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## Liner shipping : the code and the G.C.C. states

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**LINER  
SHIPPING,  
THE CODE,  
AND THE  
G.C.C. STATES**

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by  
**Mohamad K.  
AL-Mazeedi**

Assessment form for student's project.

Course on General Maritime Administration

Name: Mohamad K Al-Mazeedi

Title of project: Liner Shipping, The Code, and the G C C States.

Maximum marks for the whole project are 100 marks.

The lower limit for a satisfactory project is 40 marks:

How has the topic been defined?  
(Limitations, purpose)

The preliminaries

The text

The reference material

Presentation of summaries  
and conclusions

Other comments

Comments

A great effort has been given by the Student to present his Project covering the subject which is new specially from its applied side on the Conditions of the G.C.C. states. From all aspects I find that this project is an excellent one.

A. A. Mansel  
Professor, WMU

13.6.1985

In the name of God, most gracious, most merciful



LINER SHIPPING, THE CODE AND THE G.C.C STATES

A Thesis

Presented to

Course on General Maritime Administration  
the World Maritime University

In Partial Fulfillment  
of the Requirements for the Degree  
Master of Science

by

Mohamad Kazem Al, Mazeedi

THE WORLD MARITIME UNIVERSITY  
MALMÖ, SWEDEN

LINER SHIPPING, THE CODE AND THE G.C.C. STATES

by  
Mohamad Kazem Al, Mazeedi

A paper submitted to the World Maritime University as part of the requirements of the Course on General Maritime Administration.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the World Maritime University or the International Maritime Organization.

Signature:

Date:

Paper Directed by

Professor G. Stubberud  
The World Maritime University

and

Professor A. Monsef  
The World Maritime University

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## LIST OF TERMS AND ABBREVIATIONS

Terms

The Code	The U.N. Convention on a Code of Conduct for Liner Conferences, also called UNCTAD Code, and the Code Convention.
G.C.C. National Fleet	The fleet owned and operated by the G.C.C. National Line
G.C.C. National Line	A grouping of all liner shipping companies recognized by the G.C.C. states as their respective National Line(s)
G.C.C. States	Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates

Abbreviations

G.C.C.	Gulf Cooperation Council
G.D.P.	Gross Domestic Product
G.M.A.	General Maritime Administration
I.M.C.	International Mandatory Conciliation
I.M.O	International Maritime Organization
M.S.A.	Maritime Safety Administration
N.F.I.O.	National Freight Investigation Office
QNNTC	Qatar National Navigation & Transport Company
UASC	United Arab Shipping Company
UNCTAD	United Nation's Conference on Trade and Development

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I am particularly grateful to Mr Salatt and UASC for allowing me the opportunity to do such work and assisting me thereon. I am also indebted to Professor Monsef for his fatherly advice and visionary guidance. Many thanks to my friend Azam Khalaf for helping me in obtaining many of the references used in the study. Last but not least, I owe many thanks to my family, without the support of which, this work would have been much harder to do.

## Introduction

Many writers and researchers have attempted to explore the individual elements of this study, namely, development of liner shipping, practices of liner conferences, different topics related to the Code and finally different aspects pertaining to the G.C.C. states. Therefore, this study attempts to go one step further beyond the aforesaid. Accordingly, first, this study, aiming to uncover the intended interpretations of the main provisions of the Code by the fathers (drafters) of the instrument, and if not possible, to foster the most reasonable interpretations of the same in light of the agreed upon objectives and principles of the Code Convention, develops an understanding of the Code from a framework of developments both in liner shipping and in their conference system. Second, the study attempts to examine some implications of a recommended approach on the Code by the writer, in view of the aforementioned interpretation and understanding, for the G.C.C. states, given their present economic status and general level of development as well as their trade and maritime involvements.

The aforementioned issues, which this study attempts to highlight and clarify, are very relevant and rather significant in the present time. This is so because, inter alia, presently there exists in both the developed and developing world a blurred understanding and even a misunderstanding of what the Code is really all about. What does it mean? And what are some of its possible implications? Furthermore the study seems to be timely for the G.C.C. states in particular as they stand at the footsteps of developing their national and regional policies in this regard. Accordingly, the contents of this study can be of some use.

In writing this study, there is mainly one basic and generally overriding assumption made, pertaining to the purpose and thus the audience thereof. This study was written not only to satisfy the partial requirements for the M.Sc. degree but also to be used by the concerned parties, mainly in the G.C.C. states, to understand the subjects dealt with and to help direct the policies in this respect accordingly. Therefore, the reader of this study is assumed to be an expert neither in shipping nor in liner shipping, however only to possess a general background knowledge of maritime affairs and activities. This assumption

is then reflected in the scope of the subject matters dealt with, the method and approach adopted and the style of writing the study.

A basic limitation of this study concerns a very fundamental problem experienced more in the developing countries, including the G.C.C. states, than in other parts of the world. It is the unavailability of relevant up to date data and information and general lack of knowledge on the topic of this study, especially the Code. However, it should be mentioned that the severity of such a problem varies with the different countries and the different concerned institutions of the G.C.C. This limitation has been a deciding factor, especially in the third chapter of the study, in determining the scope and extent of the analysis made and the relative completeness thereof.

CHAPTER I

LINER SHIPPING

AND

LINER SHIPPING CONFERENCES

## HISTORICAL DEVELOPMENT OF MARITIME TRANSPORT

The greatness of the sea by itself is astonishing, as one can be at one point in mid-ocean yet be over 3,500 miles from the nearest land; and while the land's highest peak "Mount Everest" is 29,000 feet, the sea's deepest depth "Mariana Trench" is 36,000 feet; finally, the seas contain 330 million cubic miles of water, which is eighty times all land above sea level.<sup>1</sup> Mankind has tried to make use of this magnitudely overpowering watery mass on the planet "Earth" since well before the dawn of history. He used the sea for three purposes: firstly: something to do on the opposite land beyond the water, e.g. hunting, farming, finding a better place to live, mail, etc.; secondly: something to do on the water, e.g. fishing and fighting with water-borne enemies; and thirdly: transporting heavy things by floating them on the water, e.g. shipping.<sup>2</sup> The third use is made possible due to the fact that water can support many tons of goods without much effort, which makes ships much more efficient as a medium of transporting trade for they can carry far heavier goods with surprisingly less energy consumption requirements compared to other transport means.<sup>3</sup> Such facts were realized from ancient times when a Queen of ancient Egypt had a pair of stone "obelisks" with a total weight of 700 tons moved the entire length of Egypt on the Nile, and when the Romans determined that it costs more to carry a large quantity of grain seventy-five miles overland than to ship it by sea from one end of the empire to the other.<sup>4</sup>

Thus the application of the basic principle of maritime transport as demonstrated by the ancient Egyptians and Romans sheds some light on the history of man with shipping. In its broadest sense the history of shipping, that is the use of buoyant craft to provide transport for people and materials on water, is almost as old as the history of mankind itself.<sup>5</sup> In fact the progress of man at sea from the floating tree-trunk and coracle to the luxury cruise liner and nuclear-powered aircraft carrier is one of more than 6,000 years of history;<sup>6</sup> for there were sailors before there were farmers and shpherds, and there were ships before people had settled in villages and made the first pottery.<sup>7</sup> Moreover the adoption of wind power for land use did not take place until almost 7,000 years after the first square sail was hoisted aboard an Egyptian ship.<sup>8</sup> The earliest historical records of such progress indicate that the Egyptians invented the sailing ship about 8,000 years ago; however even though navigation probably existed

in early India in the form of sea-borne trade between the Indus people and the Sumerians in the late 2,000-3,000 B.C. and between India and Babylon about 3,000 B.C.,<sup>9</sup> it is more likely that shipping originated off the Eastern shores of the Mediterranean as proof exists that ancient Pharaohs of Egypt imported cedar logs from Phoenicia by sea very early in history. Thereinafter, the aforementioned historical progress of man in maritime transport passed through several stages until the present time, each stage having its unique characteristics and representing a structural transformation from the preceding stage.<sup>10</sup>

The first of such stages with adequate historical documentation is that covering the last millennium B.C. During this period, featured by having what can be termed free shipping, the Phoenicians took the prominence in commercial shipping from the Egyptians. They colonized Cyprus in 900 B.C. with which they had previous trading relations, settled in Spain in 700 B.C., founded Carthage in North Africa and made a trading colony down the Atlantic coast of Morocco and finally there is even a possibility that they have actually circum-navigated Africa in the service of Pharaoh Necho of Egypt in 600 B.C. Furthermore, the Greeks also were very active in maritime trade around 600 B.C. in Sicily, Italy, North Africa and along the Black Sea; and so were the Etruscans of Italy. All of this led to making the entire coast of the Mediterranean full of colonies, settlements and trading ports by 500 B.C. In fact, the whole period between the late Bronze Age and the founding of the Hellenic States saw extensive maritime activities in the Mediterranean area as well as a vigorous sea-borne trade in the whole "Fertile Crescent" of the then Middle East. However, toward the end of the millennium, Rome controlled the trade across the Mediterranean and navigated as far as the North Sea region as their sea-borne grain imports amounted to about 150,000 tons a year. Moreover, the same period marked the heyday of Indian shipping with extensive commerce between India and the West (Rome, East Africa, Arabian and Persian ports, North coast of Sacarta and the Far East (China). This Indian maritime trade was organized with taxes levied and safety precautions imposed.

The next stage extends to the 18th century. The main feature of this period is the expansion of monopolistic shipping where very large national companies had exclusive rights to the traffic. Moreover, during this period, Britain gradually obtained almost total mastery of the seas. The third stage, covering the period from 1800 to 1850 represents yet another structural transformation in shipping. In this stage monopolistic shipping was phased



out due to the pressures of the new developing industries in Britain forcing their country to open up shipping to competition. The following stage being from 1850 to 1900 witnessed a rapid technological evolution in the maritime sphere. The main reasons for such an evolution lie in the fast industrial developments of the period as well as other major events of the time such as the gold rushes, wars and the emigrant traffic to America. The period also witnessed an over-capacity in the supply of tonnage as high wage maritime nations, e.g. Britain, built new and more sophisticated ships and sold the old ones to the new maritime nations of the time (Figure 1.1).

The fifth stage covers the period 1900 to 1945. It is indisputable that the main world events during this period were the tragic First and Second World Wars. On the other hand, in the maritime field, even though there was a moderate evolution in maritime technology, the major feature of this stage was that the dominance of Britain over the ocean trades was lost which is a significant structural change in shipping. The sixth stage, extending from 1945 to 1975, is distinguished by having extensive industrial development along with the opening up of distant continents for trade in raw materials which reflect the picture on the demand side for shipping tonnage (Table 1.1). On the supply side for tonnage, this stage had a rapid evolution in maritime technology with North European companies operating the most technologically advanced vessels due to their high cost levels and selling 7-10 year old ships to the new shipping nations of the era, e.g. the newly independent developing countries. The final stage of the history of man in the maritime transport sphere begins in 1975 and extends until the present time. This period is characterized by a prolonged world economic depression, a generally limited evolution in maritime technology, slow industrial activity leading to slow transfer of both raw materials and manufactured goods (Table 1.2), e.g. lower demand for shipping services and a shipping market consisting of about 10,000 shipping companies and 30,000 ocean-going vessels, e.g. over-capacity in the supply of tonnage (Table 1.3).

#### HISTORICAL DEVELOPMENT OF LINER SHIPPING

The evolution of liner shipping over time can be represented in three main historical periods. Those periods are the following:

1. the foundation period;
2. the expansion period;
3. the concentration period.<sup>11</sup>

The Evolution of some Merchant Fleets 1850-1910

SOURCE: T. Lenman & R. Lundin, The Commercial History of Shipping  
 Sweden, Rusiman & Lundin AB, 1983, p. 180

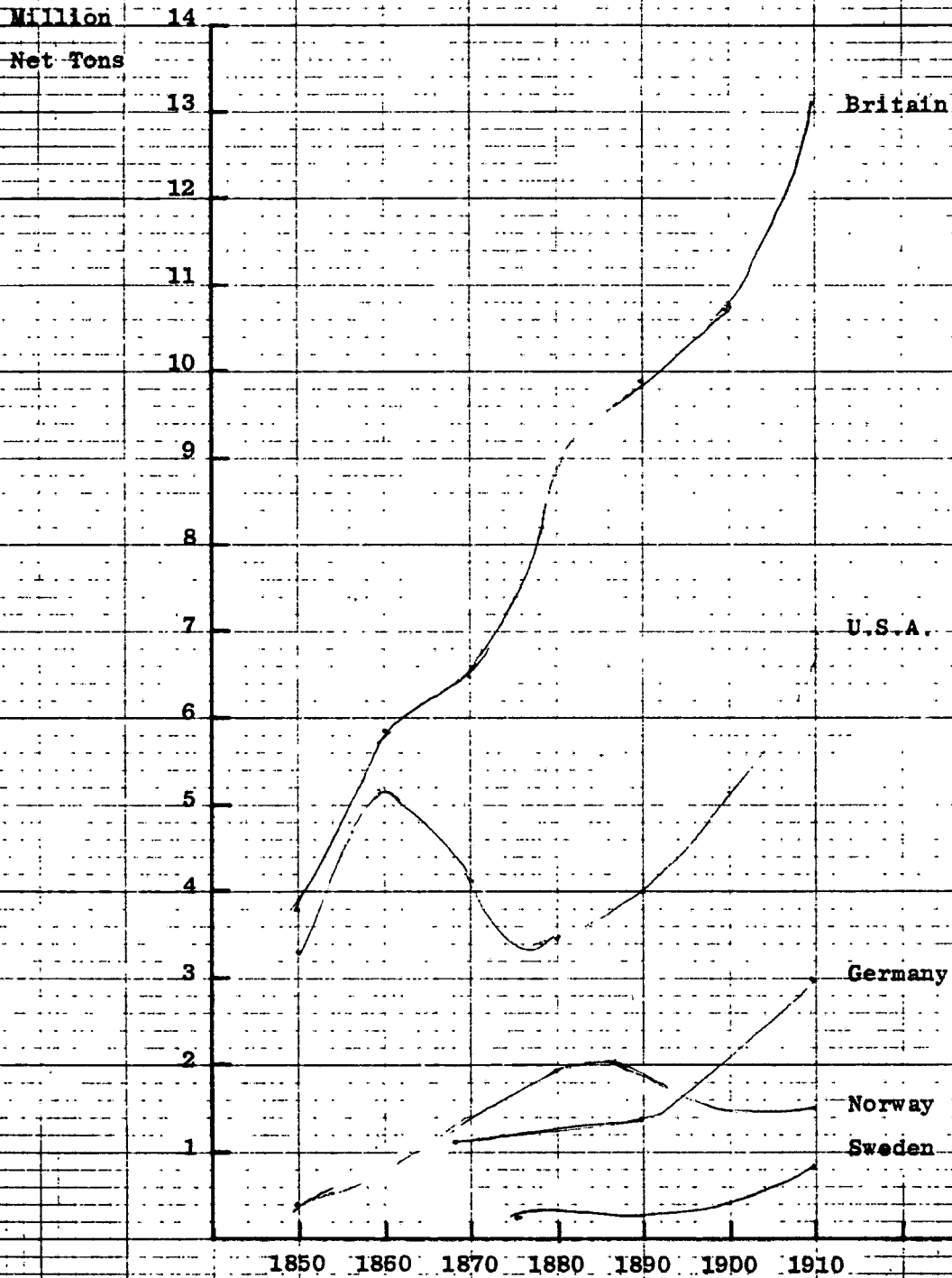


TABLE 1.1

International Sea-Borne Trade (Million Tons)

Continent \ Year		Year					
		1938	1948	1952	1958	1962	1963
Africa	L	28	31	37	53	96	121
	D	23	27	35	45	59	60
North America	L	108	160	188	210	254	279
	D	81	151	204	260	315	326
Latin America	L	53	98	117	181	225	225
	D	19	29	30	38	36	36
Asia	L	84	84	150	276	393	426
	D	68	50	78	147	228	251
Europe	L	185	108	159	206	270	291
	D	266	226	299	438	603	662
Oceania	L	8	7	9	13	23	22
	D	9	9	19	22	28	31
World*	L	466	488	660	939	1261	1364
	D	466	492	665	950	1269	1366

SOURCE: Carleen O'Laughlin, The Economics of Sea Transport, Purgoman Press, 1967, p. 5

\* The discrepancy between loading and discharging is due to statistical omissions and minor errors.

TABLE 1.2

Growth of World Trade 1961 - 1980 (Millions tons)

Year	Oil	Oil products	Iron	Coal	Grain	Other	TOTALS
1974	1361	264	329	119	130	1045	3248
1975	1263	232	292	127	137	995	3047
1976	1422	260	294	127	146	1075	3324
1977	1475	273	276	132	147	1120	4323
1978	1457	270	278	127	169	1190	3491
1979	1538	279	327	159	182	1270	3755
1980	1420	240	310	172	185	1300	3632

SOURCE: Fearnley 1980

TABLE 1.3

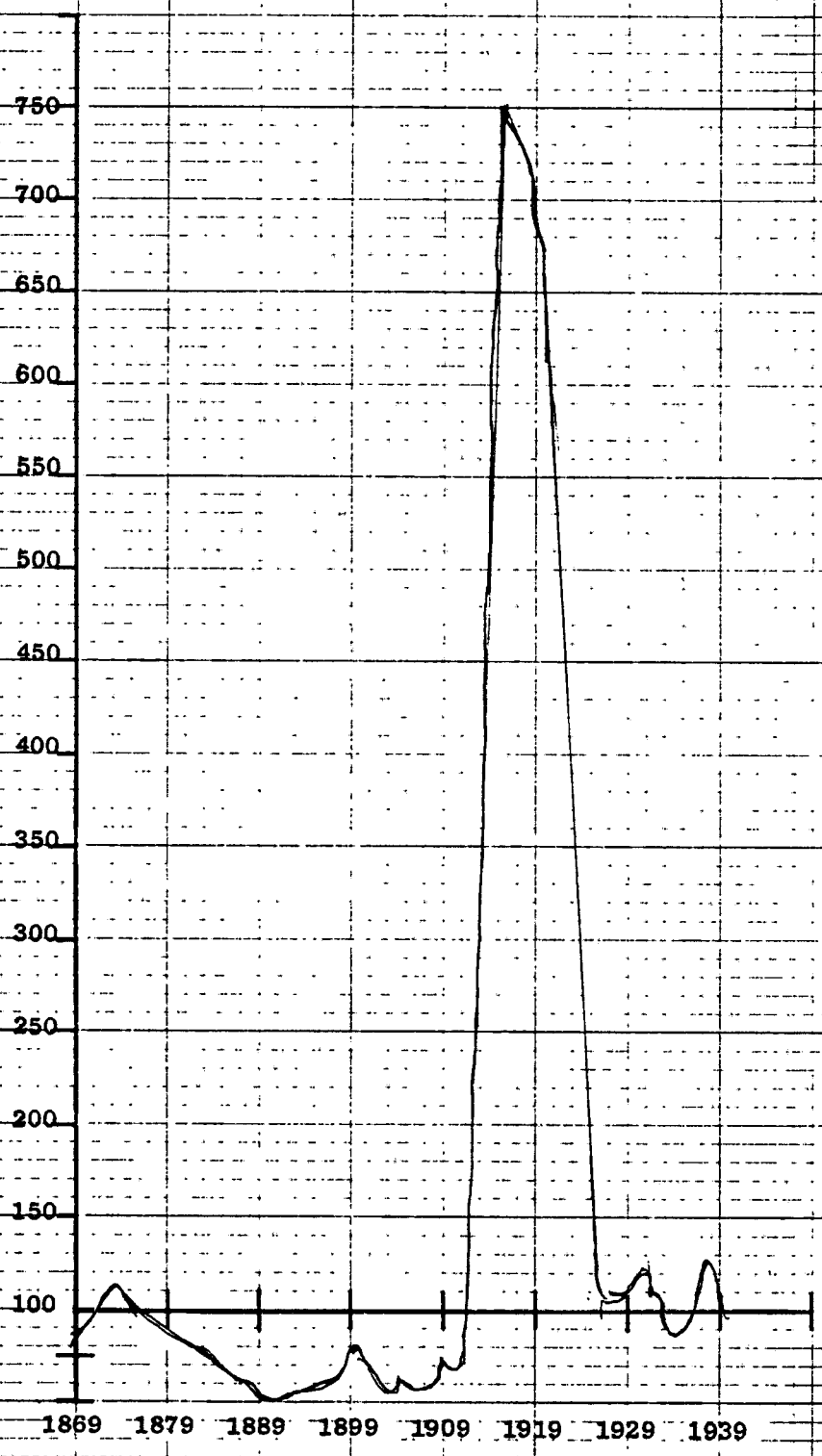
Growth of World Tonnage

Year	Dwt. Tonnage (Million Tons)
1970	326.1
1981	688.8
1982	693.5

FIGURE 1.2

Freight Index 1869-1939

SOURCE: T. Limon & R. Lindus, The Commercial History of Shipping Sweden, Rusman & Lundin AB, 1983, p. 192



The foundation period of liner shipping extends from the early years of the 1820's to the first years of the 1870's.<sup>12</sup> During this period the three basic forms of work in liner shipping were established, which are the following:

1. a geographically fixed route plan;
2. scheduled sailings, independent of weather conditions and use of the loading capacity of the ships;
3. acceptance of all consignments regardless of the size and consignor of such consignments.

In the first twenty years of the foundation period, liner shipping was based on sailing ships. However, at the end of the 1830's the steamer was introduced to gradually replace the sailing ship as it was able to satisfy the crucial and fundamental commercial and economic requirements of liner shipping.<sup>13</sup> Such requirements include the increased security for passengers and goods which increased the demand for the service as well as reduced some of its costs like insurance, the lower dependance on the weather, the generally shorter transport time which meant higher speeds leading to better regularity of the service, the lower manning costs and finally the increased ship size allowing better economies of scale and thus resulting in a more economical service.<sup>14</sup>

The British total dominance over liner shipping during the foundation period, due to its strong protectionist policies of cargo reservations, which even included the transport of mail, extended up to the mid 19th century. At this point in time, liner shipping was opened up for competition causing the emergence of new maritime nations like Norway and the United States (see Figure 1.1). The free competition led to a violent price war, causing the freight rates to drop down by up to 40% (see Figure 1.2). Even though there were some technological evolutions such as the propeller in the 1860's and the compound steam engine in the 1870's, which reduced the operating costs of liner shipping companies, such reductions were not sufficient to account for the total reduction in the freight rates during the same time period. Consequently, the huge reductions in the freight income due to the price competition among liner shipping companies rendered the profits of many liner companies very marginal if any at all and forced a large number of shipping companies to close down in these years.<sup>15</sup> Moreover, the threat against their continued existence forced the liner shipping companies to

cooperate at the beginning of the 1870's. This cooperation formed the basis of a new phase in the development of international liner shipping as the free competition which characterized the market between 1840-1870 was replaced by a system of cartels called the liner conferences. The first liner shipping conference was formed in 1875 in the UK-Calcutta trade.<sup>16</sup> From there on the liner shipping conference system played a major role within the sphere of international liner shipping, the detailed examination of which will be deferred to a later part of the study.

The second period in the evolutionary history of liner shipping, the expansion period, covers the time span from 1870 to the mid 1960's.<sup>17</sup> Furthermore, this period can be divided into two phases. The first phase covers the period 1870-1948 while the second phase covers the remaining time of the period up to the mid 1960's.

The main features of the first phase of this period relate to the economic and organizational structuring in the liner shipping industry. The industry went through a process of concentration of capital by mergers and acquisitions, principally due to the economic hardships of free competition of the preceding years. This concentration of capital and other economic resources took place not only in Britain, which was the dominant country in the field of liner shipping up to the first World War period, but also in Germany, Italy and France. The results of the concentrated liner shipping industry were the following:-

1. the gradual decrease of competition among the large national lines specially in Britain;
2. the establishment of geographic market division among the lines which limited the conflict of interest inside and outside the conferences;
3. the transfer from private firms to the limited liability companies.

Another structural change in the liner shipping industry with noticeable economic implications which characterizes the same time period of the phase is the increased common use of joint sailings or joint services at least up to 1910 and joint ventures throughout the period (1850-1950). The cooperation of liner shipping companies through joint sailings was aimed at increasing their competitiveness on individual routes and reducing their commercial risk of low utilization of the ships. On the other hand, the use of joint ventures was mainly for new and capital intensive operations, e.g. passenger

shipping, as the parent company would obtain greater risk spreading and less financial pressures.

In addition, the liner shipping market during the period 1870-1948 witnessed a keen competition for general cargoes and break-bulk cargoes between liners and general tramp vessels which were replaced by the newly-developed special carriers.<sup>18</sup> However, the liners' competitive strength was boosted by the continuous increase in their speed and size which increased their productivity and reduced their unit cost.

A further feature characterizing the liner shipping industry through the first phase of the second period is the foundation, establishment and development of liner shipping conferences.<sup>19</sup> Until 1916 the liner conferences were of the strong self-regulated closed type. These conferences were very strong and powerful on routes where a large number of small and scattered consignors existed, e.g. West Africa. However, such conferences were weaker on routes where the consignors were small in number, large in size, powerful economically and supported by the active shipping and trade policies of their governments. In 1916 however, the United States of America adopted a new shipping policy based on the country's anti-trust laws, where open conferences were the only type allowed to operate on routes to and/or from the United States.<sup>20</sup> This policy not only created a publically regulated, easy to enter into and rather loose or weak conference, but also stimulated the governments in South America, Australia, New Zealand and South Africa to try to obtain more control over liner shipping in their own ports in the 1910's and 1920's.

In addition to the policy of the United States, the organizational structure of the liner shipping industry was shaped by the general shipping policy which took different turns during the phase. It started with liberalism up to the first World War, where economic control and support measures such as mail subsidies, operational subsidies and construction subsidies replaced direct protectionistic shipping policies. From the first World War period and thereafter protectionistic laws became gradually to surface again until the start of the second World War in 1939 when sea transport in general, including liner shipping, was organized under state control, thus ceasing competition and the need for liner conferences.<sup>21</sup> This situation extended up to 1948 when liberalism was again adopted as a guideline for liner shipping policy in the world.<sup>22</sup>



Finally, it should be noted that from the time of the second World War and largely due to it, there emerged many technical and organizational innovations in liner shipping, the most important of which are the following:-

1. application of the ro-ro technique in deep sea shipping;
2. unitization of general cargo and mechanization of its handling in ports;
3. mass production of ships.

These factors would, as we will see in the next period, influence greatly the development of liner shipping. Furthermore, as a result of the war, world trade was restructured causing a reshaping of the demand for liner shipping, the centrally planned economies developed their own liner shipping tonnage which introduced a new competitive element in the market, and finally, a threat of over-supply of tonnage became very real.<sup>23</sup>

The time from 1948/49 - 1965/66 represent the second phase of the expansion period in the historical development of international liner shipping. The major developments during this phase, which had an impact on the international liner shipping industry, were threefold as follows:-

1. the revival of conferences and the establishment of new forms of national shippers' councils;
2. the economic impact of technological developments;
3. the formulation of different shipping policies by different groups of countries.

At the beginning of this phase liner shipping conferences again reclaimed their role as the main forum for cooperation among the shipping lines within the conferences and for negotiations with consignors. Moreover, conferences grew in number during the phase by more than 40%. They maintained the same previous organization and methods of operations, control and pricing leading to strong closed conferences. At the same time, the external operating environment of the conferences was undergoing dramatic changes. While the conference system was supported by the dominating European and Japanese liner shipping companies as it sheltered them from competition, thus strengthening their monopolistic hold of the market,<sup>24</sup> it was negatively looked at by the Soviet Union as it presented a hurdle for the State-owned Soviet liner fleet to be an export service, thus a source of foreign currency earner by offering much lower freight rates than allowed under the conferences' tariffs. The developing countries felt not

at ease with the conference system as it was seen to frustrate their ambitions to develop their national liner fleets. Finally, the United States' opposition to the closed conferences continued. Furthermore, new types of national shippers' councils were established to counter balance the monopolistic powers of conferences by coordinating on the national level the interests of general and break-bulk cargos' consignors and supporting them in negotiations with the liner conferences. This represented a departure from the previous types of shippers' councils which were branch associations which had a much narrower base, as they covered only consignors of a certain commodity of products.<sup>25</sup>

Technological developments during the phase were mainly in the area of improvements of previous technological evolutions. Accordingly, there were three basic developments, all of which has an economic impact on liner shipping. Productivity of ships continued to increase due to the continued switch from steamships to motor ships and the continued increase in ship speed and size. Furthermore, special ships were developed for goods previously carried in liners such as refrigerated goods, wood and wood products and cars using the ro-ro technique of cargo handling (see Figure 1.3), which reduced the cargo basis for some lines.<sup>26</sup> Moreover, alternative modes of transport to liner shipping became more attractive by offering very competitive prices. The alternative modes of transport comprise of lorries in the inter-European general cargo transport and airplanes for the passenger traffic and more importantly for the high-valued general cargos which are the cream of the cargo flow for liners. These alternatives reduced the cargo basis for liners even further.

