shipping Corporation (now National Shipping Corporation of the Philippines).(21)
4.6.4 SINGAPORE

Singapore can be considered a developed upper middle income country. Singapore, together with the Philippines, is the only ASEAN country handling significant volumes of container traffic in the early 1970s. Since this time, Singapore has experienced phenomenal traffic growth of containerized transshipment traffic to neighboring countries. While undoubtedly benefiting from a particularly advantageous location and an enhanced degree of political stability, the progressive expansion of containerization to other developing ASEAN countries will in all probability see Singapore accounting for steady declining proportion of ASEAN container trade in the future.

(21) Singapore Foreign Trade Indicators (1981) is shown in Table S-1, below:

<table>
<thead>
<tr>
<th></th>
<th>Imports</th>
<th>Exports</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign Trade as % of GNP</td>
<td></td>
<td></td>
<td>34.0</td>
</tr>
<tr>
<td>Foreign Trade with:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>USA</td>
<td>12.6</td>
<td>13.2</td>
<td>12.9</td>
</tr>
<tr>
<td>EEC</td>
<td>9.8</td>
<td>10.5</td>
<td>10.1</td>
</tr>
<tr>
<td>Japan</td>
<td>18.8</td>
<td>10.1</td>
<td>15.1</td>
</tr>
<tr>
<td>Foreign Trade in Food</td>
<td>6.1</td>
<td>5.2</td>
<td>5.7</td>
</tr>
<tr>
<td>Industrial Supplies</td>
<td>4.8</td>
<td>8.3</td>
<td>6.3</td>
</tr>
<tr>
<td>Mineral Fuels</td>
<td>33.7</td>
<td>27.3</td>
<td>30.9</td>
</tr>
<tr>
<td>Animal/Vegetable Oils</td>
<td>1.2</td>
<td>1.9</td>
<td>1.5</td>
</tr>
<tr>
<td>Chemicals</td>
<td>5.1</td>
<td>8.2</td>
<td>6.4</td>
</tr>
<tr>
<td>Basic Manufactures</td>
<td>13.8</td>
<td>8.2</td>
<td>11.4</td>
</tr>
<tr>
<td>Machines/Transport Equipt.</td>
<td>27.7</td>
<td>26.1</td>
<td>27.0</td>
</tr>
<tr>
<td>Miscellaneous Manufactures</td>
<td>6.5</td>
<td>7.1</td>
<td>6.7</td>
</tr>
</tbody>
</table>

SINGAPORE LINER CARGO: Singapore liner cargo is shown in Table S-2 below:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>TOTAL VOLUME OF LINER CARGO (F/T)</th>
<th>TOTAL VOLUME OF CONTAINERIZED (F/T)</th>
<th>CONTAINERIZED Ratio %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>31,357,001</td>
<td>14,673,144</td>
<td>46.8%</td>
</tr>
<tr>
<td>1982</td>
<td>34,049,397</td>
<td>15,673,464</td>
<td>46.0</td>
</tr>
<tr>
<td>1983</td>
<td>37,471,168</td>
<td>18,766,676</td>
<td>50.1</td>
</tr>
<tr>
<td>1984</td>
<td>40,732,470</td>
<td>22,100,694</td>
<td>54.3</td>
</tr>
<tr>
<td>1985</td>
<td>36,944,064</td>
<td>23,861,823</td>
<td>64.6</td>
</tr>
</tbody>
</table>

Note: More than One Third of the Total Cargo are Transshipment cargo.


SINGAPORE MERCHANT FLEET. Singaporean ships serving international routes as of the end of 1985 numbered 13 (17,345 TEUs), increasing by 20.6% (2,968 TEUs) over the previous year. The country’s share of the world’s full-containership fleet increased to 1.6% from the previous year’s 1.4%. Neptune Orient Lines (NOL), Singapore national carrier, has 11 containerships or 15,803 TEUs, accounting for 91% of Singapore’s total capacity on international routes. In the Far East feeder service, Singapore has eight containerships (3,901 TEUs), accounting for 18.4% of Singapore’s total capacity. A breakdown of route of the disposition of Singaporean containership in international trade is 60% on the North American (East and West Coasts) route, 14.5% on the Australia/New Zealand route, 13.5% on the Indian route and 12% of the European route. (22)
The Thai economy has been adversely affected by the introduction of ITC tin export quota in April 1982, offshore metal and concentrate exports totalling some 45,000 tonnes in 1983 as compared with 75,000 tonnes in 1981. Weaker oil markets, growing domestic energy production (natural gas, lignite, etc) and relatively buoyant demand in the agricultural sector, where rice and maize and vegetable/fruit exports are of particular significance, have removed some of the economic pressures, private manufacturing investment increasing markedly and inflation and domestic rates declining sharply over 1982/83. Having exceeded the two million tonne level for the first time in 1981, box traffic increased to some 2.3 mt and 2.8 mt in 1983; 1984 expectations suggest some 340,000 TEU with an aggregate tonnage of just 3mt will be handled. (23) Thai container trade volumes, while increasing rapidly, are as yet still mainly comprised of transshipped feeder service traffic, ship size limitations at the premier port, Bangkok, continuing to disbar the accommodation of deep sea vessels much above 15,000 DWT. Liner cargoes in export trades amounted to 2,337,000 mt in 1985, accounting for almost all of the export cargoes. In imports, liner cargoes totalled 4,023,000 mt in 1985, or approximately 62% of the total import cargoes of 6,497,000 mt. Containerized shipments in export trades amounted to 2,332,000 mt (201,000 TEUs), accounting for almost all of the export cargoes, while those in import trades totalled 1,549,000 mt (119,000 TEUs), or nearly 23.8% of the total import cargoes. The containerized ratio of containerized cargoes to total liner cargoes was 99.8% for export trades and 38.5% for import trades. (24)

THAILAND MERCHANT FLEET. State controlled shipping enti-
ties - including Jutha, Thai Maritime, Thai International, United Thai, etc. - account for the bulk of the containerized fleet, much of which presently comprises small semi-containerships in the 50/350 TEU ranges. The greater proportion of these vessels is engaged on serving various short sea intra-South and East Asian feeder routes - particularly those to Japan and Hong Kong. Unithai, the only deep sea operator, currently operates a Far East/Europe service in conjunction with MISC, the Malaysian national carrier, primarily utilizing three small 352 TEU semi-containerships acquired in 1982. A joint-service on the short haul trade to Hong Kong is also operated by the privately owned Thai Overseas Line in conjunction with OOCL.

This Section of this Chapter deals with the present situation of the ASEAN as regards shipping conferences.

4.8 ASEAN AND CONFERENCES.

Historically, regionalism has been an expression of unity against a common foe. In ASEAN shipping, the common enemy has been the Far East Freight Conference (FEFC) and other Western shipping institutions. The FEFC, probably the strongest conference on any of the deep sea trades, is a classic example of closed conference. The ASEAN agreed that FEFC had become too powerful an economic force in ASEAN affairs. In the US, the system has been declared in violation of anti-trust legislation, which requires that a conference must be open to all shipping lines that wish to join. The main area of disagreement between the conference and ASEAN shippers in the 1970s was over a series of rate hikes. From 1971 to 1977, FEFC hikes and surcharges increased the freight rate by 93%. The
shippers felt that those increases were not at all operational and that they were indirectly financing new vessel acquisition programs. During 1974 the ASEAN Shippers Councils formed the Federation of ASEAN Shippers Council (FASC) to bring unity into the negotiations between the shippers’ councils and the FEFC. The power of the FEFC lies in its number of sailings and the shippers’ rebate or loyalty clause. In ASEAN, the FEFC inducted Neptune Orient Lines (NOL), Malaysian International Shipping Corporation (MISC), and United Thai Lines (UNITHAL), and Djakarta Lloyd (as associate member) – the national flag carriers for Singapore, Malaysia, Thailand, and Indonesia. Further, it has added OOCL, part of C.Y. Tung Group in Hong Kong, Cho Yang, Korean Shipping, and Taiwan’s powerful Evergreen. This group represents both of the stronger political and economic liner shipping interests in South East Asia. (25) Maersk Line left the FEFC for a year, and MISC fought long and hard to increase its sailings. MISC had reportedly resigned from FEFC effective July 1987 due to its disagreements with FEFC. (26) Evergreen has also resigned and is the largest independent on the Europe-Far East route. The large volume Europe/Far East is essentially dominated by the FEFC consortium – TRIO, ACE, and ScanDutch, whose main ports of call are in Japan. There is a considerable hostility between the independent and FEFC as a result of FAK rates reportedly 10/40% lower than the conference. Foreign flag operators still account for the most of the fully-cellular services to Thailand, Philippines and Malaysia, but domestic lines, including Galleon Shipping, Philippines carrier (now National Shipping Corporation of the Philippines), Thai Overseas Line and MISC are making steady progress. MISC has only recently suspended operations on a direct Far East-US West Coast service follo-
4.9 SUMMARY AND CONCLUSION. (a) Summary: ASEAN countries are still suffering from continuing substantial deficits in their invisible trade accounts. These situations had induced ASEAN governments to adopt cargo reservations aimed at protecting and improving the share of domestic shipping lines. Some of ASEAN countries had the policy that export cargoes have to be shipped directly from domestic ports to importing countries without regional transshipment. One can see conflicts arising out of such situation in that national interests and policies often do not coincide with international trends. Also, competition among shipping lines from different countries is commonly heavily distorted through access to low-interest capital and substantial subsidy schemes available to carriers from some countries, while not available or to a much lesser extent to carriers from other countries. Furthermore, there are frequently substantial differences in the degree of maritime industry regulation and in development strategies and policies among trading nations. All these circumstances make it extremely difficult to manage trade efficiently while trying to preserve national aims. Potential conflicts between national objectives and international practices appear inevitable. Yet, in order to be able to market export commodities competitively and to reduce the cost of required imports, there is growing evidence that the regional economies would act in their best interest if they adjust to international practices and trends. Generally, there are indications that this process is taking place to some degree. Several governments have already adopted the view that the international environment determines the most efficient trade and shipping arrangements which will be ulti-
mately beneficial to all trading partners. However, this view necessarily implies that outside forces exert influence on decisions regarding infrastructure development, trade management and shipping arrangements. On the other hand, awareness is growing that maritime sector development policies in all regional economies need to be integrated and coordinated at national, subregional and regional basis. (28)

b) Conclusion: In the light of the trends and tendencies in international trade and shipping, the regional governments of the ASEAN are faced with issues like: (1) market responsive development of port infrastructure; (2) need to gear up for effectively adjusting national transport networks to evolving shipping and cargo handling technology changes; (3) need to restructure cargo management arrangements; (4) need to reorganize domestic, i.e. interisland shipping; (5) role and degree of participation of national flag carriers in international trade; and (6) implied necessity to reformulate national transport policies.
CHAPTER 5

RECOMMENDED STRATEGY.

5. 1 PRELIMINARY STATEMENT

At the introduction of this Study it was brought out that the implementation of the Code of Conduct has been lagging in both the developed-economy countries and the developing states. Then it was stressed in Chapter 3 that implementation of the Code of Conduct presupposes a series of juridical acts, i.e., the State must first be a Contracting State to the Convention, either by definitive signature, approval, acceptance, ratification, or accession; secondly, that as Contracting Party the State shall take such legislative or other measures as may be necessary to implement the Code; and thirdly, the commercial parties shall implement the Code pursuant to the general framework of the national legislation and the Code. The drafting and enactment of suitable national legislation is, therefore, an indispensable part of any programme for implementing international conventions. The crucial importance of appropriate national legislation at the national level has been fully recognized by Article 47 of the Code. It was mentioned also in Chapter 3 that in the ASEAN, only Indonesia, Malaysia and the Philippines had ratified the Code. Brunei, Singapore and Thailand have not. The first three ASEAN countries have not yet adopted a national legislation to implement the Code. The problem of dealing with the foreign trading States which are not State Parties to the Code has been pointed out. Nevertheless, despite this situation whereby not all
ASEAN countries are Contracting Parties to the Code, and the fact that their foreign trading partners are non-Contracting countries, this does not indicate that the Code is a useless instrument, because consultation will continue between the conferences and the shippers, shippers’ organizations, and governments as provided for by the Code. It is only from the national implementation and practices that the nature and shape of the Code’s regimes could be developed and crystallized.

In Chapter 2, it was indicated that liner shipping environment is continually altered, that environment in turn alters the potentials, realities and challenges presented to shipping operators. The probability of a shipping line surviving can be enormously enhanced if the enterprise is transformed to reflect the constantly changing market, service, technological and legal forces, and if distribution chain activities are carried out in the most cost-effective manner. In an industry that has no exclusivity, in the sense that entry and exit barriers are existing, a positive disposition to changes in a permanently evolving, competitive environment is the only lasting advantage. This Study seeks to assist such decision-making by means of an evaluation of the forces which are changing the industry, and to provide the ASEAN countries with information which they might utilize to commence preparation for the deep-sea liner shipping policy in the future.

5.2 COMMON LINER POLICY FOR THE ASEAN COUNTRIES.

Survival of liner operators requires knowledge, skills and understanding beyond the technologies of vessel operations, ports infrastructure development, and
trained manpower. The major challenge facing the ASEAN countries in this time of structural change is related to the establishment of a common policy which they might coordinate their independent deep-sea liner shipping activities. The three principal elements of a liner shipping policy are commercial, economic security, and national defense. Almost all ASEAN countries have similar requirements in each of these areas, and this similarity permits them to consider the elaboration of a common liner shipping policy.

Joint actions of shipping lines of this region, whether to establish multinational companies, consortia, rationalize operations or execute slot-chartering arrangements, should allow them to achieve an appropriate scale of operations, offer modern technologies, maintained frequencies required by cargo owners, pool technical and operational experience and have a wider financial base, all of which would contribute directly to more cost-effective services. A study carried out by Hapag-Lloyd suggests that vessel capacity utilization on the North Atlantic could rise from 68 to 85 per cent if services were coordinated and that it would lead to a cost savings of over 20 per cent. Hapag-Lloyd began implementing the results of this study when it and Atlantic Container Line rationalized their services on two routes between Europe and North America. This rationalization eliminated four vessels, permits the sharing of equipment, and is hoped to save millions of US dollars for both lines. Similarly, the cooperation between Barber Blue Sea and ScanCarriers has resulted in an overall improvement of US 30 million dollars in the two companies' operating results. Thus, shipping lines can enjoy economies of scale not only through the acquisition of large-scale vessels, which was
presented at part 2.1.5 of Chapter 2, but also through economies of cooperation. (1)

1. Operational aspect of a common liner policy. At present almost all ASEAN countries seek to satisfy their liner transport needs independently. While there are certain differences in national economic goals which are utilized to justify such independent operations, the long-term shipping crisis has made it necessary to join with other lines in order to rationalize service. As pointed out in Chapter 3, the enormous sums required for modern transport systems, like container and ro/ro services, normally exceed the financial capacity of single company and lead of necessity to stronger cooperation among shipping lines of different nationalities. With such international cooperation, most of the conference container and ro/ro services that are now operating worldwide, would have not materialized, and ocean transport costs would have gone up much more steeply during the last 10 years.

With the establishment of RTW services by Evergreen and USL (now defunct) and other liner operators such as ABC Container, Barber Blue Sea, and recently, Senator Line of FRG using containerships of smaller TEU capacity, i.e., 1,200 TEU, many European and US ship operators as well as those of this region believe that they face the very real risk of forced rationalizations or merely providing feeder services for those operators. Until its recent bankruptcy USL utilized 12 very large liner vessels of 4,458 TEUs in its eastbound service, while EL employs 20 vessels of 2,728 TEUs and two of 2,940 TEUs in its east and westbound services. Both of these lines offer traditional end-to-end ocean-feeder and inland
transport services. While the risk appears lessened with the bankruptcy of USL, such is not the case. In effect, that risk should be considered in the broader context of the forces which are restructuring the liner industry. Whether RTWS or traditional liner services, the real risk facing liner operators is related to the establishment of intermodal distribution systems in which they do not participate. Such distribution systems view oceanliner transport as merely one activity in the movement of goods from origin to destination. Shipping lines which are part of an intermodal distribution system should have greater access to cargoes, probably leaving for non-system operators only cargoes in low-volume and unbalanced trade.

In 1985 approximately 60 per cent of the exports and imports by value of the ASEAN were destined to and originated from North America, Europe, and Japan. This concentration of trade should provide an appropriate basis for the establishment of distribution systems in those routes. For example, trans-Atlantic and trans-Pacific liner operators from other regions which seek to enhance load factors could make arrangements with cargo owners, land carriers, shipping companies which provide services between ports in North America and those of ASEAN region, and others to establish origin to destination distribution systems. In November 1986 the major intermodal operator APL began offering such a service from Australia to the Indian Subcontinent and Mid-East Gulf. In this operation cargoes are to be carried between Australia and Singapore by the ANRO consortium composed of Australian National Line (ANL), Indonesian Djakarta Lloyd, Singapore's Neptune Orient Lines (NOL), Nedlloyd and Australia Straits Container Line, for transshipment to APL vessels. As ocean-liner transport of the future
will be carried out in the context of distribution systems, liner operators of the ASEAN region should carefully evaluate common policies which might lead to the establishment of their own systems. (2)

In the light of the need for liner operators to rationalize their operations with other similarly situated companies, ASEAN countries might wish to consider the elaboration of a common liner policy which could include coordination of the independent operating patterns of their fleets.