The sphere of national shipping policy during the phase was rather colourful with five different and often conflicting sets of policies adopted by the groups or blocs which emerged after the second World War. The five policies were the following:

1. limited interference in international shipping, adopted by liberal countries of Western Europe;
2. protection of the national shipowners from foreign competition while safeguarding strongly the interests of the domestic shippers, adopted by the industrial countries like the United States, Japan and Australia;
3. State-owned liner shipping fleets under non-market conditions followed by the planned market economies countries;

FIGURE 1.3



Development of the World Fleet by Vessel Type 1948-1966

4. protectionistic laws of cargo reservation and flag preferences favouring the development of the national, mostly State-owned liner fleets, adopted by the developing countries of South America, Asia and Africa; and
5. open registry policy of allowing foreign shipowners to use their flags for a fee, followed by flag of convenience countries like Panama, Honduras and Lebanon.

Finally, the third and last period in the evolutionary history of international liner shipping extends from the mid-1960's to the present times and can be referred to as the "concentration period". The liner market after the mid 1960's became a forum for rapidly growing business and political conflicts following geo-political and economic changes on the world map. The period witnessed two revolutionary developments, both of which had and still continue to have profound and far-reaching effects on the structure, organization and characteristics of the international liner shipping industry. The first revolution was in the technological field while the second development was in the political field, influencing the national and the international shipping policy.

The technological revolution of the period was started by Western European countries and the United States of America. The main reasons for looking for, developing and applying new technology in the liner shipping industry was that since the beginning of the 1960's, cargo handling costs represented an increasingly higher percentage of the total running costs of the ship and gradually became the dominant cost group within the total cost of running the vessel. This situation came about because the conventional way of cargo handling involved intensive high wage labour work and long ship turn-round time in ports which increased the costs and reduced the productivity of the liner vessels. This hampered the competitiveness of the liner shipping industry at a time when such competitiveness was challenged as was seen before toward the end of the second phase of the expansion period of the industry's history.

The basic feature of the new technology was the introduction of mass production in the industry for the first time. It meant:

1. the integration of all the separated medias of the transport chain into one system;

2. the standardization of loads transported;
3. the replacement of the labour intensive devices with heavily automated, mass producing and capital intensive equipment for cargo handling.<sup>27</sup>

The manifestation of the technological revolution can be summarized in one concept, that is "unitization". The impact of unitization on the international liner shipping industry is basically that of the new vessels and the new cargo handling techniques (see Figure 1.4).

After the mid 1960's different types of unitization techniques were introduced along with the corresponding vessels and relevant equipments to make up the whole new systems such as the containerization, the roll on-roll off and the barge system. All of these systems were competing against each other, throughout the late 1960's and the early 1970's, for claiming an adequate share of application in the liner shipping industry. However, toward the mid 1970's it was evident that containerization is to become the dominant system of general cargo transport on liners, while the ro-ro system was yet to become a strong competitor leaving the barge system lagging way behind until eventually it became of little influence on the industry by the end of the 1970's (Table 1.4). The supremacy of containerization was due to several factors, the most important of which was that the productivity in cargo handling under the container system has increased by up to 2000% compared to the conventional methods which reduced the ship turn-round time in ports dramatically (by 40-60%), which in turn reduced the total running costs of liners to a competitive level.<sup>28</sup>

The roll on-roll off (ro-ro) system was introduced to increase the productivity of the handling operations without limiting the vessel's cargo base which expressed the philosophy of acquiring higher flexibility at the expense of lower utilization.<sup>29</sup> The ro-ro technique was applied to general cargo transport using ro-ro vessels and to car transport using pure car carriers. The ro-ro application seems to be successful, as the world tonnage of ro-ro vessels has been on a steady increase since the mid 1970's (see Table 1.4).

The barge carriers were pioneered by the United States' liners on the same philosophy as the ro-ro system. However, after 1975 this system has declined, to be of very little use in the liner shipping industry by the late 1970's (see Table 1.4). The decline was mainly due to the large unit size of the barge which limited its practical and commercial use in the ever-

FIGURE 1.4

Functional Categories of Merchant Ships

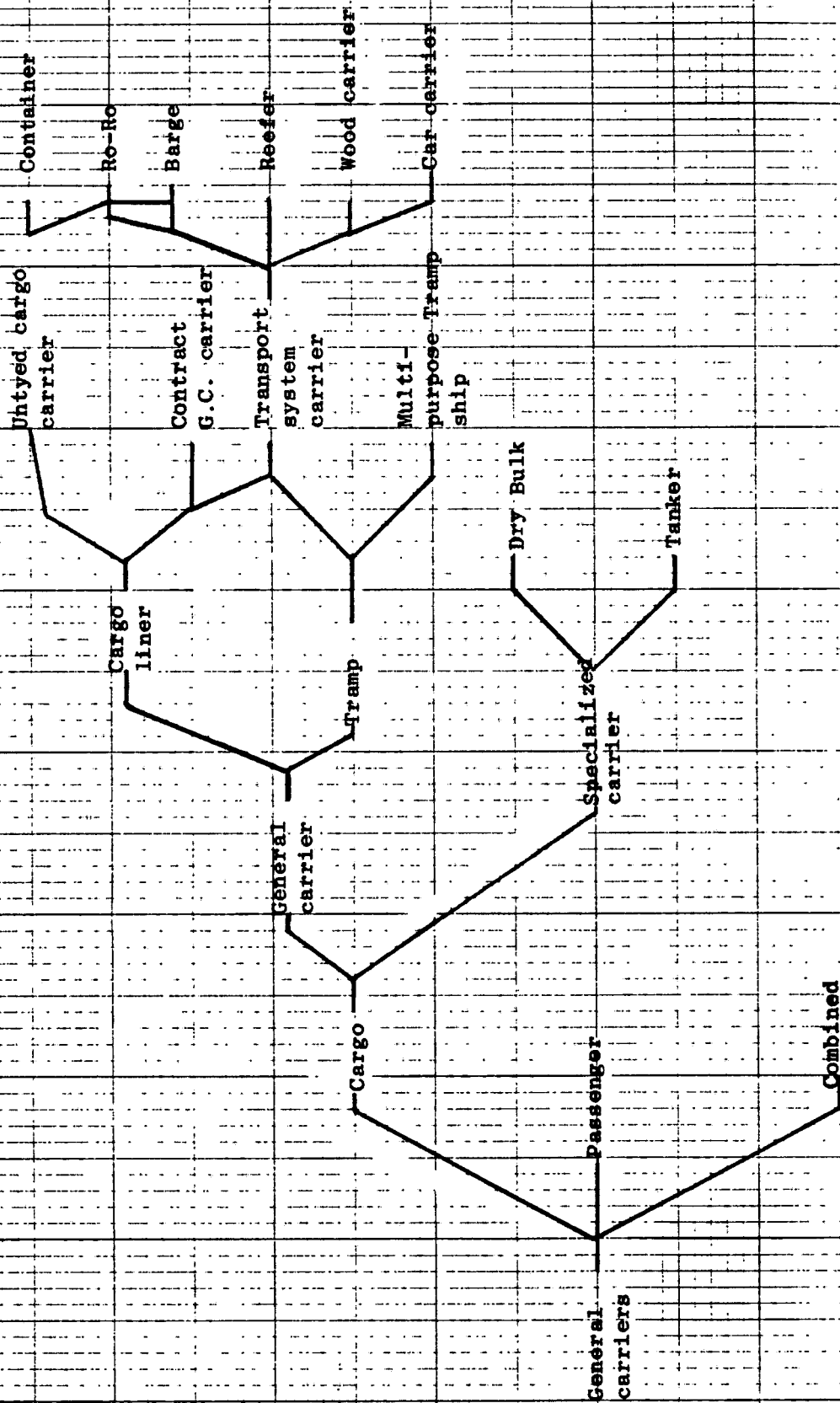


TABLE 1.4

World Fleet for General Cargo Transport :-

YEAR	Number of vessels				Carrying capacity			
	General carrier (a)	Carriers (b)	Barge carrier (c)	Ro-Ro (d)	General cargo 000,000 Dwt (a)	Container 000 TEU (b)	Barge carrier 000,000 Dwt (c)	Ro-Ro (d)
1966	11807	20	0	0	90.5	1.2	0	0
1968	11868	75	0	6	91.0	17	0	0.1
1970	11875	167	3	17	91.2	72	0.1	0.3
1972	11950	312	18	27	92.0	218	0.6	0.5
1974	12007	412	24	35	93.7	308	0.8	0.6
1976	12062	443	28	42	95.3	406	1.0	0.8
1978		531	29	72		510	1.0	1.3

SOURCE: Christopher von Schiroch-Symigil, Liner Shipping and General Cargo Transport, 1979.

(a) Vessels above 1,000 GRT

(b) Only newly built FCV

(c) Deep-sea - excluding car carriers

favoured door-to-door service. Another reason for its decline was the technical difficulties faced in the feeder transport to the barges.<sup>30</sup>

The effect of the technological revolution of the period, as manifested in unitization in general and in containerized as well as roll on-roll off systems in particular, is a continued increase in the concentration of capital within the international liner shipping industry, which has become even more evident after the mid 1970's.<sup>31</sup> This concentration of capital was inevitable as the survival of many liner shipping companies depended on it because of the high productivity of the systems which resulted in an excess of tonnage more than can be absorbed by the present demand which caused a downward pressure on the freight rates rendered many companies, already facing hardships of the economic depression presently in the market, on the verge of bankruptcy, specially during the early 1980's. Another reason, which was more evident during the 1970's than the afore-mentioned one, is the fact that the vast sums of capital required by the new systems and their complementary activities lie beyond the ability of most of the big individual shipping companies in the world. Thus, the capital resources of individual companies were brought together into large pools of centralized capital through the three forms of integration and the four types of joint operations that characterize the international liner shipping industry up to the beginning of the 1980's.

The three types of integration are the following:-<sup>32</sup>

1. Horizontal integration, which is the extending of the business activities of a company horizontally in merging between shipping companies in the same type of shipping, e.g. liner or linking various types of shipping, e.g. liners, tramps, tankers and bulk carriers;
2. Vertical integration, that is the integration of shipping companies as suppliers of the service with the companies demanding this service such as the integration of the shipping companies with industrial companies or with other transport industries, e.g. road. This form of integration is specially evident in the container system where it forms the back-bone of the system, enabling the shipowners to control the continuous flow of general cargo from door-to-door;
3. Conglomerate or mixed integration, which means the concentration between firms that are neither horizontally nor vertically related and therefore are not in the same market; in other words, the



merger between shipping and other economic activities which are not directly connected with sea transportation, e.g. the hotel business or the electronics industry.

The four types of joint operations, which represent an attempt to reorganize the liner markets to strengthen the position of the liner shipping industry in negotiations with consignors and governments and to avoid the development of over-capacity, are the following:

1. Cartels, where all operational activities in sea transport are performed jointly while marketing, inland operations, investments and ownership are performed spirally by the lines;
2. Container syndicates, where in addition to the operational activities in sea transport, the marketing and inland operations are all performed jointly to limit the financial risks and reduce competition in the container market;
3. Consortiums, where all transport operations are done jointly by the joining companies while investments are made individually;
4. Joint concerns, where common managements of operations, common vessels and common financial policy exists between independent lines.

These forms of joint operations have also influenced liner shipping conferences after the mid 1970s to a great extent, by making them relatively stronger as an umbrella for such operations - but to a lesser extent in open conferences.

Even though the field of shipping policy saw very little change in the policy sets adopted in the last period, revolutionary changes in the organization and structure of the international liner shipping industry were demanded by the group of developing countries, the political strength of which grew noticeably compared to previous periods as they would dominate most international forums in the 1970's. Accordingly, the policies toward the international liner shipping industry can be summed up as representing the conflicting economic interests and philosophies of the different political blocks in the world. The United States maintained its opposition to the closed conferences in line with its anti-trust laws. The EEC (European Economic Community) and the OECD (Organization for Economic Cooperation and Development) countries except the USA continued their support of the closed conferences and advocated a pro-free competition policy in general. The Soviet Union active policy of development of the national liner fleet outside the sphere of liner conferences succeeded in increasing the influence of the Soviet lines on the organization of the international liner market. Finally,

the developing countries also maintained their policy of increasingly exerting political pressures on the international liner industry seeking government control of the liner shipping industry and a changed market organization, mainly through restricting the powers of conferences. The efforts of the developing countries in this respect has resulted in one of the major and most important international conventions, that is the "U.N. Convention on a Code of Conduct for Liner Conferences", adopted by UNCTAD (The United Nations Conference on Trade and Development) in 1974.

Before discussing the code, which is the subject of the next chapter of this study, it is very crucially important to examine the liner shipping conference system to understand and appreciate the nature of the issues at hand.

34

#### THE LINER CONFERENCE SYSTEM

Even though at present, after 150 years from the formation of the first liner conference, there are about 360 conferences operating in the different trades of the world, there are no two conferences that are the same as each has developed individually and still continues to do so. Given the dominance of Britain over shipping in general, including liner shipping, during the period 1870-1960 (see Table 1.5), it is perhaps not surprising that British shipowners were the originators of the conference system with the establishment of the first liner conference in the UK/Calcutta trade in 1875. The background behind the creation of liner conferences reflects a rate of increase in the effective capacity of the shipping tonnage - supply of liner shipping - which was much higher than the rate of increase in the volume of trade - demand for liner shipping (see Figure 1.5). On some routes the ratio of increase in the effective supply of liner shipping to the increase in the demand for liner services exceeded two to one. This of course resulted, as expected, in a free market condition when supply exceeds demand, in a reduction in the freight rates (see Table 1.6). Therefore, because costs could not be reduced in line with the fall in freight rates, the profits of liner shipping companies declined as was indicated by the annual reports of these shipping companies at the time. These circumstances induced the shipowners in the 1870's to form combinations among themselves to protect their interests through raising freight rates and regulating the trade. So, based upon the recognition of interests which were existing at the time, shipowners formed the so-called liner conferences.

TABLE 1.5

British Dominance in Shipping 1870-1900T.T. = total tonnage  
(000 NRT)B.T. = British tonnage  
(% of T.T.)

Trade of	1870		1880		1890		1895		1900	
	T.T.	B.T.	T.T.	B.T.	T.T.	B.T.	T.T.	B.T.	T.T.	B.T.
Australia	3701	92.2	7733	94.1	14246	87.6	16848	89.3	23704	85.2
India	4009	86.7	5703	84.2	7316	87.4	8256	87.2	8627	84.3
Ceylon	1424	86.0	2907	84.8	5118	84.3	6543	85.4	8488	71.8
Straight settlement	1651	66.7	4808	69.7	8642	70.6	10054	71.4	13354	57.3
Hong Kong	2640	62.5	5079	74.0	9772	71.6	11526	74.5	14022	65.3

SOURCE: B. M. Deakin, Shipping Conferences . . . . , 1973

TABLE 1.6

Homeward Freight Rates from China, Japan and Malaya 1874 + 1878

Place / item	per ton of 40 ft. <sup>2</sup>	
	1874	1878
<u>Japan:</u>		
Tea	105	80
Waste silk	108	80
General merchandize	108	45
<u>China (Shanghai):</u>		
Tea	(70 80)	(45 70)
Waste silk	(75 80)	(40 55)
<u>Hong Kong:</u>		
Tea	80	65
Waste silk	90	80
<u>Singapore and Penang:</u>		
Gatto Percha	100 <sup>(a)</sup>	70
General merchandize	100 <sup>(a)</sup>	60

SOURCE: B. M. Deakin, Shipping Conferences, 1973

(a) 1875

Figure 1.5  
Supply and Demand for Shipping in U.K. Eastern and Australian Trades 1870-1900

Index 1870 = 100



In other words, the need for liner conferences stemmed mainly from one source, that is the characteristics of supply and demand in the liner shipping market. The supply side of liner shipping services has the characteristic of having few firms, mainly due to the very high capital investment requirements (Table 1.7) and the relatively lower return on investment compared to other economic activities. Most costs of liner shipping companies are fixed costs, even those which usually are thought of as variable costs. For example, port charges, fuel costs, become fixed costs immediately upon the commitment of a line to a sailing through advertisement.<sup>35</sup> This means that before entering the liner shipping market, the liner firm must meet the enormous capital costs related to shipbuilding and/or ship purchasing and to the establishment of the extensive shore-based network of offices, all of which are fixed costs. During operations, the liner firm must also meet the running costs of its ships which are also fixed costs. And finally, once committed to a sailing, the liner firm will have to pay all the related voyage costs which become fixed costs to it, except the cargo handling costs which can be seen as the only variable costs in the liner shipping service. Thus, the marginal cost for a liner firm which has advertised a sailing is almost equal to the handling costs of the additional unit to be shipped.<sup>36</sup>

On the other hand, the demand side for liner shipping services is characterized by having a large number of shippers, usually scattered in the hinterland, and each requiring the shipment of relatively small parcels requiring frequency, regularity and reliability in the liner service to meet their shipping needs as they may ship the different small parcels several times during a year with different intervals between the shipment dates and enter into contracts with the buyers of their goods to deliver at the buyers' places at given dates.

Having described very briefly the characteristics of supply and demand in the liner shipping market, the results of free competition in such a market are very evident. Since the marginal cost for an additional unit to be carried on a scheduled sailing is very low (almost equal to the handling costs of such a unit) there is a very strong tendency for liner operators to accept cargoes at freight rates which just cover their marginal costs. Such practice results in a cut-throat competition among the liner operators. In the long run, some operators will go out of business while others will continue, but on losing streams or with very low profits that is much less than required to attract new capital or achieve adequate returns on the present investments. Therefore, in the final analysis, the price competition

TABLE 1.7

Capital Investment Requirements in Liner Shipping for New Buildings  
(prices in \$ millions)

Ship type & size	1980	1981	1982
1200 TEU Ro-Ro	43.7	45.0	43.7
15000 Dwt. general cargo ship	13.9	14.0	14.0
1600 TEU full container ship	31.5	34.5	34.7

SOURCE: Lloyd's Shipping Economist (various issues)

TABLE 1.8

Example of Conference F. R. Charges  
(U. K. Cont./India Conference 1951-1963)

East Bond		West Bond	
Date	% increase	Date	% increase
9 March 1951	25	1 March 1951	25
1 Sept. 1951	15	1 Sept. 1951	15
1 Feb. 1955	10	1 Feb. 1955	10
1 March 1956	10	15 March 1956	10
15 March 1957	10	15 March 1957	10
1 August 1963	12	1 Oct. 1961	12

SOURCE: T. K. Sarangon, Liner Shipping in India's Overseas Trade,  
New York, U. N. 1967, p. 13

among liner operators in a free competitive liner shipping market would cause instability in the freight rates and irregularities in the liner shipping services.

This situation is not in the best interest of either the shipowners or the shippers. For the liner operator, the situation spells a serious threat to his continued existence in the market, which deters him from making long term investments in the liner route which he serves, causing a deterioration in the services provided. By the same token, for the shippers, the situation is just as bad as it is for the shipowners. The continuous and usually rapid freight rate fluctuations and the consequent entry and exit of firms in and out of the market makes the shippers unable to plan or enter into contracts and be able to meet their contractual obligations as to delivery dates and selling prices. Particularly as consumer goods require speed in delivery, care in handling and diverse loading and discharging ports, low freight rates become less important than the stability in the freight rates and the regularity of liner services.

Stemming from the above-mentioned circumstances was the need for and justification of a mechanism to stabilize rates and overcome the pitfalls of the free market forces in the liner shipping market. This mechanism is the so-called liner shipping conferences. A liner shipping conference can be broadly defined as an association of shipowners operating on a specific route for the purpose of charging the same freight tariffs, thus with the objective of eliminating price competition among member lines as well as uniting to curtail competition stemming from outside the conference.

Coming back to the pioneering conferences, such conferences can be classified as closed conferences. They were associations of owners of freight liners suitable for the carriage of general cargoes acting together to:

1. make common freight rates for the carriage of goods over the defined routes on which the conference operates;
2. admit or exclude applicants to conference membership;
3. share the trade in various ways amongst themselves;
4. make a common policy relating to many other matters as specified in the conference agreement.

The closed conferences were the only form of liner conferences in existence up to 1916 when another form, the open conference, was introduced. The open conferences were in conformity with the United States anti-trust laws, thus they were introduced on routes connecting the United States with other

parts of the world. The main difference between the two types of conferences is that new members can join closed conferences only with the consent (usually a unanimous vote is needed) of existing members, while almost any serious enough shipowner can join the open conferences. Another difference is that while the closed conferences are "self regulated", the open conferences are closely supervised by the United States Federal Maritime Commission (FMC).

Accordingly, the main benefits or advantages of liner shipping conferences are the following as per a report by the UNCTAD Secretariat:-

- A. For the shippers, liner conferences provide:
  1. better freight rate conditions;
  2. more adequate liner shipping services.
  
- B. For the liner shipowners, liner conferences maintain:
  1. a sense of security which induces long-term investment in the route or trade, as well as a strong planning position for the liner operations;
  2. a situation where the elimination of the weaker shipping lines is prevented.
  
- C. For the country whose trade is being served, liner conferences attempt to promote the foreign trade of such a country by ensuring reasonable freight rate levels and adequate liner shipping services to meet the requirements of the trade.

In this respect, the last point in the above list is self-explanatory, the others require further elaborations, which is done in the few following paragraphs.

The liner conferences attempt to provide better freight rates to all shippers of a given commodity with no discrimination among shippers (in reality this is not completely true) and through fixing freight rates for a range of loading and discharging ports but most importantly through providing reasonably stable freight rates (Table 1.8). The frequency of freight rate changes is reduced due to the nature of the freight rates in the liner conference system as well as to the nature of the administrative decision required for such changes within the system.

The freight rates in the liner conference system tend to be sensitive to increases in costs and insensitive to decreases in costs because of the relatively low elasticity of demand in liner shipping. In addition, such freight rates are relatively insensitive to increases in demand and somewhat



more sensitive to decreases in demand. So short-term changes in demand are unlikely to affect the level of freight rates, which are cost-based within the conference system. However, in periods of slumps, liner freight rates tend to fall even though the cost/ton/mile increases and the volume of cargoes decreases. On the other hand, in periods of booms in demand for liner shipping, freight rates do not normally increase purely as a result of the increase in demand. Such circumstances cause the freight rates to be reasonably stable in the long run under the liner conference systems.

Furthermore, within the liner conference system the change of freight rates requires an administrative decision which makes for three time lags. Firstly, a recognition lag, which is a lag due to the time it takes for cost changes to be noted and their effects on the overall profitability of lines to be known, specially changes in minor costs like port and canal dues which form a small part of the total costs. Secondly, an administrative lag, which is a lag due to the fact that the decision to raise freight rates is not taken by one man, but by the conference as a whole, or the rates committee, which involves some time for the same to prepare, convene, discuss and decide on such an issue. Thirdly, an implementation lag, which is due to the practice of giving ninety days notice before effecting a freight rate increase. The afore-mentioned time lags tend to increase the periods between freight rate changes and thus further help to stabilize such freight rates.

The other advantage of liner conferences to shippers is that they provide, or tend to provide, a more adequate liner shipping service. The conferences attempt to achieve this by providing a fuller geographical coverage of the trade, reducing the transit time of goods to a reasonable minimum, ensuring their ability to handle seasonal peaks, granting dispensation to loyal shippers to use non-conference vessels without jeopardizing the rebates or lower rates they enjoy as loyal shippers (even though in reality dispensations are very hard to obtain), matching the types of ships to the needs and requirements of the trade and operating as common carriers, thus able and willing to handle cargoes of all types in the trade, including low valued cargoes on the basis of first come-first served. In addition, it is observed that the more ports a ship calls at, the less adequate the service from any one of these ports is likely to be, as the cost of doing this is very high, which makes it more economical to use transshipment of goods among minor ports. Also, as more ships call at a given port, this port is likely to be congested causing the service to worsen with increases in the number of sailings from that port. Therefore, liner conferences can coordinate the frequency and

regularity of their members calls and sailings to best meet the requirements of the trade, yet reduce the above-mentioned tendencies, thus providing a more adequate liner shipping service.

To shipowners, one of the benefits of liner conferences is their ability to provide for long term planning which stems from their strong position causing certainty and optimism for the member shipowners in the long run, thus initiating long term investments by the member lines. One example is a container consortium which requires huge sums of capital and rationalization of services, the long term planning of which can be facilitated within the liner conference system. To sum up this point, it can be stated in other words that if lines are optimistic they will exist in the future, as they did in the past within the conference, they will be willing to make very large long-term investments in the trade.

Finally, liner shipping conferences help maintain a situation where the elimination of weaker shipping lines is prevented. This is achieved mainly in two ways. Firstly by eliminating the cut-throat competition among member lines - which will be discussed later in this chapter - and secondly through the nature of the conference freight rate setting. Conference freight rates are made so as to cover the costs of the member line with the highest costs and even allow it a reasonable agreed upon profit.<sup>37</sup>

Even with all their benefits and advantages, liner conferences, however, are not without their shortcomings. In fact, they have been criticized over and over again, even though their need and necessity to exist is generally agreed upon. The main criticism of liner conferences is the following:

1. they are oligopolies or monopolies, which restrict competition too much, thus causing negative effects on:
  - a. the liner freight rates, and
  - b. the quality of liner shipping services
2. they are very hard to enter into;
3. they are rigid and inflexible organizations with a slow decision-making process;
4. they are too secretive, and
5. they apply loyalty arrangements which warranted complaints from shippers.

A brief elaboration on the above-mentioned points is presented in the few following paragraphs.

First, by their nature, liner conferences are a sort of oligopoly, or even monopoly, which in turn implies that the prevailing prices are set at levels which are too high, much higher than justified by costs. In addition, the conference freight rates are fixed unilaterally and thus do not reflect the prevailing market trends. Furthermore, because cost increases can be passed on to shippers, there is a possibility that the search for cost reducing innovations, which would have enabled real costs to fall as money costs rose, would tend to be somewhat slower than might otherwise have been the case. Then a main complaint against conferences in this field is not only what they do about freight rates but also what they do about costs.

Further consequences of the oligopolistic or monopolistic nature of liner conferences concern the negative effect on the quality of the liner shipping services. Within conferences, the limitation on competition has a tendency to lead to a decline in the quality and adequacy of the service, specially with pools. Because, as lines become satisfied with their allotted share of the traffic, they tend to be relaxed and less worried about the adequacy or quality of their services or any improvements thereof. Therefore, for liner conferences to improve themselves on such a point, they should for instance be involved in making cargo composition forecasts to build the best suitable ships to serve the trade and should set minimum standards of suitability of ships, thus assisting the shipowners in providing the suitable ships for the trade and not leave it totally up to the individual lines. Other items which the liner conferences can improve on, in respect to the adequacy and quality of their service, include granting of timely dispensations to loyal shippers, reducing transit times to a satisfactory level and defining the needs of the trades it is controlling and ensuring that its members meet these needs by a conference mechanism.

Second, the entry into liner conferences in general, and into the closed conferences in particular, is rather difficult, especially for the national lines from developing countries as it is very hard for such lines to meet the criteria set by the conference for entry. These criteria are discussed later in the chapter under the heading "conference organization and internal operations".

Third, due to their structure, liner conferences are bureaucratic, rigid and inflexible organizations with a very slow decision-making process. For decisions to be taken by the conference, memoranda have to be prepared and sent by the conference secretariat to each member line. Then each

member line is given time to consider the matter at hand. After such considerations, which may involve private discussions among the member lines or even with the conference secretariat, a meeting of all member lines is set up and convened. In such a meeting the matter is discussed with each line presenting its views and arguments. At the end of the meeting a decision might be taken or postponed for another meeting requiring the whole time-consuming process mentioned above to be repeated. The criticism of conferences for their slow reaction and inflexibility is not limited to major decisions, requiring the above described decision-making process, but also extends to the daily business of conferences; for example, special quotes on project cargoes. Furthermore, a connected element of this point is that conferences are impersonal and remote, thus less sensitive to the requirements of the shippers and the trades than the individual lines.

Fourth, liner conferences tend to be very secretive organizations. They provide very little, if any, useful information and data to shippers or shippers' organizations or even to governmental authorities (except in the USA) about their actions and financial records, especially the member lines' costs which determine the conference freight rates. Furthermore, conference agreements and pooling agreements are closely guarded secrets, so no one from the outside can really know, nor check the provisions under which such conferences operate. In addition, the conference tariffs are not made readily available for shippers to inspect and thus can be regarded from the shippers point of view as at least semi confidential to the conference.

Finally, the fifth complaint about liner shipping conferences concerns their loyalty arrangements, or tying arrangements. Critics feel that the tying arrangements used by liner conferences tend to destroy the freedom of shippers to choose their means of transport. In addition, such arrangements tend to greatly reduce the bargaining power of the disorganized shippers. Thus conferences might abuse their oligopolistic or monopolistic powers (positions). More light is shed on this item later in this chapter under the heading "Tying (loyalty) arrangements".

At this stage, after the advantages and criticisms of liner shipping conferences have been mentioned, the common features of such organizations need to be given some attention. Because the early conferences were resilient and comprehensive, they witnessed very little change, if any, in their common features which determined their characteristics, structure, organization and operating practices. The principle common features of liner conferences are

basically the following:-

1. an aim to diminish competition inside the conference;
2. a responsibility of member lines to be "common carriers";
3. usually an existence of a pooling arrangement;
4. an aim to limit competition from sources outside the conference;
5. an existence of loyalty arrangements;
6. organizational set up and internal operations; and
7. mainly, self regulation.

Each of the above listed features will be examined in detail in the remainder of this section of the chapter.