2. Institutional aspects of a common liner policy.

The structural changes occurring in ocean liner transport have created a pressing need to evaluate the role accorded cargo reservation regimes by ASEAN countries. In addition to the institutional aspects of a common-liner policy presented herein above, ASEAN countries might also consider what modifications to reservation regimes would reflect the ocean-liner transport environment of the future and, at the same time, avoid counter-measures permitted by the common shipping policy of the EEC and the US Shipping Act of 1984.

5.3 COMMON POLICY IN IMPLEMENTING THE CODE.

The Code of Conduct provides a great opportunity for implementing the Code on a regional basis. The EEC transport policy under the "Brussels Package" embodied in EEC Council Regulations on May 15, 1979, amounts to a free shipping zone. This principle of applying the Code of Conduct to a group of countries could also apply as well to the ASEAN because of their geography and cargo mix. It would require a level of unity that has not yet
been achieved in ASEAN, but the trade is in place and the ships would follow the trade. The Code of Conduct, in Article 2, paragraph 8, provides for regional cooperation, viz:

"The national shipping lines of a region, members of a 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:

" Because of their importance, paragraphs 4 to 7 are quoted in full:

" 4. When determining a share of a trade within a pool of individual member lines and/or groups of national shipping lines in accordance with article 2, paragraph 2, the following principles regarding their right to participation in the trade carried by the conference shall be observed, unless otherwise mutually agreed:

(a) The group of national shipping lines of each of two countries the foreign trade between which is carried by the conference shall have equal rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference.

(b) Third-country shipping lines, if any, shall have the right to acquire a significant part, such as 20 per cent, in the freight and volume of traffic generated by
that trade.

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

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

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

An interesting question is whether a country with a right to carriage arising from negotiations under the Code which cannot, or does not wish to, carry, its share can sell, or otherwise dispose of it. There are two views on this question. Some of the developed market-economy countries (3) stated that the country cannot sell its right while other countries stated that they can sell
their rights. Sturmey (4) says that in principle there is no reason why the country cannot sell but in practice it is doubtful. He says that the Code has nothing to say on such a subject and if there is any resort to subterfuge anyway, it probably does not make a lot of difference what the considerations are involved. But if there is to be a reliance on the "unless otherwise mutually agreed" formula of paragraph 4, then the knowledge that there has been some sort of auction may not help towards the attainment of mutual agreement. On the other hand, if a country does sell the right to carry its share, the conference cannot do anything about it. This question is independent of the right of a country to allow a foreign line to establish itself in its territory and to carry its share of the cargo. The Code does not touch on this question. This is covered by the UN Convention on the Conditions for the Registration of Ships, 1986. Finally, there is nothing to prevent a country wishing to benefit from its cargo rights under the Code to concede those rights to a foreign company in any of several ways: (a) for an annual fee (that is, sale or lease); (b) in a package deal involving the use of the national-flag and the rights of carriage in return for other considerations; (c) through a slot-chartering arrangement; or (d) through a joint venture operation. (5)

The Federation of ASEAN Shippers' Councils (FASC) has asserted that the way to take advantage of the Code is through the formation of an ASEAN "Super Line" into which ASEAN cargoes would be pooled. In addition, the FASC can deal effectively and exert greater influence with the conference in Code-related matters.

5.4 SUMMARY OF COOPERATION PRACTICED BY LINER OPERATORS.
Presented below in Table 1 is a summary of cooperation forms practiced by liner operators.

Table 1. Cooperation Forms Practiced by Liner Operators:

<table>
<thead>
<tr>
<th>Cooperation Areas</th>
<th>Cartel</th>
<th>Syndicate</th>
<th>Consortium</th>
<th>Joint Venture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service</td>
<td>Common</td>
<td>Common</td>
<td>Common</td>
<td>Common</td>
</tr>
<tr>
<td>Scheduling Operations of:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vessels</td>
<td>Common</td>
<td>Common</td>
<td>Common</td>
<td>Common</td>
</tr>
<tr>
<td>Terminals</td>
<td>Common</td>
<td>Common</td>
<td>Common</td>
<td>Common</td>
</tr>
<tr>
<td>Tariffs</td>
<td>Common</td>
<td>Common</td>
<td>Common</td>
<td>Common</td>
</tr>
<tr>
<td>Revenues</td>
<td>Common</td>
<td>Common</td>
<td>Common</td>
<td>Common</td>
</tr>
<tr>
<td>Name</td>
<td>Common</td>
<td>Common</td>
<td>Common</td>
<td>Common</td>
</tr>
<tr>
<td>Marketing</td>
<td>Individual</td>
<td>Common</td>
<td>Common</td>
<td>Common</td>
</tr>
<tr>
<td>Management</td>
<td>Individual</td>
<td>partly</td>
<td>Common</td>
<td>Common</td>
</tr>
<tr>
<td>Investment plans</td>
<td>Individual</td>
<td>partly</td>
<td>Common</td>
<td>Common</td>
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<tr>
<td>Ownership:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vessels</td>
<td>Individual</td>
<td>Individual</td>
<td>Individual</td>
<td>Common</td>
</tr>
<tr>
<td>Terminals</td>
<td>Individual</td>
<td>Individual</td>
<td>Common</td>
<td>Common</td>
</tr>
</tbody>
</table>

Examples of joint operations: Trio Group, Scan-Dutch Container, Atlantic Overseas Container Line (ACL) Ltd. (OCL), Asia Con-Australia/Associated
Cooperative agreements between carriers vary in the degree of cooperation involved, from simple rate agreements through allocation of sailings, revenue pools, joint service agreements, and, at the other extreme, outright merger between liner shipping firms. (6)

Joint service agreement is defined as an agreement which establishes a new and separate line or service to be operated by the parties as a joint venture. The new and separate service fixes its own tariffs, issues its own bills of lading, and acts generally as a single carrier.

The parties to a joint service agreement agree to establish and maintain a joint cargo or a joint cargo and passenger service. They cooperate to supply tonnage for the joint service as their owned and chartered vessels are available. However, profit or loss accrues and are
borne solely by the owner or charterer of the vessel. Usually, each party delegates to a separate corporation all management and organizational responsibility of the joint service, such as the booking and solicitation of cargo and passengers, and the collection of freight and passenger revenues.

Although the parties participate in a joint service, their bills of lading, dock receipts and passenger tickets must show the name of the party for whose account the vessel is operated. All these papers may be terminated by mutual consent of the parties or by one of the parties giving the required notice to the other party and to the government agency involved.

Consortium. In a consortium providing liner services, usually only the ships will remain under separate ownership.

Joint Venture. The closest form of cooperation between independent liner companies, the participants jointly own (or lease) vessels, equipment, terminals, and the venture has its own management. Tax considerations dictate that most joint ventures are among companies from a single country.

Merger. When two firms merge, they no longer have separate identity in any respect and become a new single entity.

The closer forms of operating agreements—joint service, consortium, joint venture—implicitly satisfy the objectives of a pool. Pools merely represent one form of carrier cooperation, short of a joint service.
5.6 REGIONAL OR SUB-REGIONAL COOPERATION BETWEEN DEVELOPING COUNTRIES IN SHIPPING.

Mention has been made about the regional cooperation in shipping of the South Pacific countries of Tonga, Samoa, Australia, and New Zealand. There are cases however in different parts of the world where developing countries cooperated in shipping on a regional basis. One way of enabling developing countries to participate in the carriage of their foreign trade could be to encourage this trend and to ensure that the services are operated on an efficient, cost-competitive basis. Examples of other international joint ventures involving two or more developing countries include two liner companies in the Caribbean-WISCO, which includes Trinidad and Tobago, Antigua, Barbados, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts, St. Lucia and St. Vincent, and NAMUCAR which includes Costa Rica, Cuba, Jamaica, Mexico, Nicaragua, Trinidad and Tobago, and Venezuela. Other examples include one major oil shipping company (AMPTC) in the Middle East which includes Algeria, Bahrain, Egypt, Iraq, Kuwait, Libya, Qatar, Saudi Arabia, and the United Arab Emirates; and one major liner company (UASC) in the same region involving Bahrain, Iraq, Kuwait, Qatar, Saudi Arabia, and the United Arab Emirates, and one liner company in the Pacific (Pacific Forum Line) already mentioned above. There are also a significant number of bilateral shipping companies involving either government or private interests in two developing countries (for instance, Irano/Hind Company Ltd. and Arya National Shipping Line of Iran; the Syro-Jordanian Shipping Company involving the two governments; the Jamaica Merchant Marines Ltd. involving Jamaica and Mexico; and Flota Mercante GranColombiana between Colombia and Ecuador. Apart from joint ventures between developing countries, there has also been in
recent years a large number of joint ventures between established shipping or trading companies in developed market economy countries and government or private interests in individual developing countries, particularly, in the Middle East. The status of most of these joint ventures, however, is not known. In many cases these were new companies with direct government ownership while in others they involve one or more pre-existing shipping lines as in the case of Irano-Hind Shipping Company and UASC. Information is not available to evaluate the economic and financial success of the ventures, but it is understood that a number of the sub-regional, multinational shipping companies have in recent years been losing money. It is not known to what extent losses are due to initial starting up difficulties, the gestation period it takes for trade to build up, given particular market conditions, or to poor management planning, operations or uncommercial policies. This reportedly has been the case of two multinational companies in the Middle East (AMPTC and UASC), and two in the Caribbean (WISCO and NAMUCAR). On the other hand, the Irano-Hind Shipping Company apparently was profitable prior to the recent political events. It is also reported that WISCO's financial situation is improving after years of losses. A large number of regional or sub-regional technical assistance projects in the maritime sector in both West and East Africa were included in the Program of Action of the U.N. Transport and Communications Decade for Africa 1978-1988.
6.1 INTRODUCTION.