#### 1. Competition within the conference

The conference agreement, which is the basic document that defines the contractual relationship among members of the conference and which represents a compromise between the competing member lines, displays the main aim of the liner conference, which is to control, if not diminish, price competition among its members. The conference attempts to achieve this aim through the agreement of its members to:

1. charge uniform rates;
2. follow the same rules and regulations for:
  - a. calculating the freight charges;
  - b. payment of the freight;
  - c. deciding on acceptable packaging of different commodities, and
  - d. issuing bills of lading (B/L); and
3. pay uniform commission rates to agents and brokers under the specified circumstances for which they may be paid.

Accordingly, one of the most important features of liner conferences is their "tariffs".

The conference tariff is normally made up of the following sections:

1. rules and regulations for the calculation and payment of freight charges;
2. commodity rates and class rates sections;
3. additional charges for ports other than basic ports; and
4. index of commodities.

The tariff specifies that the freight rate on a commodity is to be charged based on weight, volume or measurement, whichever yields the highest revenue

to the lines and further, the tariff normally states a minimum freight rate per B/L regardless of the item carried because there are some costs which are not related to the size of the shipment. Moreover, the conference rates which are listed in the tariff are of two types. The first type is the "class rate", which is a rate related to a number called a "rating" which represents many commodities, thus the commodities covered by a rating are together called a class. The second type is the "commodity rate", which is a rate stated on a specific commodity of a particular description. The total number of specific commodity rates in a conference tariff depends on how far the conference lines and the shippers prefer to differentiate between commodities for rating purposes. In addition to the two main types of rates which appear in the conference tariff, the tariff provides for a "general cargo rate" which is also called a rate for cargoes not otherwise specified (n.o.s.) or a rate for cargoes not otherwise enumerated (n.o.e.). The general cargo rate, which is a relatively higher rate, is applied to shipments that do not fit under any of the other two types of rates, which is normally the case for new trading items. Furthermore, liner conferences also often give other freight rates such as "special rates", "open rates" and "volume rates".

Special rates are given for goods to be moved under a specific tender or project and for government cargoes but only on the condition that such cargoes were intended for the use of the government and were non-commercial cargoes. Some conferences also give special rates for the small packages which come to less than the minimum B/L charges, in which case certain restrictions on the size and value of the parcel are placed.

Conferences may make the rates on certain items "open" allowing member lines to charge any rates on such items, subject to a minimum rate in some cases. The cargoes falling under this category of freight rates include coal, coke, oil cokes, cement, ore, pig iron, artificial fertilizers, scrap, maize, sugar and rice. Thus, from the preceding list of cargoes, it is evident that this policy of given open rates is adopted by liner conferences mainly to meet tramp competition. The general rule seems to be that when certain commodities are shipped in a volume which is significant in relation to the ship's capacity, e.g. part cargoes, and not in parcels, then:

1. the conference makes the freight rates "open";
2. the conference may also give special rebates based on the quantity and regularity of shipments of such commodities; and

3. the conference periodically checks the tariff rates on such commodities to take into account the prevailing rates in the tramp market.

Volume rates, which are lower rates charged for shipments of a very large volume, are also given by liner conferences. These rates may be used as alternatives to the open rates when tramp competition is possible and is to be met by the conference. Thus, the commodities to which the volume rates may be applied can be generally described as those normally shipped in bulk and/or those with relatively low value per ton.

Another feature of the conference tariff which should be noted is that it classifies ports into three categories:

1. basic ports;
2. other ports served with direct sailings; and
3. ports served with transshipment.

The criteria used for such classification are the following:

1. requirements of the trade - the commercial importance of the port;
2. volume and regularity of traffic passing through the port;
3. port facilities, e.g. speed of ship turn-around; and
4. other factors such as:
  - a. the deviation involved;
  - b. port charges; and
  - c. port conditions, etc.

Accordingly, there will be additional charges to the freight rate of items going to ports other than basic ports. Such charges are calculated by the conference based on such factors as the costs of vessel deviation from the main route, the difference in costs of cargo handling and port charges, as well as the time required to dispatch the vessel between ports not of the same classification.

Furthermore, as new items are continuously introduced and while others are withdrawn from international trading, the conference tariff has to be continuously adjusted accordingly. In this respect, conferences seem to be willing to fix a specific long term rate for new items if such items moved regularly and/or moved in significant quantities. Before such conditions are met, the new items will be charged the higher "general cargo" rate. However, for a conference to fix long-term rates for new items, the shipper must approach

the conference with the request (i.e. fill in a special form) for a new rate and provide the relevant information regarding the stowage and handling of the items, the movement of the items and the capacity of the items to bear particular freight rates. Then the conference rates committee - or the local rate committee - to whom the request is referred, makes recommendations as to the principles of member lines with whom the final decision rests. In this regard, it should be mentioned that developing countries feel that since the higher general cargo rates may prevent the regular movement of new cargoes, the requirement of shippers to establish regular movements before a long-term rate is fixed poses a serious problem which may prevent a country from establishing trade in new export items in competition with other suppliers.

Moreover, as circumstances surrounding the freight rates and factors taken into account in making the freight rates change, the freight rates themselves change, more often than not increasing rather than decreasing. Freight rate increases are basically of two types, general rate increases and increases of individual commodities rates. Further, the general rate increases are of two types:

1. general rate increases - g.r.i. - to cover increases in the costs of operation occurring over a period of time, and
2. surcharges which are temporary increases to cover sudden rises in the costs of operation, e.g. act of war, congestion in ports and deviation due to canal closure.

The general rate increases (g.r.i.) are discussed and decided upon at meetings of the principals of member lines of the conference after advance notices and background notes are made by the conference secretariat. However, in some cases, such as the closure of a canal requiring deviation, or the devaluation of a currency, the decision on general rate increase is taken and implemented on a very short notice after telex or telephone approval by the member lines. In all cases, conferences use some financial data in deciding on a general rate increase which include the following:

1. the agreed allowances for depreciation on the fleet;
2. the agreed interest on capital; and
3. the normal ship running costs, e.g. crew wages, stevedoring, parts, repairs, surveys, stores and provisions, fuel, pilotage, agency commissions, insurance and administrative costs, etc.

After deciding to effect a general rate increase (g.r.i.), but before implementing the decision, the conference considers the possibility of member



lines absorbing some of the increases in the costs and also the effect of the increase on the competitiveness and movability of items carried by the conference. Accordingly, the conference may implement a lower general rate increase (g.r.i.) on some items or even exempt some items from the increase. This preferential treatment is mainly applied to items on which specific rates have been fixed in the immediately preceding period, to items which are moving in big quantities thus presenting a threat of non-conference competition and to items for which the conference has special contracts with the shippers. In addition, the conference may exempt other items if the claimants of such exemptions are able to prove to the satisfaction of the conference that the g.r.i. alone would adversely affect the movement of the commodity. This is very difficult, mainly because information about market elasticities are rarely available.

Beside the general rate increases, conferences make increases in rates on individual commodities. Such rate increases take place in six main cases:

1. when a rate has been previously reduced at the request of a shipper to meet special circumstances which had not been fulfilled;
2. when a rate had been fixed at a lower level on a purely temporary basis so that after a certain period it would revert to its normal level;
3. whenever material changes in the methods of packing, which would affect stowage factors or handling charges, occurs;
4. when there is a significant permanent increase in the value of the article, making it able to bear a higher freight rate;
5. when the rate on the same or similar commodity in the same trade or a comparable one is increased, which is done to maintain a balance; and
6. when a commodity is also carried by tramp ships and these ships have increased their freight rates on the commodity.

As a general rule in the area of conference practices regarding freight rate increases, conferences do not consult with shippers or their councils before deciding on a rate increase, however, it is possible for the shippers to make representations and use the available consultations in this respect. On the other hand, in some cases, specially "open" conferences, there is an exception to the rule as conferences are required by law to discuss rate increases with the national shippers' councils concerned, and if no agreement is reached to hold discussions with the governments of the particular countries

concerned. Moreover, the shippers are informed of the rate increases mainly through the local press, even though other methods such as calling prominent shippers, sending circulars to shippers and directly informing shippers' councils or trade associations are also used by the conference. Rate reductions are implemented immediately with no advance notice, however, such a notice is normally given for rate increases.

Despite the conference agreement and all the effects of conferences to diminish price competition among member lines, competition still occurs within the conference through malpractices. Such malpractices include the following:-

1. intentionally miscalculating freight rates;
2. accepting a wrong description of the cargo or ignoring certain physical or chemical characteristics of it, thus giving it a lower freight rate;
3. giving secret rebates;
4. falsifying shipping documents, e.g. wrong dating of B/Ls;
5. accepting cargoes after the booking for a given sailing has been officially closed;
6. paying freight brokerage contrary to the conference agreement;
7. absorbing charges which should be paid by the shippers and/or the consignors;
8. granting free storage;
9. paying unsubstantiated claims; and
10. entertaining clients beyond reasonable limits.

The subject of policing against the malpractices is discussed under the heading "self regulation".

## 2. Liners as common carriers

Liner operators who are members of liner conferences have assumed the responsibility of being common carriers. This means that since they have advertised sailings and calls at given ports, they will accept all cargoes appearing on these routes on a first come-first served basis, regardless of whether these cargoes are attractive or not to the shipowner. In other words, the liner conference member lines are obligated to cover the "good" cargoes and the "bad" cargoes, to cover the whole of the trade including the usually unattractive out ports, absorb seasonal ups and downs and to

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provide a good quality service which is continuous, frequent, regular and reliable.

### 3. Pooling arrangements

Pooling arrangements, which are usually closely guarded secrets even from conference members who are not pool members, can be defined as self-imposed restrictions accepted voluntarily by conference members in order to avoid over-tonnaging and duplication of sailings. Accordingly, pooling arrangements can be viewed as a form of rationalization which enables the conference to:

1. eliminate wasteful competition for cargoes among member lines, specially at the more attractive ports with fast turn round and sufficient cargoes and ensure that less attractive ports are covered;
2. obtain the optimum cargoes for each vessel berthed;
3. provide adequate berth coverage to meet the trade's requirements;
4. cover the trade in a more economic manner;
5. maintain freight rates at a reasonable level lower than otherwise possible;
6. provide efficient scheduling of vessels and advance sailing programmes for shippers, thus helping them to plan their shipments; and
7. provide a better coordination of supply and demand for space due to close liaison with shippers.

The basis for operating a pooling arrangement is the concept that each pool member has to share the profits earned by the operation of the conference service and at the same time share the corresponding burden of the operation of such a service, e.g. carry a percentage share of the total cargo carried by all members of the pool in an agreed upon manner. Despite the unifying basis for pools, there are various forms of pooling arrangements. They can be simply arrangements to control the number of sailings of each pool member, pools for cargoes carried between certain specified conference ports only or pools containing some members of the conference in a given conference trade section while the others operate outside the pool. The last pool type is most likely to occur in cargo preference cases where some lines have access to cargoes from which they can deny other lines. However, the most common pooling arrangements include systems where the actual cargo carried or revenue earned by each member is controlled, creating "cargo pools" and "revenue pools"

quota systems and combined cargo/revenue pools. A brief description of the four systems follows.

A cargo pool relates to a specific commodity or group of commodities where each pool member is entitled to carry a specified percentage share of the freight tons of the given items carried by all members of the pool. However, a revenue pool relates to the total net freight revenues of all the participants in the pool which is shared according to agreed percentages. The revenue paid into the pool is either a fixed percentage of the total revenues or an amount equal to the total revenues less a fixed sum per ton carried. Accordingly, the net freight revenues equal the gross freight revenues (manifested freight) less "carrying money", that is the lines' expenses directly related to the cargoes carried. In the case of cargoes which are carried free in and out (FIO) the net freight revenues on such cargoes would be the difference between the manifested freight and a specified amount per weight ton of the cargo. On the other hand, a quota pool system specifies that each line in the conference is allotted a share of the total volume of cargoes to be carried, based on estimates of such cargo volumes. Under such systems the member lines may be penalized by the pool for over-carrying and may be compensated for under-carrying if this arose from circumstances beyond their control. Accordingly, lines' liftings are continuously checked against the estimated total volumes by the lines themselves and by the conference secretariat. Finally, a combined cargo/revenue pool places on each line an obligation to lift a certain percentage of the cargoes and to pay into the pool a certain proportion of the revenues arising from carrying those cargoes, while leaving the effects of over-carrying and under-carrying to be adjusted by the pool. Despite the aforementioned different peculiarities of the common types of pooling arrangements, they all have the feature of usually exempting certain specified cargoes from the pool. Such exemptions may include the following:-

1. cargoes requiring special stowage or special cargo handling equipment;
2. cargoes for which members basically do not compete;
3. bulk cargoes and liquid cargoes in bulk;
4. government controlled cargoes; and
5. live animals, luggage and cars of passengers travelling on another ship of the same line.

The elementary principle of pooling arrangements is the fixing of shares among member lines. Shares in a pool can be fixed for a definite period after which renegotiation of the shares is made or for an undefined period under which an unsatisfied pool member can seek a revision in the shares. The actual fixing of shares in a pool is initially done on the basis of the flag groups, thus the nationality of a line is of importance in this regard, in addition to some other factors such as:

1. the negotiations among pool members;
2. the commercial and other trade requirements;
3. the future potential of each member;
4. the past performance of each member;
5. the national aspirations of the members; and
6. the ability of lines or groups of lines to compete as outsiders if agreement on pool shares is not reached.

However, in the case of a line which is operating as an outsider, the trade that would come to the conference because of the line being a member is the guiding factor in allocating a share in a pool to the new line.

In a good pooling arrangement, all types of competition are eliminated except those which might lead to an increase in the shares of a line when such shares are renegotiated. This situation is reinforced by many factors surrounding the pooling arrangements. The first factor is that each member is expected in good faith to limit and arrange its bookings and space allocations for pool cargoes so as to meet its percentage share as nearly as possible. Accordingly, both over-carriage and under-carriage are discouraged. Over-carriage is discouraged by not allowing it to lead by itself to an increase in the line's pool share and also by not entitling a line for its carrying expenses on the excess carried, if that line over-carries by more than 20% of its share. Under-carriage is discouraged by penalizing a line on the short fall if that line carries less than 80% of its allotted share in the pool. Even though the sense of responsibility of members, the fear of criticism from fellow members and the continuous vigilance maintained by the pool committee achieves the objective set out in the afore-mentioned first factor, this factor entails the different penalties imposed if member lines do not meet their pool responsibilities. For example, if a line fails to make the minimum number of loadings or discharging calls at a given port, as per the pool agreement, that line may suffer a proportional decrease of its share in the trade to or from that port for the pool period concerned. Similarly, the failure to include

all the pool earnings in the member's return would constitute some financial penalties on the line, to be decided by arbitration. Such levied penalties would go into either a common fund which is then redistributed to the pool members, even the one penalized, or a special fund, the use of which is left to the discretion of the pool committee.

A second factor leading to the elimination of competition in a good pooling arrangement is the pool administration. The administration of a pool is done mainly by a pool committee, composing of pool members or their agents, and by the secretary which the committee appoints to deal with the day to day working of the pool. The administrative work of the committee involves the assessment of cargo movements, the scheduling of member lines' vessels and the supervision of actual performance of each member of the pool. Accordingly, the pool committee decides on:

1. the admission of new members to the pool;
2. any changes in pool shares;
3. additions and deductions in the list of items exempted from the pool arrangement;
4. changes in the amount of "carrying money";
5. any changes in the minimum number of loading and discharging calls; and
6. any changes in the penalty provisions.

In addition to the pool committee, pool administration also involves an independent firm of accountants which is appointed at the conference headquarters to collect pool returns from all members, consolidate them and compute the balances at the end of the pool period, which is normally one year, for the purpose of settlement of accounts.

Finally, shippers have several complaints about pooling arrangements in liner conferences, the most founded one seeming to be that pooling arrangements cause the quality of the service to deteriorate as lines get a sense of security inducing them to develop an attitude of indifference to shippers. On the other hand, pooling arrangements in liner conferences seems to be the best among the possible alternatives of:

1. free competition leading to wastes, and
2. conferences without pooling leading to some wastes and some monopolistic dangers.

This point is stressed in a report by the UNCTAD Secretariat, as they point out that the best situation seems to occur when:

"a pool is strongly and efficiently organized and the interests of shippers are at all stages taken fully into account through consultations, then the advantages to all concerned are likely to be maximized and the disadvantages minimized."<sup>38</sup>

The report also implied that pooling arrangements tend to help the new lines entering the liner conference as in liner conferences where there are no pooling arrangements, it is difficult for the new member of the conference to secure traffic because of the relationship between the shippers and the old conference members and because of the existence of unofficial rate cutting (malpractices).

#### 4. Competition from outside the conference

There are several outside sources of competition to the liner conference. The major threat of competition, however, comes mainly from outside lines called "outsiders" and from competing conferences. Competition from outsiders can be very serious and very damaging, both to the liner conference and to some shippers. If one outsider newly enters a trade thus carrying 30% of previously conference-carried cargoes, this will cause a reduction in the conference's revenues by 30%-40%.<sup>39</sup> This situation also hurts the shippers of low-paying cargoes greatly, as they cannot afford any freight rate increases to be imposed by the conference to recover its lost revenues, and the outsider normally would not carry their cargoes as it concentrates on high-paying cargoes to afford the lower freight rates compared to the average conference freight rates. Accordingly, liner conferences attempt to fight competition stemming from outsiders through various means. The best way to fight outsiders, liner conferences claim, is by keeping freight rates as low as possible, thus making it not worth while for them to enter the market. However, in practice the main method used by conferences to fight competition from outsiders is the tying arrangements which are designed to prevent shippers from utilizing outsiders' vessels. Such arrangements may be in the form of inducements to shippers when exclusively using conference lines, or they may be in the form of penalties to shippers who casually use outsiders' services. In any case, under the tying arrangements, if shippers utilize outsiders' services, they may suffer monetary losses and also non-monetary losses, e.g. lower priority given by the conference to their shipments

compared to "loyal shippers" which always use the conference lines. This subject of tying or loyalty arrangements will be discussed in detail next in this chapter.

In addition to meeting the competition of outsiders, liner conferences attempt to limit the competition from other adjacent conferences. In this regard, it is the policy of liner conferences to take into account the inter-relationship with other competing conferences. Thus liner conferences tend to adjust rates upward, mainly to avoid rate wars among themselves. This aspect is also reinforced by the fact that adjacent conferences have a lot of common member lines.

#### 5. Tying (loyalty) arrangements

Tying or loyalty arrangements in general are the means and ways which have been devised to secure the continued and exclusive patronage of shippers to the conference lines. They are found in most conference trades except:

1. where outsiders' competition does not exist presently, nor is expected in the near future;
2. in ports to which the conference does not wish to provide regular and adequate services; and
3. for certain cargoes which are put outside such arrangements and thus quoted at net rates, such as cargoes subject to tramp competition and some low-rated items which cannot bear higher rates.

Basically, there are three types of loyalty arrangements:

1. the deferred rebate system;
2. the dual rate system; and
3. the immediate rebate system.

The deferred rebate system is a system whereby a shipper is given a rebate on the freight rate of his shipments during a specified past period called the "shipment period" if and only if he continues to utilize only conference lines for his shipments during an equal second specified period following the shipment period called the "deferment period" (table 1.9). Thus under this system, the shipper has to be loyal to the conference during both the shipment period and the deferment period to be given the deferred rebate. In other words, the reward for loyalty in the past is made conditional upon continuing loyalty in the future. Furthermore, the deferred rebate system is characterized with the following features:



TABLE 1.9

Payments under the deferred rebate system

## A. Typical example

Shipment period	Total freight payment	Total accumulated rebate	Date paid
1.1.80 - 30.06.80	200,000	20,000	31.12.80
1.7.80 - 31.12.80	300,000	30,000	30.06.81
1.1.81 - 30.06.81	250,000	25,000	31.12.81
1.7.81 - 31.12.81	400,000	40,000	30.06.82
1.1.82 - 30.06.82	250,000	25,000	31.12.82
1.7.82 - 31.12.82	300,000	30,000	30.06.83

## B. Rebate payments Indian/U.K. continent conference

Shipment period	Payable on
11 Jan - 31 Mar	1 Jul
1 Apr - 30 Jun	1 Oct
1 Jul - 30 Sep	1 Jan
1 Oct - 31 Dec	1 Apr

SOURCE: T.K. Sarngass, Liner Shipping in India's Overseas Trade, New York, U.N., 1967.

1. the rebate is given as a reward for loyalty and not as a right;
2. the terms and conditions of the rebate can be changed by the conference unilaterally;
3. the burden of proving loyalty lies with the shippers if the conference claims otherwise;
4. the shippers cannot withdraw from the set up without losing some rebate; and
5. the penalty for disloyalty is the loss of accumulated rebates.

The dual rate system is a system whereby the conference specifies two rates in the tariff. One rate applies to any shipper, while the other lower rate applies to shippers who have contracts with the conference to utilize vessels of conference lines only. The characteristics of this system are the following:

1. the lower rates are charged as contractual rights of shippers;
2. any changes in the contract require the consent of both partners, the shipper and the conference;
3. the burden of proving disloyalty lies with the conference;
4. the penalty for disloyalty or withdrawal of the shipper from the contract is usually liquidated damages;
5. both sides can terminate the contract on due notice; and
6. the shipper must be loyal only during the contract period.

Very similar to the dual rate system is the immediate rebate system. The immediate rebate system is where a single rate is given in the conference tariff and a percentage rebate on these rates for contract shippers is specified.

Furthermore, even though the deferred rebate system provides higher rebate rates, shippers prefer to have the dual contract rebate system and the immediate rebate system as an alternative, which is sometimes done by the liner conferences. However, liner conferences feel that the deferred rebate system is more effective in securing shippers' loyalty than the other two rebate systems which require suing defaulters, thus causing conferences to incur additional costs and delays. Regarding the question of defaulters, liner conferences do not usually have a special machinery to detect defaulters. In fact, they don't need such a machinery as they rely for such a task on individual conference lines and their agents who follow the trade in the conference ports very closely and also on loyal shippers who suffered a competitive disadvantage due to the disloyal shipper's use

of a lower rate vessel as well as on the conference normal and frequent reminders to shippers of their loyalty arrangements and the consequences of default on them.

Tying or loyalty arrangements like many other conference practices are not free from problems when it comes to practice. One of the main problems from the shippers' point view regarding loyalty arrangements is their applicability to free on board (FOB) or free alongside ship (FAS) shipments. Shippers sometimes do not have much say in such shipments - the buyer does - yet these shipments may cause the shipper to be regarded as disloyal if such shipments are shipped on non-conference vessels. Most conferences fear that if such shipments are exempted from loyalty arrangements, shipments could be purposely arranged so as to use an outsider with lower freight rates which could weaken and perhaps destroy the conference to the ultimate disadvantage of shippers. Thus must conferences treat the FOB/FAS shipments just like any other shipments with respect to loyalty arrangements. However, some conferences have dealt with the problem by devising a triple rate system comprising of lowest rates for loyal shippers even on FOB/FAS shipments, higher rates for loyal shippers except on FOB/FAS shipments and even higher rates for shippers who are not tied at all to the conference. Moreover, the open conferences follow the United States regulations of allowing shippers to use any vessel with FOB/FAS cargoes unless such shippers have the right to select the carrier at the time of shipment.<sup>40</sup>

Another problem area of loyalty arrangements is related to its fairness in requiring shippers to ship with the conference lines only which do not obligate the liner conference to provide the space all of the time. Liner conferences respond to this issue by stating that they provide liner services sufficient to meet the ordinary requirements of the trade and that space cannot be guaranteed because shippers prefer to make last minute bookings, some shippers even booking more space than actually required, thus causing lines to estimate the actually-needed space, therefore possibly under-estimating such requirements. They continue to state that another element of the issue is the fact that shippers are not obligated as to the volumes and types of cargoes, nor times and places of shipments in advance. Furthermore, liner conferences point out that dispensation, allowing the shipper to use a non-conference vessel without affecting his loyalty arrangements, is given to shippers if a conference vessel cannot be provided within a reasonable time. However, the notion of a reasonable time is not

precisely defined, thus it may be 15 days, 30 days or any other time period. However, conferences are quick to point out and observe that in the great majority of cases the shippers ask for dispensation at short notice when a non-conference vessel, usually a tramp, is in berth offering competitive rates. Thus, in such cases liner conferences could not grant the dispensation as that would go against the very purpose of the loyalty arrangements.

In addition to the practical problems associated with loyalty arrangements, there are also different philosophical points of view on the subject. The liner conferences view such arrangements as necessary to maintain a regular service at stable rates. They argue that conference lines carry good and bad cargoes at efficient and non-efficient ports, thus their freight rates represent an averaging of such items and costs, while outsiders can concentrate on good cargoes and efficient ports, thus offering lower freight rates. If conferences retaliate by changing their rates, the conference rate structure will be unstable. On the other hand, shippers view such arrangements as too restrictive on their choices of shipping lines and services, because the effectiveness of such arrangements, they argue, prevent outsiders from entering the trade and providing a regular and reliable service. Shippers support their view by pointing out that for an outsider to enter permanently into a conference trade he must: convince shippers of his ability to give lower rates in the future, pay the shippers for their losses due to breaking their loyalty ties, thus charge very low rates presently and face a chance of a rate war by the conference. Therefore shippers are able to use outsiders only occasionally, and if they do so they may lose their accumulated rebates or pay liquidated damages and may be unable to get the loyalty advantages in the future from the conference.

#### 6. Conference organization and internal operations

The organizational set up of any organization is influenced mostly by the participants in such an organization. The liner conferences are no exception from this norm. Accordingly the most important aspect in the organization of liner conferences is membership. Not only is membership the main determinant of the type of conference being formed, whether open or closed, as indicated earlier, but it also influences the internal affairs of the conference. One feature of conference membership is that it is made up of two classes: full membership with full rights, as

specified in the conference agreement and associate membership with restricted rights. In both cases, the member does not lose its individual identity as a line, even though it is entitled to receive cargoes from shippers tied to the conference. However, full membership in a conference means that the line is given sailing and berthing rights, is obliged to follow the conference tariff rules and regulations, is given a secure position in the conference as per conference agreement, and admitted to existing pools as a full participant in the pool. On the other hand, an associate membership in a conference means that the associate member cannot vote in conference meetings even though it can attend such meetings, does not pay security deposit, pays less of the conference expenses, does not pay admission fees and is admitted to existing pools as a limited participant with no voting rights in matters relating to the pooling arrangements. Therefore, the associate membership is given because either the line has an incidental interest in the trade, the line only needs this kind of membership, or the conference is unwilling immediately to grant full membership to the line, thus permitting the line to participate in a limited way as a member of the conference instead of competing with it as an outsider.

Another feature of conference membership is the criteria for admission in the conference of a new line. The criteria for admission into an open conference centres around the financial and other related qualifications of the line. Such criteria include the following:

1. the ratio of owned to chartered vessels operated by the line as a measure of the line's intention to make a long-term investment in the conference trade;
2. the ability of the line to meet the minimum service (sailings) obligations of the conference with the size of tonnage it operates;
3. the financial and commercial standing of the line to ensure the protection of the conference due to the several and joint financial responsibility of conferences; and
4. an adequate background experience in liner operations and cargo handling operations.

The criteria for admission into a closed conference include in addition to the above-mentioned criteria applicable to admission into an open conference, the effects of admission or non-admission of the new line on the interests of existing conference members. This criterion entails the answering of the following three questions by the conference:

1. what is the likely effect on the revenues of existing members
2. would the admission of the new line cause freight rates to increase as the trade is already adequately served and most importantly,
3. is the line in a position to successfully fight and compete with the conference if it is not admitted

In this respect, if the line is found to be strong, thus capable of threatening the conference as an outsider, it is very likely to be admitted into the closed conference. From such criteria the criticism of conferences being hard to enter, especially for the national lines of the developing countries, can be substantiated.

After a line is admitted into the conference, it must pay an admission fee. Such a fee is a contribution which covers both the expenses which the conference will incur directly as a result of the new line's admission, e.g. new copies of tariffs and the share of the expenses which the conference has incurred in the past, but the new line will still benefit from such as loyalty arrangements and other loyalty matters, improvements made to the conference tariff, the value of the conference office as an asset and shippers' goodwill. In addition to the admission fee, the new member line must deposit with the conference an amount called security deposit or faithful performance bond. Even though this amount varies widely among conferences it generally serves as:

1. a guarantee of faithful performance by the member line of its obligations under the conference agreement;
2. payment for liquidated damages; and
3. payment for awards or judgements which may be rendered against the line.

Furthermore, a member line can withdraw from a liner conference without penalties if it gives the conference due notice in writing to that effect. However, in this case the line will immediately lose shippers' cargoes under loyalty arrangements. Besides this voluntary method of membership termination, a line may lose his membership in the conference due to its failure to place a sailing in the conference trade for a sufficiently long period of time, e.g. 6-8 months, unless this was due to war, strike, force majeure or other factors beyond the line's reasonable control. The termination decision in the second case rests with the conference member lines.