The Philippines is one of the earliest developing States to ratify the Code of Conduct on 6 June 1976, or two years after the adoption by the United Nations Conference on Plenipotentiaries of the Code of Conduct on 4 April 1974. Ever since, however, no national legislation was enacted to implement the Code of Conduct in pursuance of its Article 47, requiring Contracting States to take such legislative or other measures as may be necessary to implement the Code. The Code of Conduct entered into force internationally on 6 October 1983 when the required number of ratifications and tonnage was fulfilled with the ratifications of the Federal Republic of Germany and The Netherlands on 6 April 1983.

It is assumed that the international debates in the early 70s on ocean shipping had influenced the government to focus on its maritime industry.

First, the Philippine maritime industry developed from the postwar era to the present largely through the initiatives of the private sector. But the Philippine-flag vessels share in the carriage of the seaborne trade was approximated to be over 20% only and in the liner sector of the seaborne trade, the share was estimated to be less or 15% of the volume and freight of the liner cargo in the Philippine-United States where the Philippine national flag liner operators namely, the National Galleon Shipping Corporation (now called the National
Shipping Corporation of the Philippines (NSCP) and Maritime Company of the Philippines (now defunct since 1984) were active. The NSCP has been designated by the FMC a government-controlled ocean common carrier under the Controlled Ocean Carrier Act, 1978 as amended by the Shipping Act of 1984.

Secondly, to rectify the deplorable condition of the industry and to make it an effective instrument in the furtherance of the nation’s economic and development growth, the government decided to take a direct hand in the development of the industry. Thus, the Maritime Industry Authority was created on 6 June 1974 by Philippine Presidential Decree No. 474, to serve as government arm that will undertake the development, promotion and regulation of the maritime industry.

Thirdly, Philippine Presidential Decree No. 1466 (P.D. 1466) was issued on 6 June 1978, reserving cargo sold to, purchased, financed, or guaranteed by, the Government or government-owned or controlled corporations, of state financing institutions, to Philippine-flag vessels.

Lastly, on January 19, 1982, Presidential Executive Order No. 679 (E.O. 769) was issued reserving at least 80% of the Philippine export and import liner cargo not covered by P.D. 1466 for carriage by national flag vessels of the Philippines and its bilateral partner in equal shares, with the remaining cargo to be available to third-flag vessels. The rules and regulations implementing E.O. 769 became effective July 22, 1982. In separate Memorandum Order No. 3 issued by the Maritime Industry Authority (MARINA), E.O. 769 was implemented initially in
the Philippine-US Liner trade where two Philippine liner operators, above-mentioned, were actively operating.

This chapter attempts to discuss the implementation of Executive Order No. 769 (E.O. 769) in view of the following considerations: (1) E.O. 769, otherwise called as the Cargo Sharing Law attempted to divide the liner cargo similar to the cargo sharing formula of the Code of Conduct; (2) E.O. No. 769 was the most controversial piece of national legislation intended to promote and develop the shipping interests of the country. A chorus of protests was received from the developed market-economy countries, both jointly from the OECD and individually from US and Japan; and (3) the author of this study was directly responsible in the implementation of E.O. 769. A new office called - Liner Traffic Regulations Office (LITRO) - a Unit in the MARINA, with 18 staff, headed by this researcher was created in 1982 to supervise and coordinate its implementation. The LITRO implemented the waiver system in the Philippine-US liner trade from 1982 to 1984 when the Cargo Sharing Law (E.O. 769) was indefinitely suspended. At that time, the MCP, one of Philippine liner operators in the RP-US liner trade met financial difficulty and finally ceased operation, leaving the NSCP the only Philippine national line in the trade.

6.2 CARRIAGE PERFORMANCE OF THE PHILIPPINE FLAG VESSELS.

Prior to the creation of the MARINA (1) in 1974, the participation of the Philippine flag vessels in the carriage of the Philippine seaborne trade was only 7.8% of the trade volume and the balance of 92.2% was carried by foreign flag vessels. This situation improved in 1981 when the Philippine flag vessels' share increased to
15.0% of the trade volume. In terms of value, the RP-(Philippine) flag vessels carried 17.8%. This increased in the third quarter of 1981 to 21%. In terms of freight share, the Philippine flag vessels generated less than 10% in early 1970s. This freight share increased to 15.0% in 1979.

In terms of trading routes, the Philippine flag vessels carried 18% of total trade volume in Philippine-Japan route; 15% in the Philippine-US route; 10% in the Philippine-EEC route and 9% in the Philippine-Australia route by volume. Philippine external trade has always been predominantly moved on tramp/bulk shipping rather than on liner basis. In 1980, only 23% of the total trade volume was carried on conference liners serving Philippine/Japan trade route; 15% of the total volume moved in liner basis on the Philippine-US trade route; and other routes hardly any volume of trade was carried on liner basis. Such cargo movement profile is similar with the profile of the Philippine merchant fleet which is predominantly comprised of tramp/bulk tonnage. The Philippine economy is heavily dependent on its foreign trade. The trade is likewise dependent on the water transport facilities considering that the country is separated from her neighbors by bodies of water. Although the Philippine tonnage has increased over the last ten years, the picture appears rather discouraging when viewed in the light of the Philippine flag vessels' participation in the transportation of export and import cargoes. The carriage performance of the Philippine flag vessels is shown in Table 1 below: (1979 and 1980 in %)

<table>
<thead>
<tr>
<th>Trade Route</th>
<th>Volume</th>
<th>Freight</th>
<th>Volume</th>
<th>Freight</th>
</tr>
</thead>
</table>

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6.3 VALUE OF PHILIPPINE SEABORNE TRADE

The value of Philippines' seaborne trade (both import and export) was estimated at US 12 billion dollars annually in the early 1980s. It is sometimes assumed that ocean freight rates represent about 10% of the value of the goods transported. Such an average figure for the ratio of freight to the value of goods is questionable as it varies tremendously with the type of goods transported. For many high value, industrial goods usually carried by liner services, the ten percent figure may be on the high side. For basic commodities and low value goods, freight rates may amount to as much as thirty percent or more of the value of the cargo. (2) There is no precise estimation of Philippine deep-sea freight bill in existence. Thus, while a figure of US$ billion is often quoted (3), it must be borne in mind that this can only serve as an indication of the order of magnitude. Whatever be the exact figure of the freight bill is, the economic cost of oceanborne trade is significant to the country's economy. Freight charges are borne by consumers and are drains to the foreign exchange badly needed by the country's economic growth. Therefore, the country has a stake in the shipping cost of the commodities transported. Transportation costs do not equally affect all products in foreign trade.
trade. Products which have a high value per weight or volume may not be severely hampered by high freight rates. For instance, a freight charge of US$ 1,000 on a machine worth US$50,000 may not significantly limit its marketability. The same freight charge on the shipment of a basic commodity worth US$ 3,000 may make it uncompetitive. In general, low value, standardized products tend to be more sensitive to freight charges than high value, differentiated products. It is important therefore to consider one country's maritime transportation policy in the light of the composition of its foreign trade. (4)

In the late 1970s, private enterprise through government-supported financing procured several "semi-modern" ships which were employed initially by their owners on the Philippine foreign trade but thereafter again removed from the trade and employed elsewhere where supposedly expectation of profit is greater. Which brings us to another aspect of the problem - the absence of not too many high freight paying cargoes in the Philippines foreign trade. Admittedly, by the very nature of its economy, the country is a "bulk cargo" exporting country. These cargoes pay low freight rates such that freight revenue generated is barely sufficient to cover operating costs. Any help from the government for say financial assistance will be hard to come by, to remedy the situation, as its main priorities lie in areas of land reform, country's infrastructures, i.e. highways, roads, ports, education, peace and order, food, health services, and national defense.

Today many shipping companies strapped for finance are reliant on the bareboat chartering scheme sanctioned by the government to get tonnage to operate. Although a
provider of employment for Filipino seamen and earner of valuable foreign exchange, the increased use of the scheme has come to the renewed attention of the International Transport Workers Federation (ITF), which was seriously considering declaring the Philippine flag a flag of convenience with all the repercussions that it would carry.