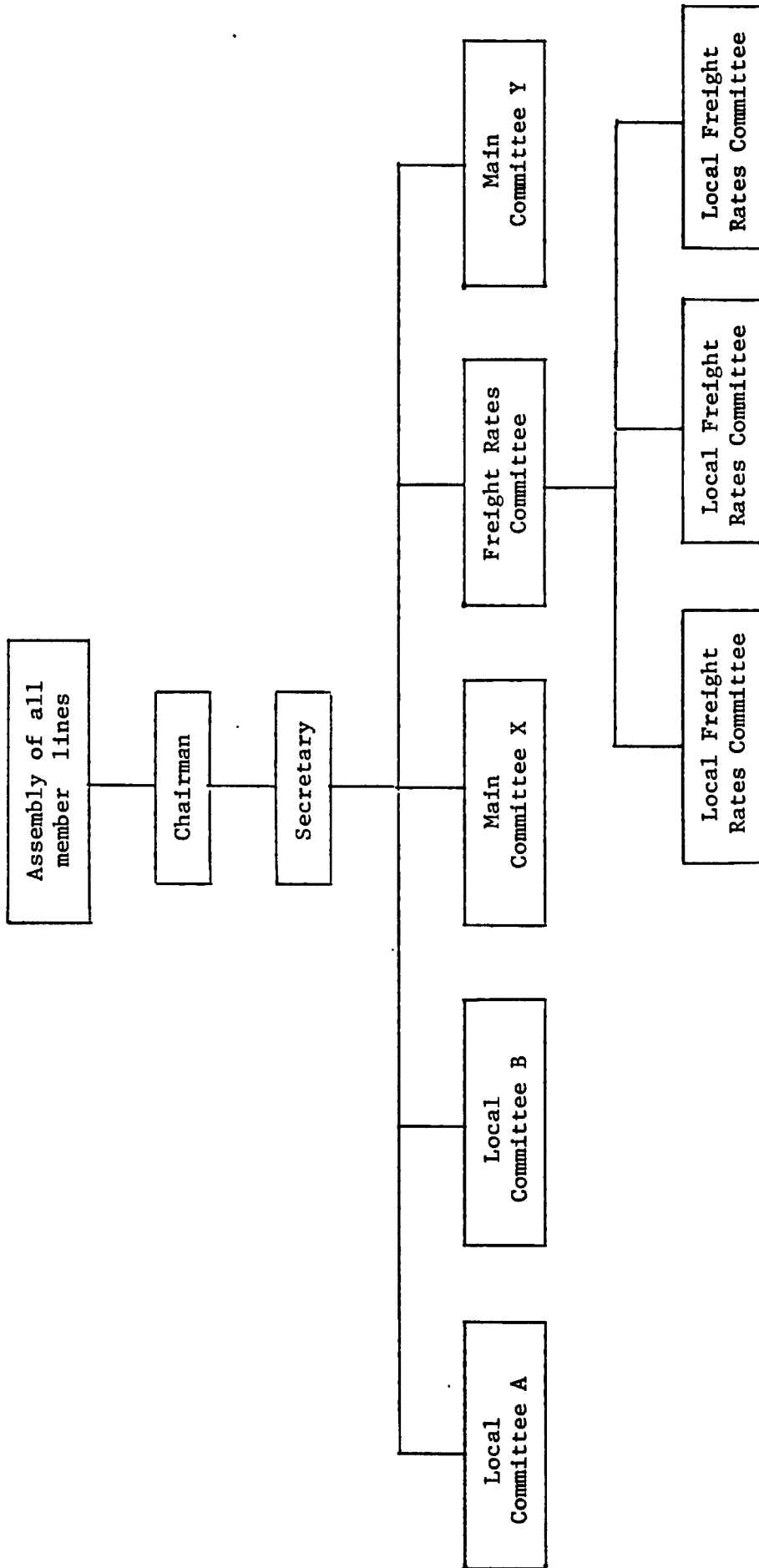
Conference membership has some effects on the policy of the conference also. Firstly the size of the conference plays a role in the conference policy formation. Small conferences in membership have more operational flexibility than large ones. Large conferences are less likely to adopt narrow and restrictive attitudes than smaller ones since they have a variety of national and trading interests and somewhat stronger forces of competition among members. Secondly, the coordination of views of certain groups of lines within the conference can be a very strong factor guiding conference policy decisions. For example, member lines of the same flag may on some issues adopt the same approach, which may be decided by the national ship-owners' association of which they may be members, or by the government concerned. Another example is the case of the big holding companies having more than one line in a given conference, thus all the lines under the holding company may also adopt a given approach on some issues and form a block which in turn tends to influence the conference policy decision in their favour.

A second main aspect in the organization of liner conferences is the internal structure. The structure of liner conferences entails their main functional origins as shown in the liner conferences' organization flow chart (Figure 1.6), namely, the assembly of all member lines, the chairman, the secretary and the committees.

The assembly of all member lines consists of the principles or representatives of all member lines in the conference. Thus, it is the highest authority in the conference decision-making hierarchy. This organ makes the policy decisions which direct the work of the other organs in the conference, as well as determine the functioning of the conference. In addition, this body gives the final decisions on all matters referred to it by the other organs of the conference. Such decisions are taken usually after discussions and in accordance with recommendations submitted by the other organs, e.g. the committees.

The chairman of a liner conference may either be employed by the conference as a whole, or comes from each member line on a rotational basis. The chairman is normally authorized and empowered to take prompt decisions on the day-to-day affairs of the conference. However, sometimes he is empowered to negotiate freight rates on behalf of the conference.

The conference secretary is usually an appointed one, by the assembly of member lines. The conference secretary is charged with performing the following functions:





1. carry out the day-to-day business of the conference within the guidelines provided by the policy decisions made by the member lines;
2. provide liaison between:
  - a. the member lines of the conference;
  - b. the conference and shippers;
3. follow up shippers observance of their loyalty obligations with the conference, and
4. follow up and report on existing and potential outside competition to the conference.

Finally, the last functional organ in the structure of the liner conferences is the committees with which the conference functions. There are two types of committees used in the operation of liner conferences: main committees and local committees. The main committees consist of member lines and are located at the conference headquarters. Normally they perform the following tasks:

1. make recommendations on specific issues or matters to the assembly of all member lines, so that the conference membership as a whole can decide on such issues;
2. look after the working of:
  - a. pooling arrangements;
  - b. restricted sailings arrangements:

thus ensuring that member lines operate within the framework of the conference agreement. On the other hand, the local committees consist of either member lines or their agents or of independent agencies, which are much preferred by the shippers. These committees by their nature are located in the different areas served by the conference and usually perform the following functions:

1. provide a communication link between the headquarters of the conference and the trade;
2. coordinate the views of local agents of member lines;
3. maintain continuous communication with the conference headquarters and inform them of communications and contacts made with individual shippers, trade associations, shippers' councils, governments and port authorities.

It should be noted here that the developing countries generally consider that their problems receive better consideration from the conference when

their national line is represented in the major committees of the conference. They also emphasize the importance of the local committees which they view as having better appreciation of the local problems than those at headquarters. Another point which deserves a note in this connection is the determination of the conference headquarters. The conference headquarters is determined mainly by the fact that a country or a region has the majority of member lines of the conference established in it, and also by tradition and the traffic patterns. Thus most conference headquarters are found in developed countries depriving the developing countries of the related benefits such as a better sensitivity and appreciation of local problems and needs.

The third and final aspect in the organization of liner conferences is the internal operation of such associations. This aspect refers to the areas of meetings, voting and self-policing in liner conferences. Firstly, in the field of meetings, there are basically two types: regular conference meetings to consider routine matters, and meetings of principals, which is the assembly of all member lines to decide policy issues and consider matters of overall policy implications. Furthermore, if the conference agreement covers a very wide range of ports, the conference meetings are divided into sections, each with lines operating in a specific area. Secondly, regarding voting, voting is generally based on a "one line one vote" principle, except in pools where the voting power is influenced by the shares of the different member lines or flag groups in the pool. Another exemption to the general voting principle applies for lines running a joint service, which for voting purposes, are counted as one member. However, the "one line one vote" principle applies even if two or more lines are under the same ownership yet operate separate services in the conference. Finally, the conference self-policing provisions constitute a very important, even crucial, element in the internal operation of liner conferences. Under such provisions, the member lines are required to report to the conference chairman or secretary any suspected violations of the conference agreement by other members. Then member lines vote on such reports of alleged breaches of the conference agreement after discussions and deliberations. If found guilty, the member line is liable to pay a fine or liquidated damages, or other penalties as may be decided by the member lines in accordance with the provisions of the conference agreement.

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CHAPTER II

THE UNITED NATION'S  
CODE OF CONDUCT  
FOR LINER CONFERENCES

## REGULATION OF LINER CONFERENCES

The previously examined pros and cons of liner shipping conferences have provided to a large degree the background for the policy makers in different countries, while the vested interests of such countries determined the country's policy regarding the regulation of liner conferences. Viewed from this perspective, and since it is indisputable that liner shipping conferences are needed and that they are here to stay, although maybe in different forms and perspectives, governments have mainly two choices of policy in this area. These alternatives are the following:

1. technical efficiency, leading to closed conferences and strong loyalty agreements;
2. market efficiency, leading to open conferences and weak loyalty agreements.<sup>1</sup>

In other words, a government in its attempt to reduce freight rates, one of UNCTAD's reports<sup>2</sup> states, has two options. The first option is to press shipowners and shippers to rationalize, thus reduce, the freight rates by reducing the overall cost of the service. This will restrain competition as shippers must adhere to their conference loyalty agreements.<sup>3</sup> Thus this option requires a closed conference system with efficient shippers' organizations. The second option is to encourage outsiders' competition. This approach tends to lead to a less rational overall liner trade and a more costly overall liner service.<sup>4</sup> These tendencies are due to over-tonnaging, duplication of sailings and fragmentation of overall cargo movements.<sup>5</sup> Illustrations of the different views and policy approaches in the area of regulation of liner conferences may include, but are not limited to, the following:

1. Western European model;
2. United States model;
3. Australian model, and
4. Developing countries' model.

The Western European countries view liner shipping conferences as providing a valuable and indispensable service to liner trades. They also see self-regulation in liner shipping to have produced a system of workable competition which neither a giant international regulatory agency nor free competition can duplicate.<sup>6</sup> Thus they are against open conferences and for



very strong closed conferences, which was expressed in the Rochdale Committee Report. The Report stated that open conferences led to a very substantial over-tonnaging of the routes. It added that cargo liners were sailing on average over a period of years about half to one-third empty. It also pointed out that freight rates were higher, and rising. Finally, the Report concluded that closed conferences with full rationalization are most likely to serve the best interests of both shippers and shipowners. Therefore, the Western European model policy with respect to liner shipping conferences can be summed up in three main points. Firstly, liner shipping conferences are essential to allow shipowners to provide shippers with regular and efficient services at stable rates. Secondly, the liner conference system should function outside the sphere of government intervention, e.g. self-regulation should be sought. Thirdly, an example of liner conferences is the ESC/CENSA - European Shippers' Council/ Council of European National Shipowners Association - Code (which will be discussed in the next section of this chapter), which calls for direct consultations between shippers and shipowners without government interference and calls for disputes to be solved between the two parties or through three-party arbitration.

The United States allows liner conferences to exist only as an exception to the nation's anti-trust laws, which prohibit such organizations to be established. Accordingly, conferences serving trades to and from the United States must be open ones, and they are allowed to operate only with a parallel mechanism of governmental supervision of such conferences. Such supervisory mechanism is carried out by the Federal Maritime Commission (FMC). The Commission examines the conference agreements, approves freight rate increases and supervises the general functioning of conferences to ensure their compliance with the relevant laws and regulations. Therefore the United States model policy regarding liner conferences is that liner conferences are monopolistic by their nature. Thus to ensure that they do not abuse their monopolistic powers, and to protect the shippers' interests, they are allowed to operate only within strict regulatory limits. Such limits include beside others, the rule that liner conferences operating to or from the United States' ports can be only open conferences. In other words, the United States pursues a market efficiency approach in its policy towards liner conferences.

The Australian policies toward liner shipping conferences stem from their belief that in liner shipping, pricing decisions cannot be made independently from capacity decisions, thus rationalization - efficient capacity decisions - can be achieved only under the closed conference system. Accordingly, they aimed at rationalization through cooperation, ensuring that considerable bargaining strength remained in the hands of shippers, which is essential for rationalization to be possible and successful.<sup>7</sup> To achieve the set aim, the Australian Government took firm steps designed to ensure that the strong closed conference system allowed does not abuse its powers. These steps are basically the following:

1. establishment of the "Australian Overseas Transport Association (AOTA)" as a legislated shippers' council;
2. appointment of a government representative to attend conference rate negotiations with shippers;
3. requirement for conferences to negotiate with shippers' councils;
4. maintenance of the government function as a final arbitrator; and
5. requirement that the conferences accept the national lines as members.

Therefore, in a nutshell, the Australian model approach to liner conferences is that of cooperation, consultation and negotiation, primarily between private parties, e.g. shippers' interests and the closed, fully-rationalized conferences, with the government assuming the role of an observer and final resort for mediation of differences.

The developing countries accept the fact that liner shipping conferences are necessary and unavoidable, however, they regard such associations as very strong monopolies. The experiences of developing countries with liner conferences are not too threatening in general. Extending from the colonization era up to the early 1970's, liner conferences' practices were viewed by the developing countries as detrimental to the growth and development of the countries' economies and to such nations' aspirations in the maritime field. Therefore, the developing countries, keeping in mind their aspirations of having a position of sovereignty in respect to their shipping services through, but by no means limited to fleet expansion, attempted to rectify the situation by adopting a general policy or approach calling for an international regime for the regulation of liner conferences. Such a regime was sought through the United Nations Conference on Trade and Development (UNCTAD) fora, and resulted in the "United Nations Code of Conduct for Liner

Conferences". The remainder of this chapter will be an examination of the Code's background, provisions and other related issues.

#### THE BACKGROUND BEHIND THE CODE

Suspensions of the operations of liner shipping conferences had started soon after they had been established in 1875. There have been many official inquiries about the working of the liner conference system. The earliest of such inquiries was in 1909 by the Royal Commission on Shipping Rings in the United Kingdom. Another was in 1916 in the United States, which produced legislation against the system and introduced open conferences. Yet during the 1920's, the Imperial Shipping Committee found itself forced to examine conference practices. All of such inquiries and investigations recognized the need for the system, however realized that the system is in need of some reforms or improvements. The most recent inquiries into and examination of the liner conference system and the practices of liner conferences, which led to some concrete developments in the field, were the following:

1. The Rochdale Committee, 1967-1970;
2. Inquiries and work by UNCTAD, 1964-1974.

In July 1967, the United Kingdom Government set up the Committee of Inquiry into Shipping, chaired by Mr. Rochdale. The Committee's report, published in 1970, devoted 20 pages to the field of liner shipping conferences. It concluded that:

"as a condition of shipowners, whether UK or foreign, continuing to benefit from the operation of restrictive agreements relating to trade to and from the U.K., members of conferences should collectively accept a published code of conference practice."<sup>8</sup>

Thus, this Committee was the first official body to suggest the need for a code to govern liner conferences' practices.<sup>9</sup> The Committee's report also stated the fields which such a code should cover. In the report's chapter titled "Summary of recommendations", the following is stated:

"Members of conferences covering trades to and from the UK should collectively accept a published code of conference practice, which should contain provisions relating to the admission of new members, the publication of tariffs, the provision of information about revenues and costs to representatives of the government and of shippers and consultations with the government and shippers."<sup>10</sup>

The second of the two most recent developments started on the first occasion on which shipping questions were discussed in a truly representative international forum, which was at the United Nations Conference on Trade and Development held in Geneva in 1964.<sup>11</sup> At this conference, a recommendation entitled "The Common Measure of Understanding on Shipping Questions" was adopted without a vote. On the subject of liner conferences, the recommendation recognized the necessity of the liner conference system but noted certain questions and problem areas which gave rise to uneasiness among the users of conference services. It also pointed out that the development of merchant marines in developing countries, as well as their participation in liner conferences as full members on equitable terms, is to be welcomed. Then the Shipping Committee of UNCTAD was established with one item on its working programme having to do with conference practices and the adequacy of shipping services.

Stirred by the developing countries, the subject was studied and a report by the Secretariat entitled "The Liner Conference System" containing such studies was finished in 1970. The report was submitted to the Shipping Committee in the same year in which a debate on the subject was held, the final outcome of which was a statement by the representatives of developing countries that since conferences were monopolistic and restrict competition, conference practices should be subject to government regulation. Even some representatives of developed countries maintained that experiences in their respective countries suggested that certain abuses of the conference system could be prevented by government regulation. Therefore, the resolution adopted by the Committee agreed that further improvements in the liner conference system are necessary and would be in the common interest of shippers and shipowners. Furthermore, it was decided to transmit the Secretariat study to the UNCTAD Working Group on International Shipping Legislation (WGISL).<sup>12</sup> The group passed a resolution inter alia expressing the hope that work on conference practices will lead to the formation of internationally acceptable appropriate rules of conduct for liner conferences. Responding to the WGISL resolution, the UNCTAD Secretariat produced toward the end of 1971 a report entitled "The Regulation of Liner Conferences". This report considered various methods of regulating conferences and concluded that the most appropriate and effective method was an international convention with provisions for local and international arbitration for the settlement of disputes.

Along with these developments there was another one which deserves some attention here. Such was initiated by the United Kingdom government and led to a meeting of the Consultative Shipping Group (CSG), comprised of Western European and Japanese Ministers responsible for maritime transport, held in Tokyo on 2-3 February 1971. The meeting ended in a communique stating that the liner conference system played an essential role in liner trade and that it should continue to function by self-regulation to the greatest possible extent.<sup>13</sup> However, they agreed that improvements are needed and that:

1. it was essential that conferences should not only observe but also be seen to observe certain principles of fair practice;
2. they should promote the acceptance by conferences of a published code of practice, which should take due account of the criticisms against conferences; and
3. they should aim initially at acceptance of the code by conferences serving the trade of their countries, while bearing in mind the ultimate objective that such a code should receive world-wide endorsement.<sup>14</sup>

As a result of the communique and the meeting of the CSG, a code was developed on request of the ministers by the shipowners of the same countries and the European Shippers' Council (ESC). This code, dated 3 November 1971, was named the CENSA Code<sup>15</sup> and was accepted by the ministers of the CSG as meeting their set objectives. The fundamental difference between the CENSA Code and the Rochdale Report recommendations was mainly in the approach. The CENSA Code emphasized self-regulation, while the Rochdale Report mentioned an international treaty, which implies government intervention. Therefore, the Rochdale Report proposal was closer to the eventual U.N. position, strongly backed by the developing countries, than the CENSA Code.

During April and May 1972, the two streams of thought, one for self-regulation and the other for government regulation by an international convention, met in Santiago, Chile at UNCTAD III. During this session, overall agreement could not be reached; however Resoltuion 66(III) was adopted. The Resolution stated that there was an urgent need for adopting and implementing a universally-acceptable code of conduct for liner conferences and requested the General Assembly to convene a conference of plenipotentiaries as early as possible in 1973 to adopt such a code. The draft code, which was produced by the developing countries (the Santiago

draft), was annexed to the Resolution.<sup>16</sup> Acting upon this Resolution, the U.N. General Assembly adopted Resolution 3035(XXXVII) which inter alia established a forty-eight member preparatory committee to prepare a text for submission to the Conference of Plenipotentiaries which the same resolution requested the Secretary-General of the United Nations to convene as early as possible in 1973 under the auspices of UNCTAD. The Preparatory Committee met in two sessions, however, due to the wide differences in views the outcome of the meetings was not much more than an arrangement of the alternatives, rather than a resolution of the differences. Accordingly, at the end of the second session, the Preparatory Committee had a proposed text of a code of conduct for submission to the Plenipotentiary Conference covering the following areas:

1. the objectives and principles;
2. the substance of the code; and
3. provisions and machinery for implementation.

The United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences was held in two parts; the first part was from 12 November to 15 December 1973 and the second part was from 11 March to 6 April 1974. Eighty-six countries were represented in the second part. The Conference established three main committees (Table 2.1) as follows:

1. First Main Committee: objectives and principles of the Code;
2. Second Main Committee: substance of the Code; and
3. Third Main Committee: provisions and machinery for implementation of the Code and transitional arrangements.

In addition, the Conference also set up an informal President's Group to examine the fundamental issues before the Conference, e.g. the role of governments, participation in the trade and dispute settlement procedures, with an aim of arriving at agreed principles thereon which could form the basis for drafting the appropriate provisions by the Second and Third Main Committees.

As negotiations reached a deadlock in the Second and Third Main Committees, the President's Group came up on 7 December 1973 with a number of principles in respect of the fundamental issues as recommendations to the Conference for consideration. These principles called "the package deal" were agreed upon by the Group of 77, Group D and some Group B countries of UNCTAD. The deal basically involved some Group B countries of UNCTAD,

Table 2.1

Countries represented in the three  
Main Committees of the Conference

Main Committee	Name of the Countries
First Main Committee	Algeria, Argentina, Australia, Bangladesh, Brazil, Bulgaria, Burundi, Canada, China, Colombia, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Ethiopia, France, GDR, FRG, Ghana, Greece, Guinea, India, Indonesia, Iraq, Italy, Ivory Coast, Jamaica, Japan, Liberia, Libyan Arab Jamahiriya, Malaysia, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Republic of Viet Nam, Romania, Senegal, Singapore, Sri Lanka, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Union of Soviet Socialist Republics, United Kingdom, United Republic of Cameroon, United States of America, Uruguay, Venezuela, Yugoslavia.
Second Main Committee	Algeria, Argentina, Australia, Bangladesh, Belgium, Bolivia, Brazil, Bulgaria, Burundi, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Gabon, GDR, FRG, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Iran, Iraq, Italy, Ivory Coast, Jamaica, Japan, Kenya, Khmer Republic, Kuwait, Liberia, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Romania, Saudi Arabia, Senegal, Singapore, Sri Lanka, Sudan, Sweden, Switzerland, Trinidad and Tobago, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yugoslavia, Zaire.
Third Main Committee	Algeria, Argentina, Australia, Bangladesh, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Democratic Yemen, Denmark, Ecuador, Egypt, Ethiopia, Finland, France, Gabon, GDR, FRG, China, Greece, Guatemala, Guinea, Hungary, India, Indonesia, Iraq, Italy, Ivory Coast, Jamaica, Liberia, Japan, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Republic of Vietnam, Romania, Singapore, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom, United Republic of Cameroon, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yugoslavia, Zaire.

From the UNCTAD Volume I Report on UN Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences, New York, 1975, pp.219-220.

accepting a certain role for governments in consultations between liner conferences and shippers and in conciliation proceedings, and provisions on participation in the trade giving preference to the shipping lines of the exporting and importing countries, in exchange for the Group of 77 countries of UNCTAD dropping their proposed system of international mandatory conciliation.<sup>17</sup> However, due to lack of time, the Conference decided to consider the principles further along with the draft texts proposed by the three Main Committees of the Conference at the second part of the Conference.

In the second and final part of the Conference, the three Main Committees and the President's Group continued their examination of the issues. After intensive negotiations among the participants, broad agreement was reached by the Group of 77, Group D and some Group B countries of UNCTAD. Such agreements were later reflected in the relevant provisions and decisions of the Conference. The agreement included such issues as the following:<sup>18</sup>

- 1. participation in trade where there were no pooling arrangements;
- 2. non-conference lines and the option of shippers in respect thereof;
- 3. joint inter-governmental liner services;
- 4. implementation of a general freight rate increase, pending a recommendation by the conciliators;
- 5. entry into force requirements;
- 6. rules of procedures for conciliation; and
- 7. the institutional machinery for the administration of the Code.

Then, the three Main Committees submitted their compromise proposals to the Conference for adoption. Thereafter, on 6 April 1974, the Conference adopted the Convention on a Code of Conduct for Liner Conferences by a vote of 72 to 7, with 5 abstentions (Table 2.2). The Conference also adopted two resolutions on:

- 1. non-conference lines; and
- 2. local conciliation.

This adopted Code is a historical document because, as best said by Professor Sturmev:



Table 2.2

The final vote on a UN Convention for a  
Code of Conduct for Liner Conferences

Vote	Name of the countries
For	Algeria, Argentina, Australia, Bangladesh, Belgium, Bhutan, Bolivia, Brazil, Bulgaria, Burundi, Chile, China, Colombia, Cuba, Czechoslovakia, Democratic Yemen, Ecuador, Egypt, France, Gabon, GDR, FRG, Federal Republic of Ghana, Guatemala, Guinea, Guyana, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ivory Coast, Jamaica, Japan, Kenya, Khmer Republic, Kuwait, Liberia, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mexico, Morocco, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Republic of Viet Nam, Romania, Saudi Arabia, Senegal, Singapore, Spain, Sri Lanka, Sudan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zaire.
Against	Denmark, Finland, Norway, Sweden, Switzerland, United Kingdom, United States.
Abstentions	Canada, Greece, Italy, Netherlands, New Zealand.

"The real significance of the Code is that it exists. Breaking with all precedent, not codifying existing practices, but seeking deliberately and consciously to change existing practices... it represents the first venture in bringing under international control the actions and practices of what remain essentially nationally-based private industries."<sup>19</sup>

#### SOME PROVISIONS OF THE CODE

The United Nations Convention on a Code of Conduct for Liner Conferences as adopted by the United Nations Conference of Plenipotentiaries on the same subject, held at the Palais des Nations in Geneva from 12 November to 15 December 1973 and from 11 March to 6 April 1974, can be viewed as a body of principles, some explicitly stated, some implicit, together with a set of well-defined guidelines to assist all concerned to establish practices which accord with the principles.<sup>20</sup> It contains eight chapters divided into two parts, preceded by a statement of objectives and principles of the Code, and also contains two annexed resolutions. The discussions in this section of the chapter will concentrate on the main and most important provisions of the Code, but will follow the same order of contents as in the Convention itself, which is as follows:

- A. Objectives and principles;
- B. Part One:
  - 1. Chapter I, Definitions
  - 2. Chapter II, Relations among member lines
  - 3. Chapter III, Relations with shippers
  - 4. Chapter IV, Freight rates
  - 5. Chapter V, Other matters
- C. Part Two:
  - 1. Chapter VI, Provisions and machinery for settlement of disputes
  - 2. Chapter VII, Final clauses
- D. Annexes:
  - 1. Non-Conference shipping lines
  - 2. Local conciliations

#### Objectives and principles

The Code states three objectives. These are as follows:

- 1. to facilitate the orderly expansion of world sea-borne trade;

2. to stimulate the development of regular and efficient liner services, adequate to the requirements of the trade concerned; and
3. to ensure a balance of interests between suppliers and users of liner shipping services.<sup>21</sup>

Aiming to improve the liner conference system, the Code goes further to specify three basic principles to be followed in this respect, which are the following:

1. conference practices should not involve any discrimination against the shipowners, shippers or the foreign trade of any country;
2. conferences should hold meaningful consultations with shippers' organizations, shippers' representatives and shippers on matters of common interest, with, upon request, the participation of appropriate authorities; and
3. 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.<sup>22</sup>

However, it should be noted and emphasized that the objectives of the Code concern not only the above-mentioned statements found in the preamble to the Code, but also the points of view expressed by delegates, particularly at the closing session of the Conference of Plenipotentiaries.<sup>23</sup> Accordingly, the stated objectives and basic principles of the Code, and later the detailed provisions and articles of the Code, can be viewed as a clear reflection of the beliefs of why the Code was needed. The underlying objective of establishing a new Code was to change the institutional structure under which liner conferences operate.<sup>24</sup> The specific need for the Code is best summarized by Professor Sturmev, when he said that the Code "was thought to be needed to do the following things, inter alia,

- a. remove from the conferences the power arbitrarily to decide on the admission of new lines and thus whether or not shipping lines could operate in particular trades;
- b. provide that the allocation of cargoes within conferences should take place on an internationally agreed basis, rather than through the private arrangements by which shares are traditionally determined;

- c. bring into the open the level of conference freight rates and the process of decision-taking;
- d. restrict the power of cartels formed of lines, usually foreign, to the country concerned, to take unilateral decisions on matters vitally affecting the trade and economic development of those countries; and
- e. establish an independent tribunal to which parties with complaints about the operation of the system could have recourse."<sup>25</sup>

Understanding this interrelationship between the stated objectives of the Code and the statements of delegates at the Conference of Plenipotentiaries, along with the believed needs for the Code, will clarify a lot of the articles and provisions of the Code which require interpretation. Such clarifications will be evident during the rest of this section of the chapter.

#### Definitions

The first chapter of the Code Convention is "Definitions". It contains the definitions of nine terms which are liner conference, national shipping line, third-country shipping line, shipper, shippers' organization, goods carried by the conference, appropriate authority, promotional freight rates and special freight rates. Due to their particular importance, the terms liner conference, national shipping line and appropriate authority needs more attention. A liner conference is defined very broadly in the Code as:

"a group of two or more vessels 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."<sup>26</sup>

It should be noted in this respect that the definition can be interpreted so as to include container consortia, due to their structure, as conferences under the Code.<sup>27</sup> This, therefore, could call for a change in the structure of the consortia to be more like limited companies returning profits to shipowners who are shareholders. In addition, the above definition appears to exclude the following:

1. a single operator on a trade, and
2. operators outside the conference.

Such exclusions would constitute a major weakness in the Code unless other provisions were inserted to close the gap which the definition opens,<sup>29</sup> which is examined in the next section of this chapter "cargo sharing in perspective".

A national shipping line of a country is defined as a vessel operating carrier which has its head office, effective control and management, and is recognized as such by the appropriate authorities in that country. In addition, "lines belonging to and operated by a joint venture involving two or more countries, and in whose equity the national interests, public and/or private, of those countries have a substantial share and whose head office of management and whose effective control is in one of those countries can be recognized as a national line by the appropriate authorities of those countries."<sup>30</sup> Finally, an appropriate authority is either a government or a body designated by a government to perform any function specified to such an authority in the Code.

#### Relations among member lines

The second chapter of the Code Convention is entitled "Relations among Member Lines". It contains six articles, the first three of which can be considered as the most important, yet controversial ones, in the whole convention. Article 1 deals with membership of lines in conferences. The essence of this article is the new concept, which is in contrast to the traditional conference system, of opening conferences to national lines. The article calls for a conference where the national lines have almost an automatic membership as it states that any national shipping line shall have the right to be a full member of a conference which serves the foreign trade of its country, upon proving its ability and intention to operate a regular, adequate and efficient service on a long-term basis. Regarding the application for membership by a third country shipping line, the article specifies further criteria to be taken into account which does not depart much from the way open conferences deal with such applications, as detailed earlier in the previous chapter of the study. Finally, article 1 requires the decisions of the conferences in this regard to be communicated to the applicant at the latest within six months, and if the line is refused admission, grounds for such refusal have to be given in writing and in such a case the views of the "appropriate authorities" have to be considered by the conference.

The main implications of article 1 of the Code Convention seems to be the fears expressed by some analysts and writers that in developing countries' trades, the automatic admission of developing countries' national shipping lines might have a negative effect on the image of shipping conferences when these lines go bankrupt. They present the Eastern African National Shipping Line being bankrupt in 1980 as a prime example of such a concern.<sup>31</sup> They further argue that the higher the membership of costly developing country national shipping lines in any conference, the more likely the conference is to price itself out of business and see almost all cargoes carried by outsiders.<sup>32</sup>

The fear of a negative impact on the image of liner conferences due to developing countries' national shipping lines being given easier access to entry into liner conferences, as well as the argument of this access leading to the destruction of the conference as its prices will increase beyond what the market can absorb, are not well founded, for several reasons. Even though the Eastern African National Shipping Line became bankrupt, many other lines from developing countries did not. On the contrary, they proved to be very strong and dependable lines in times of world-wide economic recession and low shipping cycle, for example, the United Arab Shipping Company. Furthermore, there are shipping lines from developed countries which also declared bankruptcy during the same time period such as the Hellenic Line. Therefore, on the whole, there is no evidence to believe that there is a trend developing in the feared direction, nor does there seem to be strong reasons to assume that such fears will materialize in the future. On the contrary, as national shipping lines from the developing world enter into liner conferences and operate within the provisions of the Code, they are likely to grow stronger and contribute positively to their countries' foreign trade, which is likely to enhance both shipping and liner conferences.

The same line of reasoning can be extended to demonstrate that costs will not increase to price the conference out of the market, if the number of national shipping lines of developing countries entering liner conferences increases, at least not in the long run. If it is accepted that most shipping lines from developing countries are more costly than the other members of the conference, which is arguable, this tends to be a short-term phenomenon which is very likely to disappear or even be reversed in the longer run. The main reasons for the higher costs of many national shipping lines from the developing world appear to be inefficiency due to inexperienced

and generally poor management, which is normally the case in the infancy stage of any industry like shipping. Therefore, as such lines enter liner conferences and operate on equitable basis, which is envisaged by the Code, their costs are likely to gradually diminish. This will tend to occur because of the following factors:

1. they will gradually benefit from the economies of scale as they will tend to have bigger fleets and larger operations, as well as a higher utilization factor;
2. they will gradually acquire more experience and managerial skills and know-how, which will in turn increase their efficiency and effectiveness and thus reduce their costs;
3. the above-mentioned points along with other provisions of the Code, e.g. article 2 provisions tend to give the national shipping lines of developing countries more bargaining strength in and better access to international financial markets which can reduce their fixed costs dramatically.

Moreover, in the short run, many national shipping lines from developing countries should and probably will capitalize on their unique advantage cost-wise, compared to their counterparts from the developed world, namely abundant cheap labour. This factor should at least reduce the comparative cost disadvantage many national shipping lines from developing countries allegedly possess. Finally, and in addition to the above-mentioned remedy to the short-term cost differential concern, the fact remains that the aspirations of developing countries are broad in perspective regarding economic activities, therefore, foreign trade considerations tend to make the national shipping lines more willing to absorb the short-term cost differentials rather than pass them on to shippers to avoid adversely affecting the country's foreign trade.

Article 2 of the Code Convention is titled "Participation in trade" and covers exactly that. It is the most controversial article in the whole Convention, therefore, in this section of the chapter, only the contents of the article will be briefly covered and the detailed analysis of its provisions will be dealt with in the following section headed "Cargo-sharing in perspective". Article 2 of the Code Convention contains six main items of interest. Firstly, the article states that, unless otherwise mutually agreed, the following principle regarding the right of lines to participate in the trade carried must be observed:

"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. 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." (article 2, para. 4)

In this respect, for the purpose of determining the share of trade as stated above, the Code clarifies that the national shipping lines of each country, irrespective of the number of lines, shall be regarded as a single group of shipping lines for that country. It can be seen from the above that the Code does not provide an automatic application of a 40:40:20 formula, nor governmental cargo allocation. It provides, however, the choice for the member lines of a conference to either agree unanimously on a cargo-sharing system on conditions entirely to their liking or to follow the guidelines of the Code, that is to say, the national lines at both ends of the trade have the right to participate in the freight and volume of the trade carried by the conference on an equal basis.<sup>33</sup>

Secondly, article 2 allows the national shipping lines of a region, members of a conference at one end of the trade covered by the conference, to redistribute among themselves, by mutual agreement, the shares allocated to them in accordance with provisions of the Code. Thirdly, the article specifies that if any one of the countries whose trade is carried by a conference does not have a national shipping line participating in the carriage of that trade, then the share of the trade to which national shipping lines of that country would be entitled to under the above-mentioned provisions, shall be distributed among the individual member lines participating in the trade in proportion to their respective shares. It needs to be noted that the afore-mentioned forms of redistribution which might occur between groups of lines provide a very important element of flexibility in the operation of the cargo-sharing arrangements, specially the regional redistribution. This is so because there are several parts of the world where, for various reasons, an attempt on the part of each country in the region to act independently in allocating cargo would be uneconomic and inefficient. In both East Africa and West Africa, for example, because of the trade volumes, a rational service serving shippers' needs will serve several countries and efficiency of operations will be secured only by regarding these as one country for the purpose of overall trade allocations,



with a sub-allocation of rights between the national lines of the several countries.<sup>34</sup> The same concept or principle can be applied in the Arabian Gulf sub-region.

Fourthly, article 2 of the Code Convention excludes "military equipment for national defence purposes" from the above-stated trade participation provisions. Fifthly, the article indicates that when no pooling or other trade participation agreements exist in a conference, the national lines of the countries at both ends of the trade can require such a pool or agreements to be established, and that pooling or trade-sharing agreements must be reviewed periodically. Finally, article 2 specifies that the application of the article shall be completed within a transition period of maximum two years after entry into force of the convention. This transition period offers two years to the liner conferences concerned to adjust where necessary their rules, agreements and practices to meet the Code's requirements.

Article 3 of the Code Convention reflects the Code's vision of a conference where the national lines effectively control the conference. The last part of the article states that:

"... a decision cannot be taken in respect of matters defined in a conference agreement relating to the trade between two countries without the consent of the national shipping lines of those two countries."

Therefore, it can be seen that the vision of the conference is not the 'democratic' one-line one-vote system of the past, which too often enabled lines with minor interests in a trade to dominate the conference decisions, but a system in which the national flag lines, whatever their number, dominate by reason of their importance to the trade. This rule was inserted in the Code so that in a situation where a conference covering the trade between countries A and B consisting of one line of each A and B between them carrying 80 per cent of the cargoes and rag-bag of perhaps four or five third flag lines carrying 20 per cent, these latter could not, under a two-thirds majority rule, decide something against the opposition of the two major lines.<sup>35</sup> This rule is designed to prevent the situation existing presently where, for example, the routes of many developing countries are served by technology which the trade does not really require, nevertheless, it causes higher freight rates on these routes<sup>36</sup> and hurts the foreign trade of such countries who can afford it the least.

### Relations with shippers

The third chapter of the Code Convention is entitled "Relations with shippers" and contains Articles 7-11 inclusive, the most important of which are articles 7 and 11. In general, many provisions of the chapter reflect the age of the Code as they attempt to put right the wrong practices of conferences in their relations with shippers at the time the Code was adopted in 1974. However, to date most conferences have adjusted their practices in this area, it is argued mainly due to the existence of the Code, making the Code provisions lag behind the best current conference practices.

Article 7 deals with loyalty arrangements and states that:

"these arrangements shall be based on the contract system or any other system which is also lawful."

Given that the original intention was that with the Code the deferred rebate system should be abolished as a form of loyalty tie,<sup>37</sup> article 7 stops short of achieving this objective. Therefore, even though paragraph 3 of article 7 attempts to abolish most of the negative features of the deferred rebate system and the fact remains that in practice today relatively few conferences operate loyalty systems, if a contracting government wishes to ensure that the odious deferred rebate system is not used, it would be advisable to make the matter clear in the implementing legislation since normally anything not declared unlawful is lawful.<sup>38</sup> Article 7 also specifies in paragraph 2 that:

"whatever loyalty arrangements are made, the freight rate applicable to loyal shippers shall be determined within a fixed range of percentages of the freight rate applicable to other shippers. Where a change in the differential causes an increase in the rates charged to shippers, the change can be implemented only after 150 days notice to those shippers or according to regional practice and/or agreement."

Article 11 of the Code Convention relates to consultations. It institutionalizes the machinery of consultations and leaves no escape to either conferences or shippers as it makes it mandatory or compulsory when it states:

"there shall be consultations on matters of common interest between a conference, shippers' organizations, representatives of shippers... These consultations shall take place whenever requested by any of the above-mentioned parties."

and that:

"consultations shall be held before final decisions are taken."

It goes further to specify the role of governments in the consultations by declaring that:

"appropriate authorities shall have the right, upon request, to participate fully in the consultations, but this does not mean that they play a decision-making role."

The article also specifies the areas for which consultations are to be held. These areas include the following:

1. changes in general tariff conditions and related regulations;
2. changes in the general level of freight rates;
3. promotional and/or special freight rates;
4. imposition of and related changes in surcharges;
5. loyalty arrangements;
6. changes of tariff classification of ports;
7. procedures for the supply of necessary information by shippers concerning the expected volume and nature of their cargoes and the presentation of cargo for shipment and the requirements regarding notice of cargo availability; (this could enable the conferences to squeeze shippers for information in the above-mentioned areas.);<sup>39</sup>
8. changes in the pattern of services;
9. effects of the introduction of new technology; and
10. adequacy and quality of shipping services.

The last two points are particularly important and relevant to many developing countries' trades where such trades are served as by-products of other trades. A case that comes to mind here is the containerization of conference services in such trades which both left a number of shippers dissatisfied because on account of the very nature of their cargoes they would still have to rely on conventional services, and increased the overall cost of transportation of the cargoes which lend themselves to containerization.<sup>40</sup>

Even though this article attempts to protect shippers through requiring a consultative machinery before decisions are made, it is not without problems or weaknesses which must be dealt with when putting the Code into operation, particularly in developing countries. Since effective consultations are not

possible unless all parties are equally informed, and given the fact that third world shippers' councils, if existing at all, generally lack the necessary financial resources and manpower support to effectively prepare themselves for negotiations with conferences,<sup>41</sup> shippers, realizing that consultations are so often no more than a sham, may not wish to be involved in the consultative process, which is required by the Code in Article III. This situation might leave the shippers with a significantly reduced capacity to challenge conference decisions because no matter how meaningless the consultations, they have been involved in them before the decisions were made.<sup>42</sup> A second but related problem in this respect is that large shippers are frequently able to make their own arrangements with the shipping lines and the conferences and then may be perfectly willing to stand aside and allow the conference to recoup from the small shippers what it has given to the large shippers.<sup>43</sup> This situation is likely to occur on a global basis, but increasingly under the newly-introduced United States of America system of allowing "service contracts" to replace the traditional "rate contracts" system in conference loyalty arrangements, advocated by the Code in article 7. Under the "service contracts" system, conferences can make individual contracts with the individual shippers and can agree on any terms they see fit. Such a system, as even admitted by representatives from the Federal Maritime Commission (FMC) as pro-big shippers, can quite easily lead to the above-mentioned problem.

Therefore, what is needed to solve the above-stated problems and to achieve the aims of article 11 in attempting to afford protection to shippers are the following:

1. a shippers' council which represents all shippers;
2. consultations must be ensured to take place between representatives of shippers and representatives of conferences, each side having the authority to reach agreements on the subjects which had been announced in advance;
3. adequate means for getting shippers' views on subjects which are due to arise in consultations;
4. a data bank containing the relevant data, kept up-to-date for shippers' use;
5. a research unit which can produce comprehensive briefing papers as well as regular reports on matters of interest to shippers;
6. involvement and full participation of government representatives, specially in developing countries, to protect the interests of

importers on c.i.f. terms and exporters on f.o.b. terms, who have no contractual relationship with the shipping lines, and also to protect the interests of small shippers and consumers in general. However, because the Code limits the role of governments in the consultation process by stressing that it is a non-decision making role, the need for an adequate and strong shippers' representation is even more crucial if shippers are to benefit from the Code; and finally

7. regional cooperation in order to both reduce costs and broaden the basis for the consultations. Without this it is certain that shippers in many developing countries are going to feel disappointed by the Code.

At the conclusion of the discussion of Chapter III of the Code Convention, it can be said that the Code is one instrument of reform and this chapter is intended to deal with the problems relating to the relations of liner conferences with shippers. Whether the Code will succeed is one issue to be known in time; however, it is certain that shippers in general and those of developing countries in particular, will stand to gain little from the Code unless they make particular efforts themselves, preferably with the assistance, mainly financial, of their governments and on a regional cooperation basis.

#### Freight rates

Chapter four of the Code Convention, entitled "Freight rates", contains articles 12-17 inclusive, articles 12 and 14 of which can be regarded as the crucial ones and thus warrant emphasis. Article 12, named "Criteria for freight-rate determination" sets forth four criteria for the purpose of determining freight rates. It stipulates that "in arriving at a decision on questions of tariff policy..., the following points shall, unless otherwise provided, be taken into account", then it specifies the first criterion declaring that:

"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;"

and the second criterion is as follows:

"The cost of operations of conferences shall, as a rule, be evaluated for the round voyage of ships, with the outward and inward directions

considered as a single whole. Where applicable, the outward and inward voyage should be considered separately,";

and the third criterion by stating that:

"the freight rates should take into account, among other factors, the nature of cargoes, the interrelationship between weight and cargo measurement, as well as the value of cargoes";

and the fourth and last criterion, as relating to fixing promotional freight rates and/or special freight rates for specific goods, requires that the conditions of trade for these goods of the countries served by the conference be taken into account.

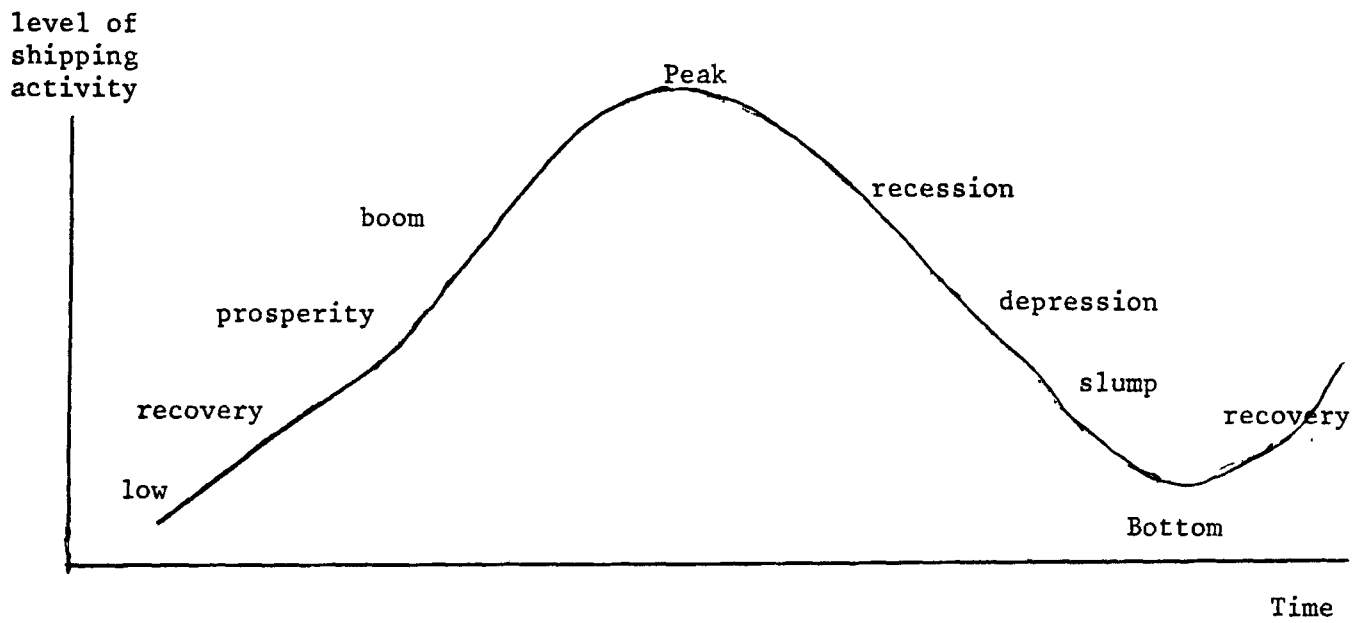
There are several main observational issues connected with the above-listed criteria. Firstly, it should be noted that even though the article specifies the particular criteria which should be followed in order to determine the freight rates, it also includes what seems to be an escape clause when it states "unless otherwise provided". The importance of this clause is not too clear as the Code is silent on the person or persons by whom the otherwise alternative criteria can be provided. Certainly, it cannot be the conferences, as this would make the article, and thus the criteria, meaningless and surely needless. Another possible interpretation of this clause is for the alternative criteria to be provided by shippers and conferences through the consultative process. This view sounds reasonable, however, it can work in practice to the satisfaction of everybody if both sides enter the process on an equal footing, which is rarely the case, especially where developing countries' shippers are involved.

Another observation is that the part of the first criterion requiring freight rates to be fixed at as low as commercially possible, is relatively clear and coincides with the Code's objective to facilitate the orderly expansion of world sea-borne trade. This part can be met if conferences utilize all the options open to them, e.g. pools, joint sailings, consortia and other forms of rationalization. However, the part of the same criterion permitting reasonable profits for shipowners generated different interpretations. Some have concentrated on the word "shall" and understood this part to mean that the Code ensured a reasonable profit for shipowners. Therefore, they concluded that it would take enormous efforts to safeguard a reasonable profit for shipowners. Others viewed the deciding word not to be "shall" but rather "permit". They, therefore, interpreted the second part of the first criterion to mean that shipowners are to be guaranteed

an opportunity to make reasonable profits and not to be guaranteed profits as such. Therefore, inefficient shipowners, or those who offer a level or quality of service which is too excessive in relation to the needs of the trade, for example, vessels of high speed and capacity, cannot insist on an increase of freight rates, even if they can show that they do not earn a reasonable profit. Considering that shipping is continuously moving in an on-going cycle extending from a low level of activities to a boom and a peak and back to a slump and bottom level of activities,<sup>44</sup> (Figure 2.1), it is virtually impossible to ensure profits for shipping lines when the level of shipping activities at a recession or depression stage as any increase in freight rates at such a time would only cause matters to deteriorate and lengthen the downward cycle time. In addition, it is the opinion of the writer that the delegates at the United Nations Conference of Plenipotentiaries on the Code were aware of the above implications, which encouraged them to change the word "ensure" used in the first draft of the paragraph to the word "permit", which appears in the Code presently.<sup>45</sup> Therefore, the criteria must be regarded as long-term, extending even beyond one year to maybe several years. There must also be a coherence between the time horizon for the two parts of the criteria, namely, low levels of freight rates and reasonable profits for shipping lines. Finally, it should be noted that even though what can be regarded as a reasonable profit varies from time to time, according to the general economic conditions and the shipping cycle, it is rather clear that it needs to be sufficient to keep the shipowner in the business in the long run, and no more than that. This sounds just fine, fair and desirable, however, quantifying it in practice is another matter.

A third observation regarding the criteria set forth in article 12 for determining freight rates concerns the criteria dealing with the calculation of the operational costs of conferences. The Code requires, as a general rule, such costs to be evaluated based on the round-voyage concept, but it weakens the requirement by providing an escape possibility. To understand better the meaning of this concept, some liner accounting notions and problems need to be touched on. In liner operations' accounting, there are basically three classifications of costs which impact directly on the freight rates. Firstly, those costs which can be connected directly to the cargo carried, such as the cargo handling costs. Secondly, those costs which can be attributed directly to the voyage as they can be avoided if the voyage is not made, such as fuel costs. Thirdly, there are the so-called

Figure No. 2.1

The Shipping Cycle

Source: Mirabout, Capital Cost in Shipping



overhead costs, which are related to the organization as a whole and cannot be attributed to specific activities or cargoes except on an arbitrary basis. Costs falling in the third category include fixed costs like capital expenditures and running or operating costs like personnel and administration. Given the above cost classifications, there are three fundamental accounting problems relating to the allocation of the given costs to the voyage, to the segments of the voyage and finally to the cargoes on each segment. In other words, the three problems are the following:

First: what costs to allocate to a particular voyage

Since the first and second classifications of costs can readily and easily be dealt with for the purposes of this question as cargo costs will relate to the cargoes carried on the voyage, and voyage costs are attributed to the particular voyage by definition, then only the overhead costs represent an allocation problem. Therefore, the problem can be refined to read, what overhead costs to allocate to a particular voyage

Second: how the direct costs of a given voyage, including its allocated share of overhead costs, are to be divided among the component segments (legs) of the voyage

Third: how to distribute among the cargo items carried the costs which are allocated to the component segments of the voyage <sup>46</sup>

The first problem can be a very difficult one to deal with, especially if a shipping line has many interests, particularly if ships are switched between trades in response to variations in the demand for tonnage, and a number of ports in different countries to serve, which is a very common operational pattern. It is beyond the scope of this study to deal adequately with this question which requires further research. However, it can be said with a fair amount of confidence that the distribution of the general overhead costs can be a rich source of potential conflict, especially with capital costs of between 40 and 50 per cent of annual costs for container and ro-ro shipping, compared with 20 to 30 per cent for conventional liners.

The second problem is the one with which the second criterion listed in article 12 of the Code attempts to deal with. Recognizing that the way in which voyage costs, including overheads share, are allocated between the constituent segments of a voyage clearly determines the level of freight rates to be charged for the service on each of these constituent segments, the Code stipulates that the direct costs of a particular voyage should be

divided among its component parts or segments according to the round-voyage concept. This concept provides as a rule that the outward and homeward voyages should be considered together. It was introduced into the Code in order to ensure that shippers could take into account the allocation of costs between the different legs or segments of the journey and to ensure that freight rates on one leg are not fixed in isolation from those on the other.<sup>47</sup> Even using this concept does not solve the problem completely. In fact the problem of allocation does not have a particular right answer or solution as there are different allocation schemes which are popular, including:

1. the solomon approach, equal division between the two segments;
2. the stop watch approach, the per cent of time per segment of the voyage is the basis for the allocation;
3. the robin hood principle, allocating overheads in relation to the revenue-earning capacity of each leg; and
4. the big chief method, the heaviest leg to bear all the overheads with the other legs bearing only marginal costs.

All of these approaches have their virtues and assumed degrees of logical fairness as well as difficulties and capabilities of producing conflicts with the objectives and principles of the Code. Furthermore, the application of this concept entails another practical difficulty. The consultations regarding freight rates for the outward trip and for the return trip do not take place at the same time, nor at the same place, while the shippers are not the same at the two consultations. The common element is the conference, which immediately increases the power of the conference relative to that of the shippers<sup>48</sup> which causes the consultations to be imbalanced.

The third and final problem does not represent any additional difficulties, as in the past the parties discussing the issue of freight rates have concentrated almost solely on this issue of the allocation of "segment or leg" costs over the cargo items carried. The only difference now under the Code is that this allocation issue has to be discussed along with the allocation of the attributed voyage costs over the various legs of the voyage.

A fourth and final observation regarding the criteria stipulated in article 12 for the determination of freight rates is in connection with the last criteria. This criterion is not important and is out of place among such criteria. It is a very good example of the fact that, in many of the clauses, the Code does not go beyond the most advanced conference practices of some ten or fifteen years ago.<sup>49</sup>

Article 14 of the Code Convention entitled "General freight rate increases" basically makes two requirements regarding freight-rate increases, namely:

1. fifteen months' freeze of freight rates; and
2. consultations in this regard.

The Code attempts to meet its intention of forming a world in which the major internationally traded products of each country would be carried under fixed rate contracts, with a duration of at least fifteen months, unless the two parties agreed to a shorter duration, but always with some escape clauses to take care of major unforeseen changes, through the combination of paragraphs one and nine of article 14. Accordingly, the Code provides in paragraph one that a conference must give notice of at least 150 days, or according to regional practice and/or agreement, of its intention to effect a general freight rate increase, to the following:

1. shippers' organizations;
2. representatives of shippers;
3. shippers; and
4. appropriate authorities of the countries whose trade is served by the conference, upon request.

The article further stipulates, in paragraph nine, that "unless otherwise agreed between the parties concerned during the consultations, the minimum period of time between the date when one general freight rate increase becomes effective and the date of notice for the next general freight rate increase ... shall not be less than 10 months." The Code specifies that such provisions apply also in the case of any increases in the freight rates on one or more basic commodities of a trade if such a trade of a country carried by shipping lines who are members of a conference on a particular route consists largely of one or a few such basic commodities.

These provisions received quite a list of criticisms from the Western World. One of such criticisms which warrants some attention is one made by Mr. Arwood, who said:

"The Code mandates rate increases every fifteen months - a naive attempt to control and stabilize costs ... however, economic realities will induce exactly the opposite effects. Carriers will most assuredly post hefty increases on schedules every fifteen months, both in anticipation of higher costs in the future and to compensate for what they perceive to have been a shortfall in the prior term.<sup>51</sup>

Even though Mr. Arwood's prediction might occur with the application of the Code, it mainly reflects the traditional situation where an extreme imbalance existed between the powers of the conference and that of the shippers, which the Code attempts to rectify as can be seen from its objectives to ensure a balance of interests between suppliers and users of liner shipping services. Under the traditional situation, the carriers in the conference would be able to post such hefty increases in freight rates every fifteen months. However, if the Code is successful in achieving the strived for balance between the conference and the shippers, it would be very hard for carriers to increase freight rates just to make up for the stipulated fifteen months' freeze in freight rates. This would be so because shippers and/or their representatives would be fully equipped and informed to successfully challenge the intentions of the conference. On the other hand, if this balance is not achieved and shippers still do not, or cannot, meet the conference on an equal footing, then Mr. Arwood's prediction has a good chance of occurring.

In addition, it should be noted that it was the developing countries which insisted on a period of stability for freight rates due to the fragility of their economies which are frequently directly dependent on the net revenues from the sale of two or three primary products.<sup>52</sup> This is particularly the case for products, the freight rate for which represents 50 per cent of the sale price and the elasticity of supply and demand of such products is such that the developing countries exporting such products are obliged to absorb most, if not all of the increases in the freight rates. Therefore, an unforeseen increase in freight rates, in such a case, could easily at one blow destroy the financial planning of a country and jeopardize its economy.<sup>53</sup> Accordingly, the fifteen months' freeze on freight rate increases attempts to deal with this situation, whether it will succeed can only be determined in practice through the application of the Code, which is severely handicapped by the EEC's Brussels package, discussed later in the chapter, under the heading "The present status of the Code".

Alternatively, there are some who advocate another alternative for developing countries to pursue in their attempt to protect their economies through seeking to stabilize freight rates for a period of at least fifteen months. Such an alternative approach entails that shippers and their councils and/or representatives should identify the products for which the stability of freight rates is very important and then push the conference very hard into accepting to negotiate contracts with a duration related

to the economic needs of the sensitive products.<sup>54</sup> This approach is generally possible from a practical point of view, however, for its success it also requires shippers or shippers' councils and/or representatives to be very well equipped with up-to-date data and economic analysis reports and to be well informed about trends in supply and demand of the products, not only in their routes, but also in other competing routes and markets. In other words, unless shippers confront the conference on an equal footing, the alternative approach might not achieve the desired stability, which it did in the case of the major manufacturers of capital equipment in developed countries.

The second requirement which article 14 of the Code Convention makes concerns consultations regarding freight rate increases. It states in paragraph 2 of article 14 that at the request of any of the parties prescribed for this purpose in the Code, to be made within an agreed period of time after the receipt of the notice, consultations shall commence ... within a stipulated period not exceeding 30 days or as previously agreed between the parties concerned. It adds that the consultations shall be held in respect of the basis and amounts of the proposed increase and the date from which it is to be given effect. Then paragraph 3 of the article places a responsibility on conferences to provide to the participating parties, at the consultations regarding freight rate increases, a report from independent and reputable accountants, including an aggregate analysis of data in respect of relevant costs and revenues which in the opinion of the conference necessitates an increase in freight rates. The remaining provisions of article 14, dealing with consultations on freight rate increases, namely paragraphs 4-7 inclusive, concentrate on the possible outcome of the consultations and the recourse available for each party in case of disagreement.