Priority has been given by the present administration to the inter-island fleet. Inter-island shipping in the Philippines is the major form of communication for many of the communities dotted around its hundreds of islands. The Philippines does not have an extensive, modern road network, and with many islands too far apart to bridge, ships are the most practical if not economical form of transport and communication. The country's inter-island shipping is made up of several thousand crafts, usually owned by companies operating one or two vessels. Most of these are small, wooden craft with only some 200 relatively large vessels and 20 major companies.

On the foreign trade, MARINA supervised the implementation of the shipowner-shipowner Log Transportation Agreement (LTA) entered into between the Filipino Shipowners' Association (FSA) and Japanese Nanyozai Freight Agreement (NFA) providing for 50-50 cargo sharing of the log exports to Japan. MARINA continued participation in the ASEAN Liner Service Project in coordination with other concerned agencies jointly with the Philippines ASEAN Council Action Group on Shipping, aimed at establishing a network of liner services linking ASEAN ports and promoting intra-ASEAN trade. The project initially focussed on the route Davao (Philippines) - Menado (Indonesia), culminating in the signing of Philippine/Indonesia Memorandum of Understanding on Trade, Investments, Handcrafts and Shipping on the occasion of the President
Corazon C. Aquino's State visit to Indonesia in August 1986. This initial cooperative effort between the bilateral parties can be extended to apply to such cooperative efforts in the regional implementation of the Code of Conduct.

6.4 Carriage Performance of Philippine Flag Vessels in Liner Trade in Philippine-US Route.

As shown in Chapter 4, Table P-2, the US trade share in the Philippine foreign trade is 37.2 per cent of Philippine export valued at US$2,003, and 26.5 per cent of Philippine import valued at US$1,629 billion. The Philippine-US liner trade is therefore very important to the Philippine shipping in terms of volume of trade and also because it is in this liner trade route that the Philippine national flag carrier, the National Shipping Corporation of the Philippines (NSCP) is actively operating an independent fortnightly time schedule. As shown in the Table 2 below, the Philippine flag vessels' share in the Philippine-US liner trade is 9.8% of Philippine import and 13.1% of Philippine export or a total of 11.4% of the total Philippine-US liner trade compared to the other major foreign flag carriers as follows:

Table 2. PHILIPPINE-US LINER SERVICE (1985): (VALUES ARE IN THOUSANDS)

<table>
<thead>
<tr>
<th>VESSEL FLAG</th>
<th>IMPORTS</th>
<th>EXPORTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>TONS</td>
<td>% FLAG</td>
<td>VALUE$</td>
</tr>
<tr>
<td>US</td>
<td>115,875</td>
<td>33.4</td>
</tr>
<tr>
<td>PHIL.</td>
<td>34,161</td>
<td>9.8</td>
</tr>
<tr>
<td>3rd Flag:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>DENMARK</td>
<td>21,427</td>
<td>6.2</td>
</tr>
<tr>
<td>TAIWAN</td>
<td>26,092</td>
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</tr>
<tr>
<td>PANAMA</td>
<td>28,443</td>
<td>8.2</td>
</tr>
<tr>
<td>JAPAN</td>
<td>29,861</td>
<td>8.6</td>
</tr>
<tr>
<td>SING.</td>
<td>17,300</td>
<td>5.0</td>
</tr>
<tr>
<td>UK</td>
<td>23,966</td>
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</tr>
<tr>
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<td>6.3</td>
</tr>
<tr>
<td>NORWAY</td>
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<tr>
<td>LIBERIA</td>
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<tr>
<td>S.KOREA</td>
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</tr>
<tr>
<td>ITALY</td>
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<tr>
<td>HONDURAS</td>
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<td>NETHERLANDS</td>
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<tr>
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<td>-</td>
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<td>-</td>
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</table>
ARGENTINA  3  5.9
BRAZIL  1  5

TOTAL  346,961  100  877,087.8 335,508 100 480,109

Note: Due to rounding up, the total figures may not be exact.


As shown above, Philippine total imports from US in 1985 totalled 346,961 tons valued at US$877,087.8 and total exports totalled 335,508 tons valued at US$480,109.8 or overall total of 682,469 tons valued at US$1,357,197.5 Philippine foreign trade to and from US. As shown from the statistics above, Philippine export was of high volume at 335,508 tons and low value at US$480,109.8 as compared to import of 346,961 valued at US$877,087.8. In other words, almost of same weight of import cargoes and export cargoes, the export cargoes are valued 50% less than the import. Assuming that the liner freight rates are based on measurement ton or weight ton whichever is higher, the Philippine export will pay freight rates higher than its import. This makes the Philippine export bulky and unattractive to the liner service. The US flag share of Philippine import liner trade was 33.4% and export trade 43.9%, as compared with Philippine flag share of 9.8 of import and 13.1% of export. The figures are very startling since in the past and in the present, the US Government is always against any cargo sharing as being contrary to free enterprise. The US flag vessels enjoy already the 40% of the Philippine-US liner trade. The US will not obviously have the incentive to implement any government-sponsored cargo sharing as shown from its opposition to E. O. 769. The above statistics gathered
from US agencies or sources are almost parallel to the statistics gathered from cargo manifests submitted to the Philippine Port Authority and Department of State Office of Maritime Affairs. (Of which cargoes for U.S. military bases in Philippines were carried 100% by US flag vessels under U.S. Flag Preference Law): Table 3 shows the carriage shares of the U.S. flag vessels, the Philippine flag vessels, and third flag vessels.

(Table 3): 1983 Total U.S.-R.P. Liner Trade (Metric Tons)

<table>
<thead>
<tr>
<th>PORT OF MANILA(1)</th>
<th>(M.T.)</th>
<th>(%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PHILIPPINE FLAG</td>
<td>154,720</td>
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<tr>
<td>U.S. FLAG</td>
<td>406,977</td>
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</tr>
<tr>
<td>THIRD FLAG</td>
<td>251,233</td>
<td>21</td>
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<tr>
<td></td>
<td>812,930</td>
<td>67</td>
</tr>
</tbody>
</table>

U.S. BASES

| WESTBOUND        | 331,406| 28  |
| EASTBOUND        | 63,158 | 5   |
|                  | 394,564| 33  |

TOTAL 1,207,494 100%

(1) Port of Manila figures also include US preference cargoes, such as Eximbank, P.L. 480, and US AID.

Source: National Galleon.
If the westbound trade is to be examined for 1983, the Port of Manila volume is 389,862 or 54% of the total trade by metric tons, and for U.S. military bases, it was 311,406 metric tons of total westbound trade, or almost half. In terms of revenues, the percentages accounted for U.S. Bases cargo reserved for American flag carriers may even be higher due to the generally higher freight rates on military cargo compared to general cargo.

6.5 BREAKDOWN OF U.S.-R.P. LINER TRADE BY MONTH (1983-84)

The monthly breakdown of Philippine export and import liner cargoes by month for 1983 and 1st semester of 1984, is shown below. This trend was expected not to change in 1987 and for a priori implementation of the cargo sharing law, the breakdown will serve as an approximation of the liner trade in the R.P.-U.S. trade route:

\[
\begin{array}{ll}
1983 & \\
January & 50,430 MT  \\
February & 68,996 MT  \\
March & 78,663 MT  \\
April & 86,351 MT  \\
May & 86,592 MT  \\
June & 76,797 MT  \\
July & 76,576 MT  \\
August & 84,215 MT  \\
Sept. & 51,776 MT  \\
Oct. & 62,700 MT  \\
Mov. & 90,627 MT  \\
Dec. & 46,047 MT  \\
\end{array}
\]

\[
\begin{array}{ll}
1984 & \\
January & 42,173 MT  \\
February & 43,184 MT  \\
March & 21,177 MT (1-15 only)  \\
\end{array}
\]

6.6 ANALYSIS OF THE PHILIPPINE-US LINER TRADE
The trade between the United States and the Philippines is highly competitive. There were approximately 20 liner operators and more than 60 sailings or Trans-Pacific crossings per month in each direction as per data available from the published sailing schedules in the 80s. This sailing frequency has not changed up to 1987. Approximately 79 per cent of these sailings were provided by third flag carriers, 16 per cent by U.S. flag carriers and 5 per cent by Philippine flag carriers. Due to the bankruptcy of MCP, the Philippine share should reduce. A number of liner operators provide mini-landbridge service from US West Coast to the East Coast. Other intermodal services to and from inland points are also offered regularly. Among the principal commodities carried outbound to the United States are furnitures (wooden and rattan), garments, canned pineapples, woven articles, dessicated coconut, footwear, handicrafts, toys, gloves, foodstuffs, electronics, beer, canned tuna, coffee beans, and wood products. Major inbound commodities from the US include linerboards, tin plate, cotton, tobacco, resins, waste paper, lubricating oil, machineries, chemicals, fibers and car accessories.