In this respect, there are two points which must be emphasized. First, the provisions give an important role to the International Mandatory Conciliation (IMC) for solving any unagreed upon issues as it states that "if no agreement is reached within 30 days of the giving of notice ... the matter shall be submitted immediately to international mandatory conciliation, if the conference doesn't abide by the decision of the IMC then shippers can free themselves from any loyalty arrangements which they have with the conference upon giving notice to the conference of such intended action. In this case, the conference cannot withhold or forfeit a deferred rebate which is due to the shippers and which has already been accumulated by the conference.

These provisions of the second requirement of article 14 regarding consultations with respect to freight rate increases entails five observations. The first is that a request for consultations has to be met even if made by a single shipper, who may send cargo only occasionally, even if all other parties "prescribed in the Code" refuse such consultations. This point can be detrimental to shippers in two respects. Shippers, realizing that the consultations are likely to be nothing more than a sham - a cosmetic event - may not want to participate in or hold such consultations so as not to weaken their position against conference decisions, for example regarding freight rate increases. Thus a minor status shipper's power to ask for and get consultations will rob shippers in general of the possibility to follow such a strategy. In addition, a request for consultations, and even an accountant's report by one shipper, would justify the conference's claim for exploitation expenses which have to be recovered by the conference through increases in freight rates affecting all shippers using the conference services. It is possible to rectify this situation by clear and explicit provisions in the complementing legislation of the Code.

The second observation is that the Code requires the request for consultations to be made "within an agreed period of time" after the receipt of notice by the conference announcing its intention to effect a freight rate increase, but it does not specify the boundaries of the length of such a period, nor does it clarify the procedures to be followed in case such an agreement cannot be reached. The Code's lack of clarity on this point could be an intentional one to allow for enough flexibility for it to work in practice. Yet, such lack of clarity can be a source of difficulties in applying this provision of the Code.

The third observation is that the Code, by stating in paragraph 5 of article 14 "If no agreement is reached within 30 days of the giving of notice ..." implies that everything must be completed within the 30-day period. Accordingly, the following actions must be performed in the 30-day period:

1. the receipt of the request by the conference;
2. the giving of an assignment to the accountants with all necessary information;
3. the preparation of the report by the accountant;
4. the sending of the report by the conference;
5. the studying of the report by the conference;

6. the sending of the report to all designated parties;
7. the study of the report by the shippers;<sup>55</sup> and
8. the holding of consultations and reaching a point of agreement or final disagreement thus the need to submit the matter to the International Mandatory Conciliation.

It is not likely that a 30-day term is sufficient time to undertake all the above-mentioned activities. Therefore, one possible approach to avoid such a packed timetable is for the implementing legislation to, after clarification of the expression "unless otherwise agreed" from the above discussion, separate from the 30-day term provided in the Code the period of time the prescribed parties have for requesting consultations following freight rate increase notice by the conference. In addition, the legislation may introduce provisions allowing all the above-listed activities to be performed during the first period created by the legislation, which should be taken into consideration when determining the length of such a period, except the first and last items on the list, namely the request by "the prescribed parties" for consultations and the consultations themselves. Such arrangements may be arrived at by "the prescribed parties" and the conference, but they must be of equal strength for such agreement to be fair and the legislation must allow for such an agreement so as not to conflict with the Code. In either case, the timetable would be such that after the notice is received by "the prescribed parties", the first period, the length of which is either legislated or mutually agreed upon, would contain the following activities:

1. receipt by the conference of the request by "the prescribed parties" for an accountant's report, and if desired, an aggregated analysis of revenues and costs of the conference;
2. awarding of the assignment to the accountants, with all necessary information;
3. preparation of the report and analysis, if any;
4. sending of the report to the conference;
5. study of the report by the conference;
6. sending of the report to all of the designated parties; and
7. study of the report by the shippers.

Then the 30-day term stipulated in the Code begins, during which the request for consultations by "the prescribed parties", as well as the consultations themselves, are carried out.

The fourth observation in this respect concerns the accounting data and reports called for by the Code to be used in consultations regarding freight rate increases. In general, the provisions in article 14 of the Code concerning the responsibility of conferences to supply accounting data to assist freight rate negotiations must be regarded as a positive step, even if one in practice may be a source of difficulties.<sup>56</sup> A first likely difficulty is the basis and approach used in preparing the accounting report from the raw accounting data. A possible good basis is for the accounting data to be based on a prior analysis of operating results prepared normally by an accountant on the basis of confidential data supplied by each conference line, which should present neither problems nor additional costs to a conference. To complement such a basis an averaging approach can be used. Accounting data which is a simple average of the results of all the lines in a conference is not likely to represent the real position of the conference, as in any one year it may be rare to find a situation where fluctuation around the average is so slight that the average is meaningful; the average over a period of years to be representative of the real position of the conference is more common. Therefore, an agreed form of moving average could appropriately be used in interpreting the raw accounting data.<sup>57</sup> The moving average approach can be applied with considerably less difficulty if the implied message of the Code is accepted. This message is a recognition which provides that only the costs and revenues of the national lines which are the dominant lines, should be taken into account for accounting report purposes. The reduced difficulties are generated from the fact that the two national flag groups' costs for the trade could be determined with no more than the usual difficulties of determining cost in a multi-product enterprise. Then such costs could be used to determine the level of conference costs and to determine freight rates.<sup>58</sup>

A second likely difficulty of the accounting data and reports required by the Code is the limitations of such reports. Almost all accounting reports are made according to assumptions, principles and standards, many of which are arbitrary and subjective. Therefore shippers may find it difficult to objectively analyse such reports. This brings a third likely difficulty in that for shippers to be able to properly understand the accounting reports submitted by the accountants, who are assigned by the conference and benefit from them, they may need their own equally qualified accountants, which can involve the shippers in considerable cost. However, this is crucial because if shippers, shippers' councils or shippers'



representatives do not ensure that they properly understand all the reports which the Code calls for, these reports are likely to inform the conference more effectively than they will inform the shippers and will render the efforts of the Code to establish a balance in these consultations fruitless.<sup>59</sup> In this respect, it cannot be stressed strongly enough that shippers cannot and should not depend only on conferences and on the reports of their accountants. They must have, maybe in mutual efforts with their respective governments, a data bank and competent personnel to produce back-up reports to aid the shippers in their consultations with conferences.

The fifth and final observation is that it seems that the system proposed by the Code provides for consultations with each individual country of the several served by the conference at one end of the route. Because the 30-day period provided by the Code makes it impossible to undertake a series of consultations within the prescribed time, a conference may hold consultations with the weakest of the countries concerned to gain maximum augmentations and then apply such gains in the consultations with the other countries. To avoid such a situation, regional cooperation is needed. Under such an approach the countries would need to agree to establish a single committee or body which would conduct negotiations in all the conferences on behalf of all the countries concerned. Such a committee would be composed of representatives from all the shippers' councils, and shippers' representatives in the region. Inter-governmental action would be required to establish such a committee.<sup>60</sup> This would increase the role of the government accordingly, but should not conflict with the Code.

To sum up the discussions of Chapter IV of the Code Convention, it can be reasonably declared that this chapter is a very good one insofar as intention is concerned, but it is one which is likely to create a lot of difficulties in application. However, many of these difficulties can be overcome with some good-faith efforts from the concerned parties including the governments.

#### International Mandatory Conciliation

Since chapter five of the Code Convention does not require much in the area of implicationary analysis, the next chapter of interest in the Code Convention is chapter VI, which is headed "Provisions and machinery for settlement of disputes". This chapter encompasses 24 articles starting

with article 23 and ending with article 46, and details the provisions of the international mandatory conciliation proposed by the Code for the settlement of disputes. The Code's dispute settlement machinery applies to disputes between:

1. a conference and a shipping line;
2. shipping lines which are members of a conference;
3. a conference or a shipping line which is a member thereof, and a shippers' organization or shippers, and
4. two or more conferences;

and if such disputes relate to:

1. refusal of admission or expulsion of a shipping line from a conference;
2. an inconsistency of a conference agreement with the Code;
3. a general freight rate increase;
4. surcharges;
5. changes in freight rates or the imposition of a currency adjustment factor due to exchange rate changes;
6. participation in trade; and
7. the form and terms of proposed loyalty agreements.<sup>61</sup>

However, the option to use other dispute settlement machinery than that of the Code, such as arbitration, is allowed for in the Code upon agreement of the parties to such alternative procedures. In other words, the Code is not rigid, and the parties in a dispute can choose any other instrument to find a solution. But, as regards matters having to do with the composition of the conference, the participation in traffic, the loyalty agreements, experience leads us to believe that the conferences would accept to refer disputes to arbitration. On the other hand, the conferences lack the predisposition to look for a decision from a tribunal for the solution of disputes concerning freight, surcharges and such related matters as they wish to have the final word in these matters,<sup>62</sup> a crucial area where the Code can help.

The stated purpose of the Code's IMC is to reach an amicable settlement of the disputes through recommendations formulated by independent conciliators (A31, p.1). In such a process, the Code allows the appropriate authority of a contracting party to participate in the conciliation proceedings in support of a party being a national of that contracting party or in support of a party having a dispute arising in the context of the

foreign trade of that contracting party (A28). Furthermore, the international mandatory conciliation is like arbitration, in that a decision is given, and there is no prior commitment to acceptance. The parties agree on the appointment of the conciliator or the panel of conciliators, a recommendation is made, the parties either accept it or reject it. Thus, not merely a new concept in jurisprudence is introduced but a new meaning is given to a well-established word referring to a well-established practice. Accordingly, since the recommendation of the conciliators will become binding by acceptance of the parties in dispute only, the major weakness of the conciliation system set out in the Code becomes apparent, that is the ability of either party to reject its results if they wish to do so, and the absence of any effective sanctions against the party which does so reject the recommendation. In short, the system clearly lacks teeth.<sup>63</sup> One possible, yet partial, remedy to this problem can be found through the application of article 40 of the Code. The article in paragraph 2 stipulates the following:

"when the recommendation has been rejected by one or more of the parties but has been accepted by one or more of the parties ... the party or parties rejecting the recommendation shall publish its or their grounds for rejection ... and may at the same time publish the recommendation and the reasons therefore."

Therefore, the publication of details of the non-observance of conciliation awards would bring the pressure of international public opinion to bear against those failing to observe the awards, causing them to avoid doing so.

The main benefits of the Code's dispute settlement machinery and its international mandatory conciliation can be the following:

1. they will prevail over remedies available under national laws;
2. they can help shippers in freight rate increase disputes by enabling them to free themselves of their loyalty agreements after proper notice, if the conference rejects the conciliators' recommendations;
3. they attempt to speed up the dispute settlement process by requiring it to be generally completed within six months from the date on which the conciliators are appointed, unless otherwise mutually agreed; and

4. they allow the contracting parties, through their appropriate authorities, to play a bigger and more active role in matters which may have a vital impact on their foreign trade, shipping and therefore on their national economies.

#### Implementation, denunciation and amendments

The last chapter of the Code Convention, Chapter VII entitled "Final clauses" contains articles 47 to 54 inclusive, the most important of which are articles 47, 49, 50, 51 and 52. Article 47 is headed "Implementation" and states:

"Each contracting party shall take such legislative or other measures as may be necessary to implement the present convention."

With this the Code seems to indicate that the main role of governments under the Code would be the protection of its framework against violators. In this context, even though the Code is completely silent on the question of administration, as it only refers to implementation, it is strongly implied that the administration of the Code would be in the hands of the conferences applying it, but always under the influence of two important principles:

1. the principle of the equality of the two groups of national lines; and
2. the principle that decisions affecting the trade of one of the countries served cannot be taken unless the respective national flag group agrees to it.<sup>64</sup>

However, conferences themselves could not satisfactorily administer the Code system unless backed up by some form of supervisory body from the governments' side.

Accordingly, one way to implement the Code Convention, even seemingly implied by the Code itself, is for contracting parties to introduce it into their national legislation and let the liner conferences sort out its application themselves. However, they should assume a supervisory role by creating an administrative office, for instance within the ministry dealing with shipping, to deal with complaints of non-compliance with the Code by shipowners, shippers, conferences and others and to periodically review the Code's application by the conferences, e.g. observance of participation in trade provisions.<sup>65</sup> This method is by no means the only way to go about the

implementation or administration of the Code. There are other approaches requiring higher government involvement and entailing higher costs, but leading to less effectiveness in most cases. In the final analysis, it is the contracting parties taking into consideration the particular circumstances of their administrative set up, foreign trade composition, trading patterns and practices and other relevant factors which will decide on "the other measures as may be necessary to implement the present convention". This issue is further examined in the next section of this chapter entitled "Cargo sharing in perspective".

Article 49 stipulates the requirements for the Code Convention to enter into force. The provisions of this article will be discussed later in the chapter under the heading "The present status of the Code".

Article 50 titled "Denunciation" states that the Convention can be denounced by any contracting party at any time after the expiration of a period of two years from the date on which the Convention has entered into force. This provision may have an impact in the case of some EEC countries which may use it if the Code does not fit their perceived understanding, e.g. if it is not applied as they think it should be applied specially in the area of participation in the trade, of course under pressure from the USA. This topic will be touched on further later in the chapter under the heading "Cargo sharing in perspective".

Article 51 and 52 deal with "Amendments" and "Review Conferences" respectively. Amendments may be prepared by any contracting party and will come into force, if no contracting party communicates an objection to it within 12 months from circulation of such proposals to all contracting parties and to states entitled to become contracting parties to the Code Convention, six months following the 12 months' period. A review conference is to be held five years after the Convention enters into force. This conference is to review the working of the Convention with particular reference to its implementation and to consider and adopt appropriate amendments (A51, p.1). Furthermore, review conferences are to be held every five years thereafter, unless in the first review conference it is decided otherwise (A52, p.3). Therefore, major obstacles, impracticalities and other complaints emerging after the Code Convention enters into force can be dealt with either through:

1. amendments, or
2. the review conference.

In this respect, some have suggested rightfully that it would be highly useful if an office could be established and charged with the collection and dissemination of information concerning the Code's operation.<sup>66</sup> Such a function would help achieve the Code's goal of obtaining a universality of application as well as a real possibility for promoting cooperation, not only between North and South, but also between South and South.

#### Resolutions adopted by the Conference

In addition to the Code Convention on a Code of Conduct for Liner Conferences, the United Nations Conference of Plenipotentiaries adopted two important Resolutions, namely:

1. Non-conference shipping lines; and
2. Local conciliations.

These Resolutions, unlike the articles of the Code, are non-binding instruments and thus do not impose any obligations on any one. However, their importance and prestige is derived from the company they keep, rather than their own forces or qualities. The first Resolution stipulates that, in the interest of sound development of liner shipping, non-conference shipping lines should be allowed to operate as such, but in competing with a conference, they should adhere to the principle of fair competition on a commercial basis. In these provisions, the drafters took into account only the three traditional types of outsiders which were existing at the time the Code and its annexed resolutions were adopted.

The first type of outsider comprises a line which is offering a regular service that impinges upon that of a conference, without necessarily duplicating it in its entirety. Such an outsider could co-exist for years by the side of a conference and can provide a complementary service without threatening the service of the conference, by its willingness, for example, to serve ports which the conference does not wish to serve, or cannot serve, or by its capacity to handle cargoes which the conference can handle only with difficulty, if at all. The Code and the non-conference shipping line resolution has the tendency to protect the outsiders of this type against the monopolistic tendencies of the conference. The success of such attempts remains to be seen in the practical application of such provisions.

The second type of outsider is the line that wishes to be a member of a conference and, in its efforts to pursue this objective, duplicates the

services of the conference by offering freight rates which motivate shippers enough to lead them not to respect the principles of the loyalty contracts which they have entered into.<sup>67</sup> To protect this type of outsider, the Code prohibited the use of "fighting ships" (article 18). In addition, the Code tried to eliminate such a type of outsider by providing that in the event that an outsider is of value, it shall be accepted as a conference member, either as a national shipping line or as a third flag shipping line. However, a situation where a third flag operator is not given by the other members of the group sufficient portion of the group's cargo rights, to enable it to operate profitably, is very probable. Such a situation seems to be covered by the non-conference shipping lines resolution and the line will be allowed to operate outside the conference, if it so wishes, notwithstanding relevant provisions of the Code, if it adheres to the "principle of fair competition on a commercial basis". However, such a principle may be interpreted by the concerned parties in practice.

The third type of outsider is a general variation type. It contains several variations, the most common of which are as follows. Firstly and most dangerously is the line, itself a member of a conference, whose ships are never fully loaded in one or other leg of their normal voyages. It therefore calls at ports which are served by another conference with the purpose of filling its ships, thus offering a regular service, but without any guarantee of continuity.<sup>68</sup> Secondly, is the ship which had a profitable cargo on the outward voyage but yet searches for something more attractive than making the return trip in ballast. In this case, the marginal cost of taking a cargo is a fraction of the average cost of the conference, except for the handling cost of such a cargo. Therefore, even though this variety of outsider does not offer a regular service, if ships with a similar behaviour follow frequently enough the same route, the service of the conference will suffer badly. Such outsiders, as in the first and second variety, cannot claim the Code's protection, as they do not in the least respect the principle of loyal competition or fair competition on a commercial basis.<sup>69</sup>

In addition to the three types of outsiders, traditional in nature, discussed above, there are new types of outsiders which the Code does not touch on, due to its age. Such types include the outsiders existing on many routes whose ambition is not to join the conference, but to destroy it. They are not lines wishing to become members of the club, rather they

reject the club, and they wish that the club members reject it also. The presence of such outsiders indicates that the rules of the game have changed, but the Code, based on a "pre-container" system, fails to take into account and consideration these changes.

The second Resolution annexed to the Code deals with local conciliation. It requests the first Review Conference, mentioned previously, to give priority consideration to the subject of local conciliation to know from the contracting parties to the Convention whether or not the absence of local conciliation has hampered the effective settlement of disputes and if so, which subjects should be considered appropriate for local conciliation and what procedures should be applied for resolving such disputes. This resolution, if to have an impact through useful discussions at the first Review Conference, entails a detailed examination and analysis of dispute cases occurring during the first five years of the Code's life after entering into force on the part of contracting parties. However, it must be admitted that it is not as crucial an issue as the previously discussed other provisions of the Code, which might not give it as high a priority by the contracting parties as it may deserve.



## CARGO SHARING IN PERSPECTIVE

### Foreword

As previously stated when discussing article 2 of the Code Convention, the Code provisions on "participation in trade" were not designed to impose cargo allocation, but to provide guidelines for the determination of shares once a decision to establish a cargo allocation system has been taken. Fundamentally, the article concentrates on establishing three principles which are basic to the whole Code. The first principle endeavours to put an end to the situation where there are first and second class members in a conference, by giving all shipping lines who are members of a conference sailing and loading rights, and the right to participate in the pool, even though a definition of a pool is not provided in the Code. The second principle is that the allocation of pool shares or berthing and sailing rights should be made within the framework of internationally determined ground rules and not left to the unsupervised decisions of private enterprise in its own self-interest.<sup>70</sup> The third principle is that the national shipping lines of each country, regardless of the number of lines, must be regarded as a single group of shipping lines.

Furthermore, noting that the Code looks for the improvement of the liner conference system, therefore has the cargo-sharing arrangements not as imposing cargo sharing on conferences, but as providing a right for lines to demand such an arrangement, if they desire, along with a set of ground rules to be observed, unless otherwise mutually agreed (A2, p.4). The Code has a visionary element within it which is a very important aspect of its evolutionary existence. This visionary element rests upon three pillars, namely cargo sharing, the round-voyage concept and conciliation.<sup>71</sup> The latter two pillars were examined previously in the chapter while the first pillar will be examined in the following pages of this section. Before such an examination, it should be emphasized that the vision of the Code could survive the weakening, even the removal, of one of either of the pillars of the round-voyage concept or of conciliations, but it could not survive any weakening of the cargo-sharing pillar.<sup>72</sup> Therefore, this subject entails a lot of issues and aspects, the most important of which will be examined in this study.

### Scope of application

The scope of applying the cargo-sharing provisions as stipulated in the Code has two limiting boundaries. The first boundary relates to the type of

cargoes involved, or more precisely the type of cargoes exempted from the system. The second boundary concerns the type of trade to which the provisions are to apply.

The first determining boundary is fairly clear and represents little problem of interpretation. The Code exempts from its cargo-sharing provisions the following:

1. military equipment for national defence purposes (A2, p.17);
2. bulk cargo shipped without mark or count (A7, p.3 (d) (i));  
and
3. cargo carried under inter-governmental shipping agreements where the carriers do not accept a common carrier responsibility.

The first two exemptions are rather self-explanatory, but the third one warrants some comments. This third exemption was part of the compromising process leading to the adoption of the Code Convention to ensure enough support for such an adoption. It mainly concerns the bilateral agreements which countries with fully state-controlled economies conclude with each other because in such a situation the concerned lines do not accept the responsibilities of a common carrier, as defined in chapter one of this study.

The second delimiting boundary, on the other hand, is very troublesome because its interpretation is not as clear and straight-forward as the first boundary. Basically, there are two interpretations of this boundary, namely:

1. applying the cargo-sharing provisions to the conference market share of the trade; and
2. applying the cargo-sharing provisions to the total liner trade.<sup>73</sup>

Supporters of the first interpretation are mainly the traditional maritime countries, especially those with strong traditional cross-trading operations. In support of such an interpretation, they advance the argument that the name of the adopted convention clearly indicates that the Code's provisions apply to liner conferences, as it is called "... a Code of Conduct for Liner Conferences". In addition, they argue that the adopted "non-conference shipping lines" Resolution is a clear indication that the cargo-sharing provisions would not apply to the part of the trade possibly carried by the independent lines. In a nutshell, they argue that the Code adopts narrow definitions which imply limited application in respect to cargo-sharing.

Followers of the second view are comprised mainly of developing countries and some European Economic Community members, even though the latter group is not as outspoken as the first on this particular subject. The job of such a group to effectively argue their interpretation is harder than the first one, because they cannot rely directly on the wording of the Code, but rather have to resort to other indirect means. However, it is our belief that this interpretation holds more strongly and appears to be more valid in reflecting the real beliefs and intentions of the drafters of the Code Convention. This conclusion is based on the arguments advanced by the supporters of the second interpretation to back up their view. Such arguments include the following:

1. the process of drafting paragraph 17 of article 2;
2. possible commercial detriments of a contrary interpretation; and
3. the closing statements of delegates after the adoption of the Code Convention.

The original version of paragraph 17 of article 2 of the Code Convention read like this:

"The provisions of article 2, paragraph 1 to 16 inclusive, concern all goods carried by the conference, regardless of their origin ..."

At the final meeting of the Conference of Plenipotentiaries, the words "carried by the conference" were deleted on a majority vote. The report of the Conference does not give any indication of the reasons for deleting the words. Accordingly, there are basically two possible interpretations as to the reasons of the deletion and thus its significance. One possibility is that the words "carried by the conference" were found redundant, thus deleted. This signifies that such words remain implicit in the text since the Code is all about liner conferences. A second possibility is that the removal of the words was not a tidying-up operation, since it was done only to paragraph 17 and not to the other paragraphs of article 2 where such words were also used like paragraphs 4, 5, 13 and 14. In other words, since the same words appear in several paragraphs of the same article, if they are redundant in one paragraph, they are equally redundant in the other paragraphs also. Therefore, the removal of the words from one paragraph and not from the others can be regarded as a significant indication of the intent of the drafters of the Code Convention to extend the application of the Code's cargo-sharing provisions to the whole liner trade, thus covering cargoes carried by lines operating outside the conference. This view of the second

possibility is reinforced by the fact that 11 countries voted against the afore-mentioned deletion.<sup>74</sup>

Furthermore, and in the same connection, it is argued that article 2, in paragraphs 1 to 16 inclusive, applies to conference member lines and to the conference in its pooling or other sharing of trade carried. Paragraph 17, on the other hand, catches the other trade and provides that the participation of non-conference shipping lines in the carriage of that trade also shall be covered. The trade, they argue, has to be shared out in the same way and the fact that paragraph 17 refers to "goods" whereas the remainder of the article provides rules for the conference to observe in relation to its "trade" underlines the point. Accordingly, the use of two different words, namely "goods" and "trade" cannot be ignored and it must be considered that the Conference of Plenipotentiaries used different words because it was dealing with different ideas.<sup>75</sup>

The second argument, in support of the interpretation calling for the extension of the cargo-sharing provisions of the Code to cover the entire liner trade, concentrates on the possible effects of the contrary interpretation. It is no surprise to see a liner conference carrying as low as 30 per cent of the total liner trade on a route it serves, as liner conferences do not carry any more 80 or 90 per cent of the trade and very often, they are happy if they obtain 50 or 60 per cent. Whilst independent lines operating outside the conference have grown in number and importance, carrying two or three times bigger shares of the liner cargo compared with the situation of a decade ago.<sup>76</sup> Given this change in the composition of the supply side of liner shipping and believing that further developments in the Code of Conduct, at least as far as its application is concerned, must be made to take into account any new constraints emerging in liner shipping.<sup>77</sup> Many ratifying nations, especially developing nations, will face an enormous pressure to extend cargo-sharing beyond conference traffic, if their efforts of the past decade to promote their maritime sector in general and their flag fleet in particular are not to be vastly frustrated. The reason for this is very elegantly stated by Mr. Rajmor when he said "though the foundation of the Hindu philosophy is the contemplation of, and the concentration on, zero, i.e. "shoonya" in the Hindu language, it is nevertheless difficult for one to be content with "shoonya" when one thinks of the cargoes transported by the conference" and the related cargo-sharing arrangements; "forty per cent of zero is nothing more than zero."

Furthermore, applying cargo-sharing to conference traffic only, argue the opponents of such an interpretation, will be a guarantee of success for the non-conference operators. Because under a limited scope interpretation the outsiders are lawfully entitled to operate outside of the conference and to transport any cargoes whatsoever, to which regulations regarding cargo distribution do not apply. Therefore, such outsiders can and will concentrate on high-paying cargoes in good ports, leaving low-paying cargoes to be carried and bad ports to be served by the conference lines. In the long run this situation tends to weaken if not destroy the conference, provide an unstable freight-rate structure and make uncertain the carriage of lower paying cargoes. In a nutshell, it would lead to the eventual frustration of the intentions of the Code.

Moreover, it is argued that interpreting the cargo-sharing provisions of the Code as applying only to cargoes carried by the conference, opens up an avenue by which lines could escape from the Code's rules and system. In the light of the definition of a conference given in the Code, it would be enough for shipping lines to leave the conference and operate in a fashion which brought them outside the Code's definition of a conference, for them to be outside the Code's provisions. Therefore, interpreting the cargo-sharing provisions of the Code in a narrow fashion would, or could, remove a substantial part of liner shipping from the observance of the Code and thwart the objective of "the development of regular and efficient liner services".<sup>78</sup> Thus, the contrary interpretation is more accurate and appropriate, namely applying the cargo-sharing provisions of the Code to the whole liner trade.

Finally, supporters of the second interpretation regarding the cargo-sharing provisions of the Code, revert to the intentions and understandings of the drafters of the Code Convention, relying on the closing speeches of the delegates at the Conference of Plenipotentiaries. They believe that despite the adoption of a narrow definition, the provisions of the Code might broaden its application beyond that implied by the agreed definition, based on the understandings upon which such agreements have been reached. In the closing statement made on behalf of the developing countries after the adoption of the Code Convention, it was stressed that there were certain basic understandings between those who negotiated the compromises in the Code. According to spokesmen for the developing countries, the 77 Group, one of these basic understandings concerned non-conference liner services, which developing countries understood would come within the scope of the

cargo-sharing provisions of the Code.<sup>79</sup> These countries supported the Resolution on non-conference shipping lines on the clear understanding that such lines will not be permitted to operate in a manner which endangers the smooth functioning and operation of liner conferences or jeopardizes the cargo-sharing provisions.<sup>80</sup> Thus as soon as one accepts that the closing speeches can provide relevant guidelines to the interpretation of the intentions of the drafters of the Code Convention and reviews the closing speech made by the spokesman for the developing countries in which he said, "while we have agreed that non-conference shipping lines have a place in liner shipping, in no circumstances can we accept a situation where through their operation the national shipping lines ... lose what ... they are entitled to get under the Code in respect of participation in trade". He also noted that should the Code provisions be subverted by such means "... our governments have the full power and authority to make appropriate rules ... and ... they have every intention of doing so, and this position must be fully known and recognized";<sup>81</sup> then the first interpretation regarding the scope of application of the Code's cargo-sharing provisions loses impetus and the second one becomes inevitable.

Before concluding this discussion, there is one point to make note of. Many of the EEC countries would very much like to include non-conference lines within the cargo-sharing provisions of the Code because otherwise they would find the EEC shipowners carrying 40 per cent of the residual cargoes, while Soviet ships were enjoying the cream as they operate outside of conferences and target high freight paying cargoes with unbeatable low freight rates.<sup>82</sup> So it is not only in the best self-interest of the developing countries, but also of many traditional maritime nations, to adopt the wider scope (second) interpretation regarding the application of the Code's cargo-sharing provisions.

In conclusion, it is the opinion of the writer, shared by few and opposed by many, that this issue is extremely important in this time as the success of the Code in reaching its goals and objectives relies, inter alia, on it, and that each country implementing the Code has the right to decide, if it wishes, to bring the trade carried by regular non-conference services within the purview of the cargo-sharing formula.<sup>83</sup> In a lot of cases, particularly those involving the trades of developing countries - other than the "newly industrialized countries (NIC's) - such a right must be exercised if the objectives of the Code are to be reached. However, there is a risk to be aware of in adopting such an approach. This risk is

that national shipping lines offering inferior services or excessive freight rates would be protected by rejecting the services of outsiders providing superior services and/or lower, but profitable, freight rates. Yet this risk is not sufficient an element to be so concerned about the outsiders as to allow those who seek to subvert the basic intent of the Code to do so.<sup>84</sup>

#### Implications of cargo sharing

At the outset of examining the implications of cargo sharing, it must be emphasized that cargo sharing is not new to liner shipping and its inclusion in the United Nations Code of Conduct for Liner Conferences does not by any means introduce it as a new element in the commercial application arena. The world has been applying cargo-sharing provisions for a long time before the Code even existed. Such application has not been according to internationally agreed principles and guidelines, as provided by the Code, but rather based mostly on commercial agreements among private enterprise, national legislation and bilateral treaties suiting the individual countries applying it. Examples in this respect are numerous, a handful of which include the following illustrations.

First, Brazil imposes since 1960 surcharges of 10 per cent on foreign currency for the use of private national vessels and 100 per cent if foreign vessels are used. Second, India requires that public sector imports can only be shipped on national vessels. This equals 600,000 tons/year. Third, Russia and China always stipulate their own flag vessels.<sup>85</sup> Fourth, the Ivory Coast has applied the Code's principles in re-organizing its liner trade with Europe and 40:40:20 for example has been firmly introduced in the country's maritime policy since 1976.<sup>86</sup> The list is long and includes a lot of developed countries such as the United States of America.

The examination of the implications of cargo-sharing as provided for in the Code will be in respect of the following:

- a. its tendency to raise freight rates; and
- b. its possible benefits to developing countries.

The examination of these two issues will not be in too much detail, nor will it be complete and comprehensive because each of such issues warrant a full study on its own behalf, something which is beyond the scope of this study. However, the purposes of such an examination are mainly to highlight the crucial points related to the subject and focus attention on the need for further studies of the stated issues.

First, many of the Code's critics believe that the Code's cargo-sharing provisions will lead to an increase of freight rates. One has said "should liner conferences through unilateral decrees or by mutual consent be given exclusivity to transport liner-type cargoes in their trade areas, competition will disappear and freight rates will in turn increase, probably unduly, to cover the costs of protected inefficient lines".<sup>87</sup>

Another has put it this way: he said, "if carriers are guaranteed a specific share of the trade between nations, where there is the incentive to innovate, to improve services and to reduce costs. Worse, penalties for carrying more than an allotted share of trade serve to stifle any form of competition and ultimately limit the scope of service to shippers. The result is the elimination of the dynamics of marketing and a sheer subordination of trade to transport".<sup>88</sup> In brief, what is argued is that the Code's cargo-sharing arrangements will lead to:

1. lack of incentive to innovate, to improve the service and to reduce costs;
2. a scope limitation of the service to shippers;
3. the elimination of the dynamics of marketing; and
4. a sharp increase in freight rates as a result of inefficiencies and reduced competition.<sup>89</sup>

It is very probable that the cargo-sharing provisions of the Code will lead to an increase in freight rates due to the loss of competition as a result of applying such a system. However, the extent of freight rate increases is not likely to be as sharp and dramatic as the critics of the Code believe they will be. The reasons for such a conclusion are as follows. Firstly, freight rates can be increased only so much, then they will reach a point where the trade cannot afford it, which means that cargoes will move on another alternative route. This will force conferences to limit any freight rate increases to avoid losing the trade altogether to another conference, serving an alternative trade route. This limiting factor of course must be considered in relation to the shipping cycle. In the present time, no conference is thinking about increasing freight rates as such, but merely thinking and trying to restore such rates to previous levels. Most real-term freight rates are much lower in 1984 than they were in 1979, due to the world economic conditions and the shipping cycle.



Secondly, liner conferences will be deterred from increasing freight rates unreasonably by the presence of the national shipping line(s) of the trading countries. This factor is even more effective in developing countries than in most developed nations, due to the economic structure and the inter-relationship between the shipping lines and the government in the two groups of countries. Even though the national shipping line must operate on a commercial basis, thus it would appear that it is in its favour to raise freight rates as much as they can to make more profits, it tends in reality to always keep the broad national interests of the country in mind. Therefore, such a line, given its strength under the Code, will be a deterrent factor for conferences to raise freight rates excessively, thus accepting only reasonable increases and rejecting unreasonable ones, and forcing the whole conference to follow. An example of such a circumstance occurred when the Gulf war began triggering the marine insurance companies to impose a war-risk insurance on liner shipping companies operating on the particular route, of say 5 per cent. The conferences on the same routes saw an opportunity to increase freight rates using the war as an excuse. They wanted to raise freight rates not by 5 per cent to recover the increase in insurance costs, but rather by 20 per cent to make some money out of the situation. United Arab Shipping Company (UASC), as a national line for all the Arab States of the Gulf, refused the 20 per cent proposed increase and insisted on increasing the freight rates by the same amount of increase in insurance costs only, and no more. UASC was taking the interest of the national economies of the Gulf States, for which the company is a national shipping line, into consideration when adopting such a position, as well as the commercial interest of the company as a commercial enterprise. Finally, the concerned conferences had to agree with UASC and increase the freight rates accordingly.<sup>90</sup>

Thirdly, it is the most important task of shippers, shippers' representatives and shippers' councils to ensure that conferences' freight rate increases are reasonable. The study examined previously what they should do to successfully achieve their task. The only thing that could be added here is that this limiting factor for conferences to raise freight rates unreasonably is the most important of the three discussed. It is the shippers who will pay any increase in freight rates, thus it is they who must make sure that they pay only what is reasonable. However, this factor's strength differs from region to region and from one group of countries to another. In developing countries, shippers are generally ill

aware of shipping matters and of the impact of such matters on shipping. Even though this situation is gradually changing, it will be quite some time before developing countries' shippers become very well aware of shipping and its important impact on their business and thus actively act to protect their interests accordingly. In the meanwhile this check agent will not be as strong as it should be in such countries where the situation prevails.

Regarding the tendency of cargo sharing to lead to a "lack of incentive to innovate ... and to reduce costs", such a tendency is possible but not too probable. Commercial companies are not motivated by shares of trade alone as such, but mainly by the bottom line on an income statement, that is profits. In this respect they can gain from innovations to reduce costs and improve productivity as this would improve their end-of-period results. So cargo-sharing does not seem to kill the incentive to innovate and reduce costs as the basic concept for a commercial enterprise to make and improve profits will still exist. On the contrary, it is the opinion of the writer that such provisions may help in the field of innovations and cost reduction. National lines, acquiring 40 per cent of the volume and value of liner trades to and from their countries under the Code "unless agreed otherwise", will have more funds to spend on research and development as well as on training, from which new innovations, managerial ideas and costs reducing opportunities can be produced.

Second, even though "the United Nations Code of Conduct for Liner Conferences" adopted is not exactly what the developing countries wanted and sought, as will be seen in the next section of this chapter entitled "the present status of the Code", it still presents the best available international instrument to be used as a "means" to reach an end for developing countries. It must be emphasized that the Code is not an end in itself and should not be thought of as such. It is a means to obtain an end of achieving a commercially viable, strong, efficient and effective maritime industry to serve as a base from which the developing countries can proceed in their process of industrialization and reach a better position in the world economic order. In this respect the Code in general and its cargo-sharing provisions in particular can help the developing countries, inter alia, in the following possibilities:

1. it can provide a broad base from which a successful fleet expansion programme can be mounted;

2. it can lead to an increased awareness and interest in maritime activities and thus a better appreciation of the role of the maritime industry within the structure of the national economies of such countries, and to appropriate actions accordingly;
3. it can help in providing an available tonnage for the countries' exports, especially in times of national or international emergencies, e.g. wars, and also for low-valued cargoes in prosperous shipping times;
4. it gives developing countries whose trade is served by conferences a voice in such conferences, to ensure that the national interests are not ignored and trades are not served as by-products of other trades;
5. it provides an opportunity for such countries to improve the effect on their balance of payments from the maritime activities; and last, but not least,
6. it offers an opportunity to prove to the international community that the time for the economic independence and equality of the developing countries is way overdue and its application can be successful regardless of the stiff and strong opposition thereto.

#### Administration of cargo sharing

The Code, as previously mentioned in the study, is silent on the administrative structure which might be established to carry out the cargo-sharing arrangements as stipulated in it. Therefore, there is a presumption that the Code entrusts the allocation of cargoes to be handled by the conference itself. This presumption derives on the one hand from the absence in the Code of any suggestions of an alternative mechanism and, on the other hand, from the fact that it is the conference which is called upon to establish the pool or the appropriate arrangement of berthing and loading rights which, in the absence of a specific rule to the contrary, suggests that it will be the conference which administers the pool established.<sup>91</sup> Accordingly, it follows that there is nothing related to the Code which indicates that any country has to establish for itself a mechanism for cargo sharing, unless the conference is either unable or unwilling to do so for whatever reason. But every country in the trades of which the Code provisions are applied would need a body to which the conference would report and which, at the minimum, exercise an ex post supervision over conference activities on the basis of these reports.<sup>92</sup>

The code's silence on the question of administration indicates that a unified, codified or standard administration was not foreseen. There are more than 360 liner conferences in the world, and they vary enormously in structure.<sup>93</sup> Thus, no one single system or model of administration could have been developed, or can be employed, and it is for this reason Mr. Shah's approach is the best to adapt in this area. Mr. Shah pointed out that the Code should always be looked at in terms of particular conferences, that is, a micro approach should be adopted.<sup>94</sup> In this respect the conditions and modalities of administration would be worked out in meetings between the conference members, the shippers involved with that individual conference and the appropriate authorities of the countries whose trade is served to establish the optimum, executive or administrative structure needed in relation to the requirements of that trade.<sup>95</sup> In adopting this approach in the discussions of the administrative structure to be established, considerations of economy, efficiency and the service of the needs of the trades should be paramount. Furthermore, within the afore-mentioned broad approach to tackle the unclear area of administering the Code and its cargo-sharing provisions, there are basically two systems of control relating to cargo allocation, namely an a priori and an a posteriori, both of which are acceptable by the Code.

The a posteriori system is the one generally in use at the present time. It basically entails that the control function is performed after the actual liftings of the lines have been executed. Therefore, any deviation from the agreed upon shares leads to the over-carriers compensating under-carriers for such a difference. In such a system, there are three main tasks to be performed:

1. fixing the share in the traffic of each member;
2. administering the loading of each member; and
3. establishing a system whereby the over-carriers would indemnify the under-carriers.<sup>96</sup>

The Code does nothing to change the position of the conference as regards the first task, at least as far as the aggregate share is concerned, while if one group of national flag lines request that a system of allocation be adopted, the conference has to accept. However, the division of the share of either national flag group, or of the third flag group between the group members, is a matter for the members of each group to deal with among themselves.<sup>97</sup> Regarding the second task, lines can send regular

statistics of loadings to the pool secretariat, conference secretariat or other independent bodies to follow up the adherence of the lines to the agreement. It should be noted that since the Code takes no position on the identity of the body undertaking the first two of the above listed three tasks, they can be divided among different bodies according to an agreement reached within the framework of the previously discussed "micro approach". Finally, in respect to the third task, the Code does not mention the need for an indemnification system, even though it must have been obvious that a conference must apply such a system if cargo was to be allocated and the traditional a posteriori system of control was to be adopted.

On the other hand, the a priori system is the one preferred particularly by developing countries on the grounds that they want to carry cargo rather than to earn compensations.<sup>98</sup> Under this system an attempt is made at minimizing discrepancies through performing the control function before the lines do any liftings. In any a priori system there are two major problems. Firstly, an a priori system of allocation would be difficult to operate efficiently without creating the problem of delays which can be minimized, but not eliminated. Secondly, any a priori system would have the problem of identifying and correcting discrepancies, which are impossible to avoid unless each cargo item is fractioned. This problem is more severe when the route is not heavily travelled where sailings are infrequent. In such a case, the problem of correcting discrepancies without resort to ex post compensation is practically insoluble.<sup>99</sup> Furthermore in this respect, there are mainly three possibilities between which a conference desirous of introducing this system might choose. These are the following:

1. a continuation of existing line-level methods, but with direct supervision to locate and correct discrepancies quickly;
2. a conference-wide cargo-booking mechanism; and
3. an external cargo booking authority.<sup>100</sup>

Any one of such possibilities upon agreement can be used in the assurance to be in conformity with the Code.

Finally, and in conclusion of this section of the second chapter of the study, a quote by Professor Sturmev is in order:

"... believing, first, that cargo-sharing arrangements are an inevitable consequence of our total world economic structure and second, that they may just as easily take us nearer to the point of universal blessing ... as farther away from it, we cannot condemn the principle of cargo sharing even though, in any particular case, we might have substantial reservations concerning the way in which a policy is practised. On that basis I would think that ...the UNCTAD Secretariat, in introducing this notion, did the world a service rather than a disservice ...".<sup>101</sup>

#### Present status of the Code

As of October 1983, six months after more than 24 states with combined tonnage exceeding 24% of world tonnage in 1973 as per Lloyds' register of shipping statistics, the U.N. Convention on a Code of Conduct for Liner Conferences has entered into force. In other words it became part of enforceable international law, thus inheriting the weakness of such laws, namely being dependent for their enforcement on the different governments who are party to them. In this respect the Code's effectiveness will vary in the different parts of the world due to the differing views on it. The USA is persistent in its opposition to the Code. This might create some problems in US trade, especially with developing countries as was the case with the Philippines. The tendency in such situations is for bilaterals to grow beyond the presently existing ones (see table 2.3). The US officials claim that they are not thrilled about them too much, but nevertheless are willing to go in their direction.<sup>102</sup> The EEC, even though they came up with the previously mentioned Resolution, are divided into three main groups. The first group, which includes members such as the UK, is very much against the Code, fearing it would damage their large cross-trading operations and are thus working hard to avoid it through sticking to the EEC Resolution. The second group, which includes such members as Norway and Sweden, is also against the Code for the same reasons as the first group, but is trying to use the Code to its advantage by going into joint ventures with the developing countries.<sup>103</sup> The third group, which includes members like West Germany, the Netherlands and France, is seeing in the Code an opportunity to aid its national shipping, as they do not carry 40 per cent of their respective national trades. This group is also likely to use the Code to effectively limit the tremendous competition in their national trades coming from the Eastern Bloc fleets, especially from Russia, operating as outsiders.<sup>104</sup> Lastly, there have been several meetings between USA and the EEC to harmonize their views on the subject, which is yet to be

Table 2.3

SOURCE: National Transport Committee - OECD, OCTOBER 1st 1984

OECD country.	Partner	Year	Cargo Clauses	Coverage	L/U or O/D	Transit	Obligations Other Inst.	Split Partners/3rd	Outsiders	Negotiations	Comments
Australia	Indonesia	Trade Agreement	No cargo access provisions								
Belgium/ BLEU	Ivory Coast	1979	Yes	All bit specific items	O/D	?	No	40/40/20	Same terms	Morocco	No text
	Tanzania	1983(S)	Yes	?	?	?	?	40/40/20	?	"	No text
	Algeria	1979	?	?	?	?	?	?	?	"	No text
Canada	Several Trade Agreements		no cargo access; MFN Clauses								
Denmark	South Korea	1980	No	Only non-discrimination clauses			Liner C. BP				
France	Tunisia	1955	Yes	All	L/U	Included	No	50/50/-	Same terms		
	Algeria	1967/72	Yes	No Hydrocarb.	L/U	Included	No	50/50/-	Same terms		
	Agreements also exist with Senegal, Ivory Coast, Morocco, Djibouti, Niger										
Italy	Ivory Coast	1980	Yes	No oil, bulk, fruit	O/D	Excluded?	All oblig.	40/40/20	Same terms		No text
	Agreements also exist with Egypt, Morocco										
Germany	Pakistan	1971	No	Only non-discrimination clause			All oblig.	40/40/20	Same terms?	No	German share open
	Ivory Coast	1977	Yes	No oil, bulk, fruit	O/D	Excluded					Govt. cargo 50/50
	Brazil	1979	Yes	Liner	O/D	Excluded	Liner C.	Equal/Pool sharing	Excluded?	No	
Greece	Egypt	1981	No	Only National Treatment for Port Access							
Ireland	None										
Japan	Philippines	1979	No	Only MFN Clause; Fair and mutually advantageous participation in bilateral trade							
Norway	South Korea	1984	No				Liner C.			No	No text
Portugal	Brazil	1978	Yes	No ore, oil	L/U	Excluded	No	Equal/None?	Excluded?		Split by ship-owners
	Cape Verde	1978	Yes	All	L/U	?	No	Equal/Max. 20%	Same terms		Port share can open
	Angola ) E. Guinea ) Sao Tomé )	1978	Yes	All	L/U	?	No	Equal/some	Same terms		Split by ship coys.
Spain	Ivory Coast	1979	Yes	All	O.D.	Excluded?	All oblig.	40/40/20	Same terms	Congo	No text
	Agreements also exist with Cuba, Morocco, Gabon										
U.S.A.	Argentina	1978	Yes	Liner	L/U?	?	No	substantial/Pool	?		Equal access govt. C.
	Brazil	1970/83	Yes	Liner	L/U?	?	No	As agreed	?		Equal access govt. C.
Turkey	Libya	1975	No	Only port access							

No information yet provided by Austria, Finland, Netherlands, New Zealand, Iceland, Switzerland, Sweden, United Kingdom, but expected to be Nil.

seen.<sup>105</sup> Japan is giving indications that it will ratify the Code with no reservations, which might cause some difficulties with the other OECD<sup>106</sup> members and the USA.

The developing countries in general, realizing that even though the Code is not the best possible instrument, is the best available to be used as an interim measure to create a solid base and foundation for their maritime industry in general and liner shipping in particular, and tend to accept the Code. Generally speaking, developing countries seem to be willing to at least give the Code a try to see if it can work or not. In this regard, some countries have already put it in operation, for example India and the Ivory Coast, while many others have ratified it (see table 2.4).

Finally, a brief word on the EEC resolution (annex to Council Regulations (EEC) No. 954/79) the so-called Brussels' package, which is reproduced in annex II of this study. Such a resolution, in the opinion of the writer, is unnecessary as the Code provisions discussed above are flexible enough to allow for such additions, deletions or modifications called for by the EEC aforesaid Council Regulations. Therefore, the adoption of the same can serve no real purposes other than the introduction of more complexities, complications and confusion to an already full subject of the same, in addition to virtually stripping the Code of its main features and building blocks, namely, inter alia, the participation in trade.

Therefore, and in conclusion of this chapter of the study, keeping in mind the aforesaid on the main provision of the Code and on the present status thereof, the writer may suggest an approach to be followed by the developing countries in general, and by the G.C.C. states in particular as will be seen in the next chapter of this study, with respect of the Code. The approach is for the said countries to view the Code as the best available yet not necessarily the best possible international instrument of change. Accordingly, the Code can be taken as a tool which if properly used can be very beneficial, otherwise it can be counter productive. Proper utilization of the Code is illustrated for the G.C.C. states in the next chapter, such a model may also be applicable to many other developing countries depending on their particular circumstances. However, the essence of the aforesaid approach, in the opinion of the writer, can be universal to all developing countries, namely, if the circumstances and situation of one of the said countries are conclusive



for the economic and maritime growth and development, then the Code can serve as one possible means to achieve this goal of growth and development and accelerate its pace.

Table 2.4

Countries which Ratified the Code.

No.	Country	Date of ratification	No.	Country	Date of ratification
1	Ghana	1975	31	Iraq	1978
2	Chile	1975	32	Costa Rica	1978
3	Pakistan	1975	33	Peru	1978
4	Gambia	1975	34	Egypt	1979
5	Sri Lanka	1975	35	Tunisia	1979
6	Venezuela	1975	36	Republic of Korea	1979
7	Bangladesh	1975	37	Czechoslovakia	1979
8	Nigeria	1975	38	Honduras	1979
9	Benin	1975	39	Union of Soviet Socialist Republics	1979
10	United Republic of Tanzania	1975	40	German Democratic Republ.	1979
11	Niger	1976	41	Sierra Leone	1979
12	Philippines	1976	42	Uruguay	1979
13	Guatemala	1976	43	Bulgaria	1979
14	Mexico	1976	44	Guyana	1980
15	United Republic of Cameroon	1976	45	Morocco	1980
16	Cuba	1976	46	Jordan	1980
17	Indonesia	1977	47	Yugoslavia	1980
18	Ivory Coast	1977	48	Guinea	1980
19	Central African Republic	1977	49	Mauritius	1980
20	Senegal	1977	50	China	1980
21	Zaire	1977	51	Barbados	1980
22	Madagascar	1977	52	Romania	1982
23	Togo	1978	53	Lebanon	1982
24	Cape Verde	1978	54	Federal Republic of Germany	1983
25	India	1978	55	The Netherlands	1983
26	Kenya	1978	56	Saudi Arabia	1984
27	Mali	1978			
28	Sudan	1978			
29	Gabon	1978			
30	Ethiopia	1978			

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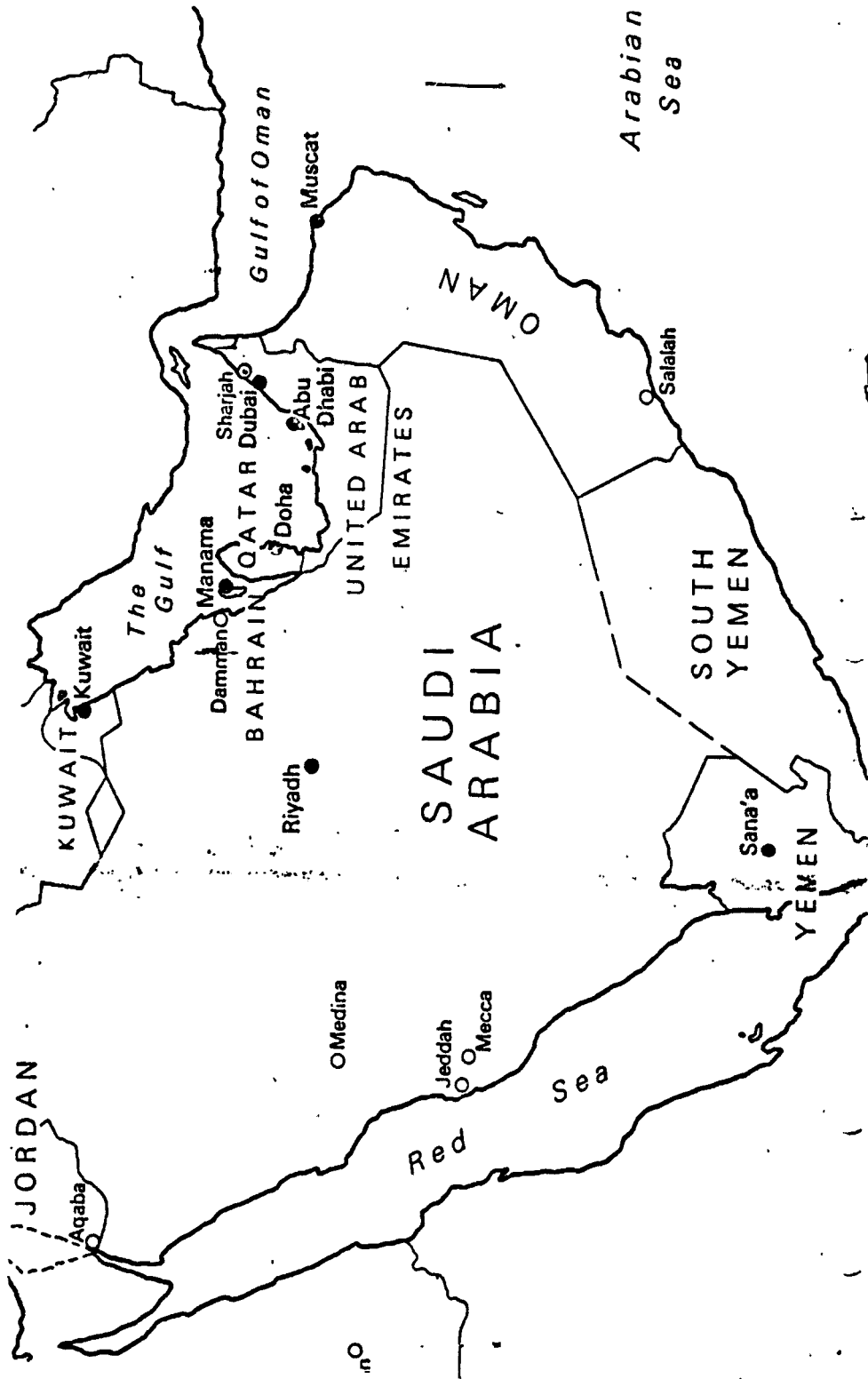


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CHAPTER III

THE G.C.C. STATES WITHIN THE FRAMEWORK  
OF THE CODE

Map of the Arabian gulf (The G.C.C. States)



Introductory overview of the G.C.C.

The Cooperation Council for the Arab States of the Gulf, short named the Gulf Cooperation Council from which the abbreviation G.C.C. is taken, has risen to the international scene first on February 4, 1981.<sup>1</sup> This was done through a joint communiqué released by the six gulf states upon a meeting of their foreign ministers in Riyadh to discuss ways and means of deepening and developing the cooperation and coordination among their nations in all fields.<sup>2</sup> However, the Gulf Cooperation Council officially came into existence after its charter was signed at Abu Dhabi, UAE, on May 25, 1981 by the six member states during the first session of the Supreme Council of the G.C.C. (Table 3.1)

Table 3.1

Meetings of the Supreme Council of the G.C.C.

Session	Date	City	State
1st	May 25, 1981	Abu Dhabi	U.A.E.
2nd	Nov. 1, 1981	Riyadh	Saudi Arabia
3rd	Nov. 11, 1982	Manama	Bahrain
4th	Nov. 1, 1983	Doha	Qatar
5th	Nov. 27, 1984	Kuwait	Kuwait

The charter of the G.C.C. starts with the names of the member states which are United Arab Emirates, State of Bahrain, Kingdom of Saudi Arabia, Sultanate of Oman, State of Qatar and State of Kuwait. It goes further to state that such states "Being fully aware of their mutual bonds of special relations, common characteristics and similar systems founded on the Creed of Islam; and Based on their faith in the common destiny and destination that link their peoples; and In view of their desire to effect coordination, integration and interconnection between them in all fields, and ... In an endeavor to complement efforts already begun in all vital scopes that concern their peoples and realize their hopes in a better future on the path to unity of their states ..." <sup>3</sup> have agreed on the articles of the charter, the first one of which establishes the G.C.C.

The objectives of the G.C.C. are basically the following:'

1. Effect coordination, integration and interconnection between member states in all fields in order to achieve unity between them;
2. Deepen and strengthen relations, links and scopes of cooperation now prevailing between their peoples in various fields;
3. Formulate similar regulations in various fields including:
  - a. economic and financial affairs;
  - b. commerce, customs and communications;
  - c. education and culture;
  - d. social and health affairs;
  - e. information and tourism; and
  - f. legislation and administrative affairs; and
4. stimulate scientific and technological progress in the fields of industry, minerology, agriculture, water and animal resources; establish scientific research centres; implement common projects and encourage cooperation by the private sector.<sup>4</sup>

To achieve these objectives the G.C.C. functions within an internal organization composed of:

1. The Supreme Council;
2. The Ministerial Council;
3. A Secretariate General; and
4. A Commission for Settlement of Disputes.<sup>5</sup>

The following few paragraphs look briefly at each of the above stated organs.

The Supreme Council is the highest authority of the G.C.C. and is formed of the heads of member states. It holds one regular session every year and extraordinary sessions as may be needed when requested by one member and seconded by another. See table 3.1 The main functions of the Supreme Council are, inter alia, the following:

1. lay down the higher policy for the G.C.C. and the basic lines it should follow;
2. approve the basis for dealing with other states and international organizations;
3. review the recommendations, reports, studies and common projects submitted by the Ministerial Council and the Secretary General;

4. appoint the Secretary General; and
5. approve the budget of the Secretariate General.<sup>6</sup>

The Ministerial Council is formed of the foreign ministers, of the member states or other delegated ministers. It convenes every three months in ordinary sessions and may hold extraordinary sessions at the invitation of any member state seconded by another. The major functions of this council are, *inter alia*, the following:

1. propose policies, prepare recommendations, studies and projects aimed at developing cooperation and coordination between member states in the various fields and adopt the required resolutions or recommendations accordingly;
2. encourage means of cooperation and coordination between the various private sector activities, develop existing cooperation between the member states, chambers of commerce and industry, and encourage the flow of working citizens of the member states among them;
3. review matters referred to it by the Supreme Council and prove periodic reports as well as internal rules and regulations related to administration and financial affairs proposed by the Secretary General and finally submit recommendations to the Supreme Council for approval of the budget of the Secretariate General.<sup>7</sup>

The Secretariate General is composed of a Secretary General, appointed by the Supreme Council, assisted by assistant secretaries general who he nominates, and a number of staff as required. The Secretary General, his assistants and the staff of the Secretariate General must be citizens of the G.C.C. member states.<sup>8</sup> The most important functions of this body, *inter alia*, are the following:

1. prepare studies related to cooperation and coordination of integrated plans and programs for member states' common actions;
2. prepare periodic reports of the G.C.C.'s work;
3. prepare reports or studies ordered by the Supreme Council or the Ministerial Council;
4. follow up the execution by the member states of the resolutions and recommendations of the Supreme Council and the Ministerial Council;

5. prepare the G.C.C.'s budget and closing accounts; and
6. perform any other tasks entrusted to it by the Supreme Council or Ministerial Council.