Although the Philippine/United States liner trade is relatively small trade, it enjoys an extraordinary level of service primarily because the carriers serving it also serve numerous other trades on the same route. Existing services is competitive. The Conference operating in the trade in the early 80s, the Philippine North America Conference, was composed of only six carriers serving the trade. Only 55 per cent of the cargo moving in the trade was carried by the Conference members. As stated in Chapter 1, a "giant" conference, the TWRA and ANERA are dominating the liner trade in the ASEAN range.
Five United States flag carriers serve the trade. Lykes, Sea-Land, and American President Lines serve the West Coast (US). Waterman provides limited service from the East Coast (less than two per cent of the outbound market) and USL, then newcomer, initiated East Coast service. As stated, USL is now bankrupt.

On the Philippine side, only NSCP operates five (5) containerized vessels in the trade with an average capacity of 550 TEUs. It was estimated that the maximum capacity available on NSCP between the US West Coast/Philippine was only approximately 900 TEUs per month at a 9-day frequency.

The Philippines has no national shipping line to Europe. The Maritime Company of the Philippines (MCP), now defunct, used to operate five (5) conventional breakbulk vessels with limited TEU capacity e.g. 120 TEUs in Europe and same number and types of vessels at the US liner trade. With the bankruptcy of MCP, only NSCP serves the Philippine/US liner trade (West Coast). It is in this situation that the implementation of the cargo sharing law was suspended in May 1984. It was felt that the Government was not justified to implement the cargo sharing law when no Philippine tonnage adequately to carry its forty per cent share. Other reasons could be attributed to the suspension, e.g. the on-going bilateral shipping consultation meetings in Washington in February 1983, and in Manila in December 1983 between the Philippine panel and US delegations. The next round of meetings was supposed to take place in 1984. At that time, the Federal Maritime Commission was also taking action against the two Philippine flag carriers, namely, the MCP and
National Galleon (now NSCP), under the FMC's powers to correct alleged unfavorable conditions in the foreign trade of US, under the US Shipping Act, 1916, as amended.

6.7 CONCLUSION

The present Government has offered for sale the assets of the National Shipping Corporation of the Philippines (NSCP) to the private sector under the Government policy of privatization of certain government business enterprise. It should be pointed out, however, that the NSCP became a government controlled shipping corporation in the early 1980s when the former private owners defaulted in the payments of the vessels' purchase price. The Government guaranteed the loan as required by the foreign lenders. The Philippine Government, through its agency, the National Development Company, was forced to manage the shipping company to protect its exposure in the form of government bank guarantees. The NSCP is now profitably managed by a team of management experts and when it is finally sold, will command a better price, with the condition that a Filipino buyer continue serving the liner trade between the Philippine and US. This policy is taken into account the importance of the RP/US foreign trade. The privatization of NSCP will remove it from the FMC list under the Government-Controlled Ocean Carrier under the US Shipping Act of 1984. One of the operating disadvantages of an ocean carrier designated by the FMC as a Government-Controlled Common Carrier, like NSCP, is that its tariffs on file with FMC could be suspended by FMC if the tariffs were considered comparatively low. Also, new tariff rates will not take effect until after 30 days from filing with FMC. Within that period, changes might have overtaken the one filed in FMC and would
render it not valid. There are other operating
disadvantages of a line designated by FMC under the
Government-Controlled Common Carrier. Suffice it to say
that privately-operated national shipping lines will
offer a good alternative for the Philippine liner
shipping.
CHAPTER 7

RECOMMENDATIONS

7.1 INTRODUCTION

This chapter presents recommendations which are believed to be essential to the achievement of the goals and objectives of the maritime interests of the ASEAN, and, in particular, the national interests of the Philippines. Each recommendation is followed by a brief explanation.

7.2 RECOMMENDATION 1

IT IS RECOMMENDED THAT THE GOVERNMENTS OF THE ASEAN COUNTRIES TAKE STEPS TOWARDS THE ESTABLISHMENT OF ASEAN CONSORTIUM FOR FULL CONTAINER CARRIERS WHEREBY EACH MEMBER STATE CONTRIBUTES FOUR (4) FULL CONTAINER VESSELS TO THE "COMMONS" TO BE OPERATED BY A SHIPPING CORPORATION AND EACH COUNTRY HAS EQUITY PARTICIPATION.

In Table 1 of Chapter 5, the different forms of cooperation practiced by Liner Operators are indicated. In consortium providing liner services, usually only the ships will remain under separate ownership. An ASEAN Liner Shipping Corporation will operate the "commons" and each member country has equity participation and clearly defined right of profit sharing. The management of the Corporation is composed of management shipping-people. The crew can be on rotation-country by country basis. The benefits that may flow from the creation of an ASEAN liner fleet are: (1) improved balance of payments position; (2) creation of job opportunities; (3) expans-
ion of auxiliary services; (4) self-reliance, and (5) national economic security and defense.

7.3 RECOMMENDATION 2

IT IS RECOMMENDED THAT THE GOVERNMENTS OF THE ASEAN COUNTRIES TAKE STEPS TOWARDS ADOPTION OF A COMMON LINER SHIPPING POLICY IN ORDER TO COORDINATE THEIR INDEPENDENT DEEP-SEA LINER SHIPPING ACTIVITIES.

Joint actions of shipping lines of the ASEAN region whether to establish multinational companies under No. 1, above, joint service, rationalize operations, or space or slot-chartering arrangements, would allow the ASEAN member countries to achieve an appropriate scale of operations, offer modern technologies, maintain frequency of service, pool technical and operational experience, exchange of crews, and have a wider financial base.

7.4 RECOMMENDATION 3

IT IS RECOMMENDED THAT THE ASEAN GOVERNMENTS TAKE STEPS IN IMPLEMENTING THE CODE ON A REGIONAL BASIS.

The principle of applying the Code to a group of countries as indicated in Item 3.27 of Chapter 3 of this Study could also apply as well to the ASEAN because of their geography and cargo mix. This requires a level of unity that has not yet been achieved in ASEAN, but the trade is in place and the ships would follow the trade. In Chapter 5 of this Study, it was mentioned that the Federation of ASEAN Shippers' Councils (FASC) had asserted that the way to take advantage of the Code is through the formation of an ASEAN "Super Line" into which
ASEAN cargoes would be pooled. In addition, the FASC can deal effectively and exert greater influence with the conference in Code-related matters. In early 1983, Dr. Ernst G. Frankel, professor at the Massachusetts Institute of Technology and now visiting Professor at the World Maritime University, was quoted as urging the ASEAN to act as one in shipping, in the wake of the UNCTAD Liner Code. He advised owners of Singapore-registered ships to consider various alternatives, including joint venture with Korean and American companies, to prevent being left out in the cold if the UNCTAD Liner Code was implemented.

As already known, in late 1983, the Liner Code entered into force internationally with the ratifications by the Federal Republic of Germany and The Netherlands. Alternatively, the members of the ASEAN – Indonesia, Malaysia, Philippines, Singapore, and Thailand – could act as a group, said Dr. Frankel. (1) Professor Frankel pointed out that by joining up with Korean and US lines, no matter which flags the vessels flew, Singapore shipowners would be able to carry cargo of the three nations and some cargo of other nations. He said that although he had not studied in depth the idea of ASEAN acting as a group it would appear that by doing so the partners could correct any imbalance in trade and shipping capacity.

Shipping Times said that of the five ASEAN countries, Singapore was the only one which had not acceded to the Code. The Singapore fleet is the largest in ASEAN and, on a per capita basis, one of the largest in the world although a substantial proportion is not owned by Singaporeans. (2)


(2) Ibid.
7.5 RECOMMENDATION 4

IT IS RECOMMENDED THAT THE ASEAN GOVERNMENTS NEGOTIATE WITH THEIR MAJOR TRADING PARTNERS WHO ARE NON-CODIST COUNTRIES AS AN ALTERNATIVE TO THE CARGO SHARING PROVISIONS OF THE CODE.

The US and Japan are examples of major trading partners of the ASEAN countries and which are non-Codist countries. The US had openly opposed the Code. With respect to Japan, the question is whether it will ratify the Code following the Brussels Package or not.

The US Position. - The US administrations from President Jimmy Carter and President Ronald Reagan had been against the Code of Conduct. The official position as stated by the US representative to the Plenipotentiary Conference in 1974 was as follows:

"A. The membership provisions encourage the continuation of closed conferences. In this regard, Mr. President, it is ironic that the closed conference system, which was so bitterly attacked by developing countries throughout most previous UNCTAD shipping meetings, is now sanctioned on an international scale by those same developing countries under the auspices of UNCTAD.

B. The cargo-sharing provisions will cartelize the transportation of trade. Such provisions subordinate trade to transport; they restrict the choice of shippers and may result in delay of shipments and consequent loss of trade."
C. The provisions on freight rates freeze them for unduly long periods, which could strangle the liner industry. Rate rigidity will hurt shippers as much as carriers." (3)

US shipping lines conscious of their own relatively low share of trade compared to the 40 per cent allowed in the Code have generally been in favor of accession without reservations; although in most cases they prefer straight bilateralism, which allows them more easily to by-pass the provisions of their own regulatory regime.

The 40:60 cargo sharing formula may be a possible outcome in the trades between Code and Non-Codist countries following the implementation of the Code. Consistently with the Code philosophy, the Codist country would unilaterally reserve 40 percent of each of its trades for its national carriers, if the trading partner country does not ratify the Code, and does not negotiate a separate allocation for its national carrier, then all carriers in the trade (perhaps even including the Codist national carrier) would compete for the remaining 60 percent.

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The RP-US liner trade is conditioned by legislations in both countries covering both government-impelled cargoes and non-government impelled cargoes. Government-impelled cargoes arise from U.S. Cargo Preference laws, e.g., Public Resolution 17 reserving US Eximbank-financed cargo and Public Law 664 reserving other general cargo, like foreign aid, for carriage by U.S. flag vessels. The Philippine government-impelled cargoes, those paid out of loans from the Government or guaranteed by government financial institutions, are reserved to be carried by Philippine flag vessels under Presidential Decree No. 1466.

7.6 RECOMMENDATION 5

IT IS RECOMMENDED THAT IN THE NEXT FIVE-YEAR REVIEW OF THE US MILITARY BASES AGREEMENT IN THE PHILIPPINES TO BE DUE IN 1988, THE PHILIPPINES SHOULD RENEGOTIATE THE AGREEMENT TO INCLUDE IN THE NEW AGREEMENT OR MEMORANDUM OF AGREEMENT PROVISIONS TO THE EFFECT THAT BOTH GOVERNMENTS SHALL EXERT THEIR BEST EFFORTS TO SECURE FROM EACH OTHER "SERVICES" WHICH ARE AVAILABLE AT VERY COMPETITIVE TERMS AND CONDITIONS.

Table 3 on page 153 of this study shows the magnitude of cargoes for U.S. military bases in the Philippines. The cargoes totalled 311,406 metric tons of the total westbound trade, or almost half of all cargoes at the Manila Port. These cargoes comprised national defense or military cargoes (combatant cargoes) and non-military cargoes (non-combatant). The US position is that national defense cargoes should be reserved wholly and exclusively on US flag carriers. The Philippine flag
carriers should share in the carriage of non-combatant cargoes or purely civilian cargoes destined to or originated from the military bases or US facilities in the Philippines.

7.7 CONCLUSION

A regional approach to Code implementation offers developing countries, an opportunity to overcome some of the natural deficiencies which limit the ability of many nations to take full advantage of the Liner Code. Regional approaches to maritime problems are not easy undertakings and there are many examples of failure and of success.

In Southeast Asia, there has been considerable discussion among members of the ASEAN group (Malaysia, Indonesia, Philippines, Singapore, and Thailand) about the development of a joint shipping line which would initially concentrate on improving liner service among the five-nation group. Unlike many other potential regional groupings of developing countries, the ASEAN nations have well developed merchant fleets and, with the exception of Singapore, are aggressive Code advocates. Though ASEAN plans for a joint liner company have yet to be put into practice, there appears to be substantial potential for success. (5)

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Regionalism under the Code will be motivated chiefly by the economic realities of liner service. Viable liner service requires fleets of at least modest size, particularly on the relatively long North/South trade routes where developing countries have the most to gain from the cargo sharing provisions of the Code. Even modest size fleets are expensive to acquire and operate.

Under a regional approach, the associated cost and risk burdens can be shared with like-minded partners. Liner fleets also need sufficient cargo volumes to keep their vessels full or nearly full in both directions on a trade. Regionalism is one way to build cargo volume and perhaps balance out what could be highly imbalanced trades when considered on a bilateral trading partner basis.

With the developing countries, the Far East and South East Asia would be the most critical regions from the U.S. point of view. These regions generate large cargo volumes in all their trades, including regional trades, and their economic growth is highly dependent on efficient shipping services. In any Code implementation, there would be a strong pressure to make their liner services as efficient as possible.
STATUS OF THE CONVENTION
DEFINITIVE SIGNATURES, RATIFICATIONS, ACCESSIONS, ACCEPTANCE AND APPROVALS:

The Convention, in accordance with its article 48, was open for signature from 1 July 1974 until and including 30 June 1975. Since that date the Convention has been open for accession.

As at 1 June 1986, 67 countries had made definitive signatures (s), approved (app), accepted (acc), ratified (r), or acceded (a) to, the Convention. The countries, arranged in chronological order, are:

<table>
<thead>
<tr>
<th>Country</th>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ghana</td>
<td>24 June 1975</td>
<td>r</td>
</tr>
<tr>
<td>Chile</td>
<td>25 June 1975</td>
<td>s</td>
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<tr>
<td>Pakistan</td>
<td>27 June 1975</td>
<td>s</td>
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<td>Gambia</td>
<td>30 June 1975</td>
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<td>Sri Lanka</td>
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(1) A "definitive signature" without reservation as to ratification is understood as having the same binding legal effect as a ratification. (UNCTAD/ ST/SHIP/2, 1986. "UNCTAD Implementation", p. 16.)
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</table>
NOTES TO CHAPTER 1: GOALS AND MARITIME STRATEGIES OF THE ASEAN IN LINER TRADES.


(3) Ibid., p. 11. See, also, UNCTAD Implementation of the United Nations Convention on a Code of Conduct for Liner Conferences. A Report by the UNCTAD Secretariat numbered (TD/B/C.4/300), 6 August 1986, p.3. The term "UNCTAD Implementation" will be used to refer to the latter report.

(4) Ibid., p. 11.
(5) U.S. Shipping Act of 1984. Sec. 5 of the Act stipulates that each conference agreement must provide reasonable and equal terms and conditions for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route.

(Sec. 5(b) (2)).

(6) The term "ASEAN" is an acronym for association of South East Asian Nations originally composed of five (5) member states, namely: Indonesia, Malaysia, Philippines, Singapore, and Thailand. Brunei was admitted into the association late 1984 after its independence on 31 December 1983. The acronym "ASEAN" is accepted internationally and the usage ASEAN is applied in this study.

(7) The criteria for freight-rate determination are found in article 12, Code of Conduct.

(8) See, for example, Professor A.A. Monsef, "Some observations on the Code of Conduct for Liner Conferences", distributed as Course Materials at the WMU, 1987. In this paper, the appropriate authority as such has an important role to play. This is as follows:

i - On recognition of national shipping line of that country (Chapter 1 Definitions)

ii - On recognition of shippers' organization (Chapter 1)

iii - On membership application—conference to consider the views, among others, of appropriate authorities, if they so request (Article 1 para 5)
iv - On participation in Trade. (Article 2 para 14)

v - Malpractices. (Article 5 para 1-c).

vi - Conference agreements. (Article 6)

vii - Availability of tariffs and related conditions.

viii - Annual reports. (Article 10).

ix - Consultation machinery. (Article 11 para 1).

x - Classification of commodities in the tariffs.
    (Article 13 para 2).

xi - General freight rate increase. (Article 14 para 1)

xii - Promotional freight rates. (Article 15)

xiii - Surcharges. (Article 16).

xiv - Currency changes. (Article 17).

xv - Adequacy of services. (Article 19 para 2)

xvi - International Mandatory conciliation. (Article 28)

Notes. All articles referred to are Code articles.

(9) UNCTAD Guidelines, supra, p.13.

(10) Ibid., p.13

(12) Ibid., p.209.

(13) Ibid., p.209.
NOTES TO CHAPTER 2: DEVELOPMENT OF THE LINER TRADE AND SHIPPING CONFERENCES.


(3) Ibid., p. 67. Drewry, supra., p. 1.

(4) Drewry, supra, p. 1.


(7) Drewry, p. 2.


(12) Code of Conduct (Part One, Chapter 1 Definitions).

(13) Harald Hansen, Loc. cit., p. 68.

(14) Drewry, supra, p. 72.

(15) Drewry, supra, p. 73.

(16) Drewry, supra, p. 73.

(17) Drewry, supra, p. 73.

(18) Drewry, supra, p. 73.

(19) Drewry, supra, p. 74.


(21) Code of Conduct, Article 2. Article 7(d)(i) specifically excluded bulk cargo shipped without mark or count from the scope of the loyalty agreement.

(22) Sturmey, Loc. cit., p. 41.

(23) Sturmey, Loc. cit., p. 41.


(25) Lloyd's List 250 Years of Shipping, 1984, p. 175.

(26) Hans J. Peters, Trends in Global and Pacific Trades
and Shipping. (Bremen: Institute of Shipping and Logistics), 1986, p. 4.

(27) Thorston Rinman and Rigmor Linden, Shipping: How It Works. (Stockholm: Rinman and Linden, 1978), p. 15.

Under the same authors, Yesterday and Today, 1978, p. 12.


(33) Ibid.

(34) Ibid.

(35) UNCTAD, Trade Among Developing Countries by Main Groups and by Regions, p. 11.


(38) Ibid., p. 4.


(40) Juda, supra.


(43) Drewry, supra, p. 75.

(44) Drewry, supra, p. 75.

(45) Drewry, supra, p. 75.

(46) Drewry, supra, p. 75.

(47) Drewry, supra, p. 76.

(48) The measures adopted by developed maritime countries include the US Shipping Act of 1984, the EEC Brus-
sels Package, the Maritime Transport Policy of the EEC adopted in December 1986, and the Joint Communique adopted by the US/CSG on 30 April 1986. The members of the CSG are Belgium, Denmark, Finland, France, Federal Republic of Germany, Greece, Italy, Japan, The Netherlands, Norway, Sweden, and the United Kingdom. Copy of the Joint Statement of US/CSG is with the author. The Joint Statement contains three paragraphs:

1. They (participants) will seek to maximise the amount of cargo subject to competitive access.

2. Whether or not the UN Liner Code applies in their trades, the participants reaffirm their resolve to avoid the introduction of new governmental measures, and to resist measures introduced or encouraged by third countries, where their effect is to exclude or restrict competitive access by each others' shipping lines to cargoes in their trades. The participants will maintain the right of commercially operated non-conference lines to compete freely for liner cargoes.

3. The participants have agreed that they should continue to consult regularly and, where appropriate, to coordinate actions relating to their shipping policies. In particular, they intend to consult on: (i) the means jointly to resist harmful protectionist actions; (ii) the means to improve competitive conditions in shipping; (iii) the means to overcome restrictive commercial practices that have the effect of substantially restricting or closing trades, especially
those practices that give effect to restrictive shipping policies of third countries; (iv) each others' regulatory practices; and (v) the future direction of the consultations. With respect to above Council Regulations (EEC) No. 4055/86; No. 4056; No. 4057; No. 4058; and No. 4059, all dated 22 December 1986, these are found in Official Journal of the European Communities L378 Volume 29, 31 December 1986.


(50) This common shipping policy of the EEC was adopted in December 1986. See Note 48, supra.

(51) Ibid.


(53) Ibid.
NOTES TO CHAPTER 3: THE CODE OF CONDUCT AND ITS IMPLEMENTATION.

(1) 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. Against: Denmark, Finland, Norway, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, and the United States of America. (Note: The first four countries and UK finally ratified the Code following the Brussels Package. Abstained: Canada, Greece, Italy, Netherlands, and New Zealand. Note: It was the ratification of Netherlands and the Federal Government of Germany on April 6, 1983, that triggered the entry into force of the Code six months later on 6 October 1983.

(2) Georgandopolous, op. cit., p. 5.
The Scandinavian countries (Denmark, Finland, Norway and Sweden) ratified the Code of Conduct in 1985 following the wordings of the reservations contained in the Brussels Package.


(6) Ibid., p. 8.

(7) Ibid., p. 8.

(8) Ibid., p. 8.

(9) Ibid., p. 9.

(10) UNCTAD Guidelines, supra. See also UNCTAD Implementation of the United Nations Convention on a Code of Conduct for Liner Conferences, a supplemental material prepared by the UNCTAD Secretariat with number (UNCTAD/ST/SHIP/2), 1986, paragraphs 29-37.


Malaysia Implementing the UNCTAD Code to Make it Effective, The Shipbroker, March 1984, p. 47.


Juda, op. cit., p. 192. Containerization International, May 1982, p. 9; see also Fairplay, August 5, 1982, p. 9. A number of countries made reservations and/or declarations upon definitive signature, ratification, accession, acceptance, or approval of the Convention. These countries concerned are Bulgaria, China, Cuba, Denmark, Finland, France, GDR, FRG, India, Iraq, Netherlands, Norway, Peru, Sweden, UK, and USSR. The majority of reservations and declarations relate to the exclusion of joint shipping services established on the basis of intergovernmental agreements from the scope of application of the Convention and to waiving the provisions of articles 2, 3 and 14 or parts thereof in specific trades. The combined effect of these reservations has been that the Code can no longer play its role as a universally acceptable instrument, as called for in the preamble of the Convention. They in fact place the majority of liner cargo flows outside the scope of the Convention or of certain of its important provisions. (See, paragraph 18, UNCTAD Implementation (supplemental), supra.

Juda, op. cit., p. 193. The text of reservations referred to may be found in United Nations, Multilateral Treaties Deposited with the Secretary-General.
(17) UNCTAD Guidelines, supra. See also, "UNCTAD Implementation", supra, paragraphs 21-24.

(18) UNCTAD Guidelines, supra. See also, UNCTAD Implementation, supra.


(21) Sturmey, p. 41.

(22) Sturmey, p. 9. 106.

(23) Juda, op. cit., p. 15.

(24) UNCTAD Guidelines, supra. See also UNCTAD Implementation, supra, para 35.

(25) Such countries include USSR, India, and other Eastern Socialist Bloc.

(26) UNCTAD Guidelines, supra.

(27) UNCTAD Guidelines, supra.

(28) UNCTAD Guidelines, supra.

(29) UNCTAD Guidelines, supra.

(30) UNCTAD Guidelines, supra.

(31) UNCTAD Guidelines, supra.
NOTES TO CHAPTER 4: THE ASEAN PRESENT SITUATION WITH REGARD LINER TRADE, CONFERENCES AND THE CODE.


(2) ASEAN Heads of Governments have met twice, in 1976 and 1977. There are meetings of Foreign Ministers at least once a year and of Economic Ministers four times a year. Other Ministers also meet on ASEAN basis. Under the Foreign and Economic Ministers are a number of Committees. There are national secretariat in addition to the ASEAN Secretariat. See Wawn, loc. cit.

(3) Ibid, p. 169


(5) The Association of South East Asian Nations (ASEAN) composed originally by five (5) countries (Indonesia, Malaysia, Philippines, Singapore, and Thailand). Brunei became the sixth nation to join ASEAN when it achieved full independence in 1984.


(7) Ibid, pp. 275/304.


(13) Ibid, p. 227. Under the IBRD Shipping Loan, US$20 M funds were made available to Philippine local shipping companies for the acquisition of vessels through local construction. For the period 1975-80, a total of 49 units of various types of watercraft were constructed locally involving the amount of US$17.6 M. More than 10 shipyards were directly benefited. (Source: MARINA).


(15) Ibid, p. 76.

(16) Lauriat, Loc. cit., p. 194. See, however, Containerization International dated August 1985, p. 47, "A Breakthrough for Shipping as Indonesia Relax Regulations" by Presidential Instruction No. 4 of 1985, aimed at improving both documentary and physical
efficiency in handling both export and import.

(17) Elliot Schrier et al., Loc. cit., p. 72.


(19) Lauriat, p. 197.

(20) Ibid, p. 197.


(22) Schrier et al., Loc. cit., p. 84.


(27) Schrier et al., Loc. cit., pp. 78-79.

NOTES TO CHAPTER 5: RECOMMENDED STRATEGY

(1) Lienhard Schmidt, supra, p. 10. Larry A. Bulkhalter, Loc. cit.

(2) The Latin America and the Caribbean Shipping Policies are being worked out by the Economic Commission for Latin America (ECLA) and the ASEAN countries may consider also to work out their own common shipping policies.

(3) UNCTAD Implementation, supra, citing Article 1(2) of the Code which refers to "ability" and "intention" to operate a service on a long-term basis.


(5) Ibid, p. 68.


(7) Harald Hansen, Loc. cit.
(1) MARINA is abbreviation for the Maritime Industry Authority and this term is used in this Study. The MARINA was created pursuant to Presidential Decree No. 474 promulgated June 1, 1974, to serve as the government arm that will undertake the development, promotion, and regulation of the maritime industry. The primary goal of the Authority is to undertake the policy of the State to accelerate the integrated development of the maritime industry through the attainment of the following objectives:

1. To increase the production and productivity of the various islands and regions of the archipelago through the provision of effective sea linkages;

2. To provide for the economical, safe, and adequate and efficient shipment of raw materials, products, commodities and people;

3. To enhance the competitive position of Philippine flag vessels in the carriage of foreign trade;

4. To strengthen the balance of payment position by minimizing the outflow of foreign exchange; and

5. To generate new and more job opportunities.

(2) "Task Force On Deep-Sea Shipping", A Report to the Minister of Transport Canada dated April 1985, pp. 4 & 5. This Task Force was chaired by Gunnar K. Sletmo.

(3) Lloyd's List, March 27, 1987, pp. 6-7.
(4) Sletmo, Loc. cit.


(6) Ibid.