The Commission for Settlement of Disputes is attached to the Supreme Council which is authorized to form the Commission for every case separately based on the nature of the dispute. This Commission will receive disputes arising over the interpretation or implementation of the G.C.C. charter, if the disputes could not be resolved within the Ministerial Council or the Supreme Council.<sup>9</sup> The Commission may seek the advice of any experts as it may deem necessary in reaching its recommendations and opinions. The Commission must issue its recommendations or opinions in accordance with the G.C.C.'s charter, international law and practices and the principles of Islamic Shori'ah, and submit its findings on the case onhand to the Supreme Council for appropriate action.<sup>10</sup>

The G.C.C. has been active since its inception in several fields and areas of interest to the member states. However, some areas took more attention than others due to the pressing demands of the times through which the Gulf area is passing. In the economic field, the Supreme Council has approved the "Unified Economic Agreement" at Riyadh on June 8, 1981. Thus the Agreement has entered the implementation stage in the member states. This agreement is designed to promote, expand and enhance the member states' economic ties on solid foundations and to unify their economic, financial and monetary policies as well as their commercial and industrial legislation, and customs regulations. Accordingly the Agreement provides that all agricultural, animal, industrial and natural resources products that are of national origin must receive the same treatment as national products and must be exempted from customs duties and other charges having equivalent effects.<sup>11</sup>

In addition, the Unified Economic Agreement calls upon the member states to establish a uniform minimum customs tariff applicable to the products of the third countries. One of the objectives of this uniform customs tariff is the protection of national products from foreign competition. Furthermore, the Agreement requires the member states of the G.C.C. to coordinate their commercial policies and relations with other states and regional economic groupings and blocs with a view towards

creating balanced trade relations and favorable circumstances and terms of trade therewith. This can be achieved by:

1. coordinating import/export policies and regulations;
2. coordinating policies for building up strategic food stocks;
3. concluding economic agreements collectively when and if the common benefit of the member states is realized; and
4. working for the creation of a collective negotiating force to strengthen their negotiating position vis-à-vis foreign parties in the field of importation of basic needs and exportation of major products.<sup>12</sup>

Moreover, the Unified Economic Agreement stipulates that the member state must endeavor to achieve coordination and harmony among their respective development plans with a view to achieving economic integration between them.<sup>13</sup> In this regard the member states must perform the following as a minimum:

1. coordinate industrial activities, formulate policies and mechanisms aiming at the industrial development and the diversification of their production based on an integrated basis; and
2. allocate industries between member states according to relative advantages and economic feasibility, and encourage the establishment of basic as well as auxiliary industries.<sup>14</sup>

Finally, in the transportation field, the agreement places a responsibility on the member states to accord means for passenger and cargo transportation belonging to citizens of the other member states when transiting or entering the territory, the same treatment they accord to the same belonging to their own citizens, including exemptions from all duties and taxes. In this area the Agreement also stipulates that the member states must allow steamers, ships and boats and their cargoes, belonging to any member state to freely use the various ports facilities and grant them the same treatment and privileges granted to their own in docking or calling at ports as concerns fees, pilotage and docking services, haulage, loading and unloading, maintenance, repairs, storage of goods and other similar services.<sup>15</sup>



In this respect, economicwise, the common projects among the G.C.C. member states have gone a long way toward a better utilization of the area's resources for building a better future for the area. An example of such a development is the project establishing a petrochemical plant involving the State of Bahrain, the State of Kuwait and the Kingdom of Saudi Arabia.<sup>16</sup> Yet such cooperation can and should be pursued further in the economic field in general and in the maritime industry in particular, especially liner shipping. An example of an issue where this cooperation may be manifested and be in line with the G.C.C.'s objectives and the Unified Economic Agreement's goals is the U.N. Code of Conduct for Liner Conferences. This issue will be referred to later in this chapter.

#### The Maritime Industry in the G.C.C. States

Before examining the G.C.C. states' situation within the framework of the Code, a brief look at the existing maritime industry in the same may help to set the scene for such an analysis and may help to put such an analysis in perspective. The maritime industry in the G.C.C. states centres mainly around the seaborne trade of such states (this perception should be modified to use this trade as the base for the development of the maritime industry in the region but with a relatively increased participation in cross trading - especially in liquid-bulk shipping). Therefore, this section of the study will examine the seaborne trade of the G.C.C. states and thereafter overview the main components of the maritime industry in the same states, namely:

1. ships' ownership and operations (the fleet);
2. ports;
3. ship repairing and drydocking facilities; and
4. other maritime related activities.

#### The Seaborne Trade

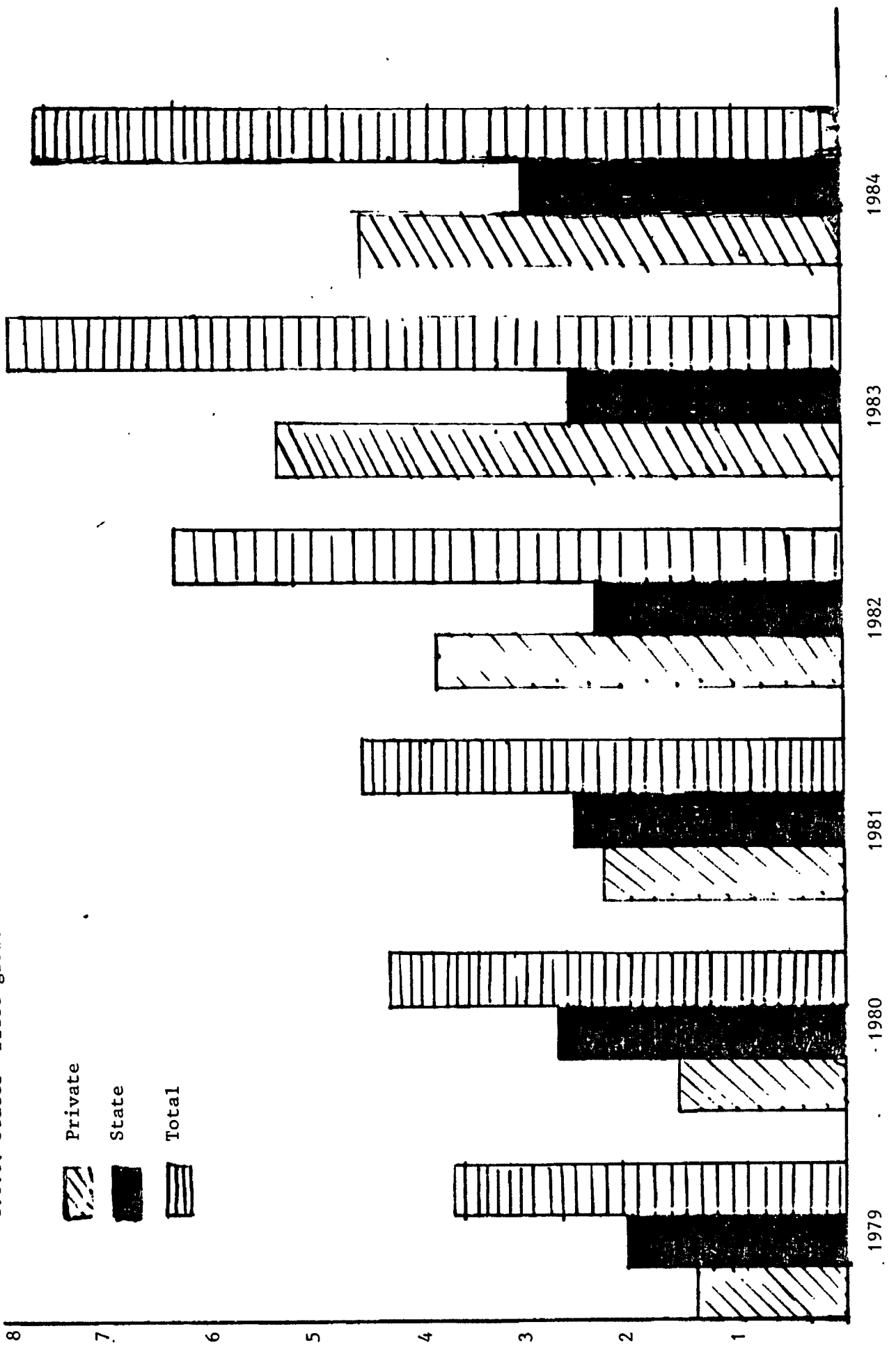
The G.C.C. states' foreign trade in general and seaborne trade in particular is closely linked to oil. The Exports of such states are mainly either crude oil or oil related products. Therefore the sea transportation requirements depend mainly on the volume of marketable production and the destination of such a production. In reference to

table A-2 in the annex to this study it can be presumed that the sea transportation requirements justify the presence and development of a national/regional fleet to perform such transportation work. However, it cannot be stressed strong enough that for such a fleet to operate efficiently and effectively and to produce positive net economic results, it must, inter alia, use the national/regional seaborne liquide bulk trade only as a base for its operations thus it must be involved actively in cross-trading and view its operating market from a world-wide perspective.

The Imports of the G.C.C. States are mainly capital and consumer goods. Such imports also depend on oil because it is with oil revenues that they are purchased. Thus generally they fluctuate in a direct relationship with oil revenues (prices and production). This is more so due to the fact that public expenditure in the G.C.C. states in general constitute a major part of the total expenditures in such states, and as the public expenditure is dependent on oil revenues (the main source of government income) it tends to be adjusted to such revenues accordingly. The aforesaid along with the discussion of the G.C.C. states foreign trade in the annex to this study, seems to indicate a fair amount of sea transportation work requirements which is a reflection of the volume and origins of the imports to the G.C.C. states. Such requirements can be satisfied principally through liner shipping services as there is a rather limited dry bulk cargo movement to such states.

From the afore-said one basic conclusion can be drawn, namely, that sea transportation is of an immense importance to the G.C.C. states. Such states depend on such transportation for the transport of their oil, from which a very high portion of the national income is received (see the annex). Therefore, without sea transport, the main blood stream of the G.C.C. states' economies would be cut off, a fact which was only demonstrated too clearly by the latest developments in the Gulf-war in relation with attacks on oil tankers therein. Furthermore, the G.C.C. states in general depend heavily on imports, most of which is transported by sea. Therefore, a cut-off of this vital link may lead to serious economic, social and even political problems. It is in this perspective that the maritime industry in general and shipping in particular must be given its well deserved interest, attention and consideration.

Figure 3.1  
G.C.C. States' fleet growth



### Ships' ownership and operations (the fleet)

When taking the G.C.C. states as a whole there can be noticed a steady increase in the tonnage owned and operated by such states. On the other hand such a development is not equally distributed among the six states. While Bahrain and Oman continue to be non owners of tonnage, Kuwait showed a stable development in its owned tonnage (grt) and the other G.C.C. states had a tremendous increase in the same (see figure 3.1). Furthermore, the composition of the national fleets of the G.C.C. states indicates that such fleets are highly diversified with almost all kinds of ships included (See table 3.2).

Operating the above described tonnage, there is a large number of vessel operators, some of which are state while many are private companies. The principle part of such operations is concentrated on liquid bulk transport and liner shipping, even though there are others such as bunkers supply, off-shore supply and dry bulk transport operations. All of such operations are mainly concentrated on serving the needs of the national/regional seaborne trade transportation requirements. Furthermore, the largest shipping firms in the G.C.C. states as of 1.1.1984, in terms of the gross registered tonnage owned and operated, have been the state-owned first, Kuwait Oil Transport Company - liquid bulk transport; second, United Arab Shipping Company - Liner shipping services; and third, Arab Maritime Petroleum Transport Company - liquid bulk transport. (Table 3.3)

The above brief overview of the developments in the ownership and operation of the G.C.C. states' merchant marines can be indicative, inter alia, of the following major observations which in turn reflect the strengths and weaknesses of said developments:

1. There is a realization of the importance of the national/regional tonnage and shipping services from a strategic as well as economic perspective.
2. In conjunction with the above, there is a gradually increasing interest in shipping from the public as well as the private sector which indicates that shipping in the G.C.C. states is an attractive activity from an economic view-point; and
3. there seems to be little or rather limited coordination among the G.C.C. states' developmental plans in this concern which have led to overlappings and repetitions of services which may prove to be wasteful in the long run.

Table 3.2

G.C.C. fleet Composition at 1.1.84

Type	Number of ships	GRT (m)	Dwt (m)	average age	Notes
<u>Deap Sea</u>					
Crude Carrier	32	3.65	6.83	8.7	
GC/Container	40	0.54	0.87	8.5	
Product tanker	19	0.41	0.68	6.3	
LPG Carrier	8	0.32	0.35	7.4	
Container	14	0.42	0.44	3.2	21, 466 TEU
Livestock	16	0.23	0.26	19.4	
LNG Carrier	1	0.07	0.07	8.0	owned by Kuwait
General Cargo	70	0.68	0.90	20.7	
Chemical tankers	1	0.003	0.004	13	owned by Kuwait
Bulk carriers	18	0.33	0.55	31	
Reefers	11	0.13	0.16	13.8	
ore/oil	1	0.1	0.3	12	owned by Saudi Arabia
Ro/Ro	7	0.1	0.2	4	10, 911 TEU
Cement Carrier	3	0.1	0.1	5.2	owned by Saudi Arabia
<u>Short Sea</u>					
Crude Carrier	2	0.010	0.013	21.5	
Product Tanker	1	0.01	0.01	11	owned by Saudi Arabia
Depot Tanker	8	0.01	0.02	23.3	" " " "
Bunker Tanker	39	0.14	0.16	16.3	
Asphalt Tanker	1	0.003	0.004	15	owned by Kuwait
Chemical Tanker	1	0.002	0.004	8	" " "
General Cargo	28	0.08	0.12	25.2	
Ro/Ro	5	0.01	0.02	14.1	
Reefer	4	0.008	0.01	22.2	
GC/Container	4	0.009	0.02	15.5	
Cement Carrier	6	0.04	0.06	11.6	
Livestock	4	0.007	0.008	23.3	
Pass/Cargo	3	0.015	0.006	26.8	1528 passengers
Ferry	10	0.1	0.01	18.9	12083 passengers
Barges	3	0.005	0.008	6	owned by UAE

Table 3.3

Main Shipping Companies in G.C.C. states at 1.1.84

Position 1984	Company	Number of ships	GRT	average age
1	KOTC * Kuwait	25	1 569 685	4.9
2	UASC * Gulf States	59	1 657 903	5.9
3	AMPTC * Oapec	9	1 018 530	7.6
4	AIMCO * SA	5	679 946	11.1
5	As-Safina SA	5	493 228	9.7
6	Adnato * UAE	5	366 091	8.4
7	Sipca, SA	2	276 610	9.0
8	Pharaon Group, SA	7	251 877	16.3
9	Orri Navigation lines, SA & UAE	24	239 887	22.1
10	Redec, SA	4	192 354	15.1
11	Sarco/Arabian Marine, SA	7	149 531	8.0
12	Arabian Bulk, SA	7	140 334	14.6
13	SARIN, SA	1	130 490	12.0
14	NSCSA, SA	6	129 794	2.4

Source: "Facts &amp; Figures", Sea Trade - Arab Shipping Guide, 1984

Ports

Given the previously alluded to economic structure of the G.C.C. states and the vital role which foreign trade plays in such a structure, and the fact that the same states have very limited, if any, road, rail or pipelines transportation net works connecting them with their main trading partners - in the industrialized regions of the world - sea outlets through ports become almost the only means of meeting foreign trade transport requirements therein. Accordingly, the G.C.C. states have made (and continue to make) tremendous investments to develop and improve their existing ports and to build new ones. For example, United Arab Emirates have budgeted lately about 1.8 billion \$ to build and develop its ports, while Saudi Arabia have budgeted 2.8 billion \$ to build the port of "Gubail" alone.

Presently, the G.C.C. states have about 21 commercial ports and more than 20 industrial or oil related ports, terminals, jetties etc. The commercial ports have a total of more than 270 deep draught quays, over 180 of which are general cargo quays while the remainder is almost equally divided between container/RoRo quays and dry bulk cargo quays, with a total length of over 80 kilometers. Generally speaking, the above described ports can be characterized by fair efficiency, high use of modern technology, high reliance on foreign labour, and under-utilization of capacity.

Moreover, from a regional integration perspective there seem to be very little, if any, signs of cooperation and coordination among the G.C.C. member states in what concerns ports' developments and investment therein. This is leading to overinvestment in the infrastructure and facilities of the ports which are duplicated and underutilized due to lack of sufficient cargo movements to and from each of such ports. A more productive utilization of the said investments can be achieved through the devotion of the same to the training of national personnel, especially at the managerial levels, who would run the ports more efficiently and productively.

#### Ship Repairing and dry docking facilities

This component of the maritime industry in the G.C.C. states consist of few minor facilities and two major ones. The major ones are 1) the Arab Shipbuilding and Repair yard (ASRY) in Bahrain and 2) Dubai Drydocks in United Arab Emirates which will be described in this section of the study.

The Arab Shipbuilding and Repair Yard was set up in 1977 by the Organization of Arab Petroleum Exporting Countries - OAPEC. With its 4 repair berths and 375 x 75 meters dry dock, ASRY can receive and work on up to 50 vessels of 550 000 tons dwt. annually.<sup>18</sup> It has been very successful in the market as it has been achieving rather high occupancy rates e.g. 88 % in 1983, however, it is yet to reach its break-even-point.

Dubai Drydocks, which is one of the largest yards in the world with 1.85 m dwt drydocking capacity, is operated by A & P Appledare since its opening in 1983. The yard has three docks, two of which are

of 350 000 dwt while the third is of 1 m dwt and equipped with a 240 tons dockside crane. During its first year of operation, Dubai Drydocks has also been successful in attracting business as it served 70 vessels, 12 of which were VL/ULCC'S.<sup>19</sup>

As new facilities come on stream, and existing ones continue to attract considerable business, the G.C.C. states are fast establishing a reputation as a major international ship-repair centre concentrated primarily in the Gulf with some capacity also in the Red Sea. Such developments can of course strengthen the national/regional shipping involvements when such facilities can offer quality service at internationally competitive prices. However, some drawbacks due to increased regional competition compounded with limited improvements in efficiency can prove to be disadvantageous to the national/regional economies. Therefore, for the economic advantage of said facilities to be maximized, immense efforts must be made to maximize the efficiency of the same. Another approach which could help in this respect is the merger among the different, especially the minor, yards to provide for better utilization of resources and to reduce the operation and administration costs accordingly.

#### Other Maritime Related Activities

This component of the maritime industry comprises the complementary services to shipping in addition to an important and growing fishing industry. The G.C.C. states in general have virtually all the complementary services necessary to adequately facilitate the relevant shipping activities in the region. Such services include, but are not limited to, the following:

1. shipping agencies
2. freight forwarding
3. ship brokerage
4. marine insurance
5. banking services
6. ship chandlery
7. stevedoring
8. towage
9. salvage
10. inland transportation services



The fishing industry in the G.C.C. states has been given lately an increased attention and interest as it can increase the strategic security of the region nutrition wise. Even though the interest varies among the member states, yet it can be seen clearly reflected in their involvements in such an industry as shown in table 3.4. The production of this industry has been increasing to reach more than 297 thousand tons in 1977 and more than 290 thousand tons in 1978. Furthermore, and within the framework of the foresaid strategic policy of the G.C.C. states, this industry can be expected to expand in order to cater for the increased demand for fish in such countries which is estimated to reach 146 thousand, 187 thousand and 233 thousand tons by the years 1990, 1995 and 2000 respectively.<sup>20</sup> Accordingly the estimated production of the fishing industry in the G.C.C. states is 486 thousand, 365 thousand and 372 thousand tons by the years 1990, 1995 and 2000 respectively.<sup>21</sup>

Table 3.4

The Fishing Industry in G.C.C. states

G.C.C. states	Number of vessels			Number of Fishermen			Number of Fishing companies
	large &	tradi- tional	total	local	others	total	
Kuwait	35	500	535	84	756	840	1
Bahrain	19	100	119	225	25	250	2
Qatar	7	150	157	75	1425	1500	1
UAE	-	1065	1065	100	4900	5000	2
Oman	4	2500	2504	5700	300	6000	-
Saudi Arabia	-	-	-	-	-	-	-
Totals	65	4315	4380	6184	7406	13590	8

Source: Statistical Directory for the G.C.C. states (Arabic)

The Code and the G.C.C. States

Given the brief account of the economies of the G.C.C. member states in annex I of this study, it can be concluded that such economies in general defy classification in the traditional academic categorization of either "developed" or "underdeveloped". The rapidity of change has contributed to the blurring of the distinction; the economies of the G.C.C. states combine extreme features of both classifications. The extremely high per capita income, one of the highest savings rates, a strong annual growth rate and a consistently favorable balance of payments situation are all indicators of a developed economic status. Yet, on the debt side of the development ledger there are equally striking examples of underdevelopment, such as the near-total reliance of the economy on a single product, an inadequate indigenous supply of technical skills and labour and over-dependence on imports of capital goods and consumer products, including food items. Another symptom of underdevelopment is the narrowness of the domestic market that does not emanate in this instance from a low per capita income but rather from the sophisticated tastes affluence brings and the actual numerical size of the population. More critical, the effectiveness of the high rate of capital savings is largely offset by the limitations of the economy in offering ample productive investment opportunities, resulting in domestic absorption of but a minor portion of total G.C.C. states' savings, most of the remaining is invested outside the region to generate investment income, specially in latter years.<sup>22</sup>

In such conditions and circumstances an industry such as the maritime industry has fertile grounds for growth and development. The characteristics and prerequisites for such an industry to successfully develop coincide to a large extent with existing conditions in the G.C.C. states in general, specially when a little more attention and support to this industry from all concerned in the area, the centre of gravity of shipping, which is said to have moved from Western Europe to U.S.A. and then to South East Asia and the Far East, may wind up in the Gulf region in the relatively near future. The detailed examination of the region's features which can be considered as conclusive to the development of the maritime industry and the possible steps and

measures which could be taken by the different actors in the scene to aid such a development, is beyond the scope of this study, as it can be a topic for future full scale research efforts. However, one element of such an examination, namely, the Code and matters related to it, is the principle concern of this study and it will be dealt with next accordingly.

At the outset of this examination aiming to relate the Code to the G.C.C. states, it is best to start with a concluding opinion of the writer in this regard. Accordingly, the Code should be ratified and implemented - as interpreted in the previous chapter of the study - by all G.C.C. member states. In addition to being a solidarity move in support and appreciation of developing countries' efforts in this regard, it can strengthen the national liner shipping of the region and help create a solid base from which the maritime industry in general can shoot off and with it push forward other industries by creating the required industrial base for the growth and development of existing as well as new industries in the region. Therefore, the Code, if implemented in the region, is likely to have an impact on the following:

1. Size of the G.C.C. national fleet;
  2. General national and regional infrastructure; and
  3. Industrialization of the region;
- each of which warrant further detailed analysis at this stage.

#### Effects on the size of the G.C.C. National fleet

In examining the likely effect of the Code's provisions, particularly the participation in trade elements, on the size of the national fleet(s) in the region, a fundamental point must be defined at the outset, namely, what is meant by the G.C.C. national fleet. It is the writer's view that all the G.C.C. member states as a group should be regarded as one unit and their officially recognized national shipping line(s) - as per chapter one of the Code - also regarded as one line (could be referred to as the G.C.C. National line for cargo-sharing purposes); therefore, their combined liner fleet can be referred to as the G.C.C. National fleet.<sup>23</sup> The National fleet size is determined basically by the volume of liner type seaborne trade available for carriage by such a fleet (in this case basically home trades only)

and the share carried by such a fleet. In the case of the G.C.C. states, the volumes of their liner seaborne trade are shown in tables 3.5, 6, 7 + 8 for the years 1979, -80 and -81.<sup>24</sup>

Table 3.5

Liner Seaborne Imports to the G.C.C. states in 1979 (000 Metric Tons)

Trading regions	Bah.	Kuw.	Oman	Qatar	S.A.	UAE	Total
USA + Canada	75	161	26	17	1090	149	1518
C. + S. America	4	41	4	3	166	65	283
UK + N. Europe	84	388	293	85	1735	614	3199
CDE (E + A)	8	98	20	8	395	50	579
Med (E + A)	53	522	56	72	2078	270	3051
Africa - Med	1	71	1	1	69	-	143
" - West	-	-	-	-	2	-	2
" - East	1	10	44	1	9	8	73
" - South	13	1	-	-	55	20	89
Southern Asia	15	111	54	20	111	191	502
South East Asia	46	88	51	11	513	251	960
F.E. Asia	60	318	9	49	1445	279	2160
Oceania	18	20	19	2	68	36	163
Others	202*	869*	308 <sup>+</sup>	58**	24	222**	1683
World	580	2698	885	327	7760	2155	14405

\* mostly coming from UAE

\*\* mostly coming from Bahrain

+ mostly coming from Gulf States (UAE + Bahrain)

Sources used in developing this table as well as tables 3.6, 3.7, 3.8.

1. Foreign Trade Statistics of each state member in G.C.C.
2. Statistical data on US - Gulf trade obtained from the US Maritime Administration data bank.
3. U.N. Maritime Transport Statistics data bank in cooperation with
  - a. Mr Hammer J. - Shipping Consultant, Norway
  - b. Mr Tor Wergeland - Centre for Applied Research, Norway
4. Port Statistics of each member state of G.C.C.
5. Annual Statistical Abstract for Kuwait, Qatar and UAE

Table 3.6

Liner Seaborne Imports to the G.C.C. States in 1980 (000 Metric tons)

Trading Regions	Bah.	Kuw.	Oman	Qatar	S.A.	UAE	Total
USA & Canada	59	243	23	31	1311	290	1957
C.+ S. America	7	44	6	8	193	193	451
UK + N. Europe	84	380	244	89	1687	541	3025
CPE (E + A)	6	-	153	10	366	94	629
Med. (E + A)	43	443	63	64	2291	289	3193
Africa - Med.	1	5	1	-	95	-	102
" - West	-	2	-	-	5	1	8
" - East	2	1	152	-	7	24	186
" - South	1	-	-	3	65	9	78
Southern Asia	20	21	40	15	178	230	504
South East Asia	49	116	122	28	711	297	1323
F.E. Asia	83	534	152	38	1577	362	2746
Oceania	30	21	15	3	88	73	230
Others	384*	95**	185	52***	69	251 <sup>+</sup>	1036
World	769	1905	1156	341	8643	2654	15468

\* 351 of which coming from UAE

\*\* 88 of which coming from Iran + Oman

\*\*\* 46 of which coming from the Arabian Gulf Area

+ most of which coming from Bahrain

Table 3.7

Liner Seaborne Imports to the G.C.C. States in 1981 (000 Metric Tons)

Trading Regions	Bah.	Kuw.	Oman	Qatar	S.A.	UAE	Totals
USA + Canada	82	243	36	37	1564	289	2251
C.+ S. America	9	55	24	11	254	132	485
UK + N. Europe	84	443	217	108	2110	649	3611
CPE (E + A)	5	70	73	11	354	80	593
Med. (E + A)	54	657	110	79	2458	340	3698
Africa - Med.	2	14	1	1	114	3	135
" - West	0	0	0	1	9	1	11
" - East	6	2	135	0	11	14	168
" - South	6	1	-	2	99	14	122
Southern Asia	20	162	43	30	203	226	684
South East Asia	53	255	112	26	616	271	1333
F.E. Asia	65	999	465	53	2264	296	4142
Oceania	11	78	17	3	83	43	235
Others	566*	112 <sup>+</sup>	451 <sup>o</sup>	48 <sup>o</sup>	369 <sup>**</sup>	374 <sup>o</sup>	1920
World	963	3091	1684	410	10508	2732	19388

\* 547 of which come from UAE

+ 102 of which come from other Gulf States

o mostly from other Gulf States

\*\* 342 of which come from Kuwait

Table 3.8  
Liner Cargoes Exported from G.C.C. States 1979-1981 (Metric Tons)

Trading Regions	1979						1980						1981								
	Bah.	Kuw.	Oman	Qatar	S.A.	UAE	Totals	Bah.	Kuw.	Oman	Qatar	S.A.	UAE	Totals	Bah.	Kuw.	Oman	Qatar	S.A.	UAE	Totals
Arabian Gulf	199	33	15	3	9	986	1245	314	100	30	3	19	588	1054	268	243	35	12	29	830	1417
Red Sea	13	18	6	0	11	1	49	23	4	7	0	14	2	50	0	192	1	0	37	10	240
USA + Canada	3	2	0	0	6	2	13	1	2	0	0	35	2	40	0	2	2	4	4	3	15
UK + N. Europe	5	8	1	0	13	12	39	1	24	1	28	26	5	85	1	3	1	0	23	3	31
Med. (E + A)	0	35	1	0	7	1	44	3	28	1	4	7	5	48	0	34	0	15	12	5	66
Africa - Med.	1	3	0	0	5	0	9	0	9	0	0	9	0	18	0	10	0	9	25	0	44
Africa - East	0	15	0	0	4	4	23	7	0	1	0	9	4	21	0	2	1	0	12	8	23
Southern Asia	47	91	4	0	4	5	151	46	146	7	0	2	9	210	0	160	6	7	5	7	185
South East Asia	25	3	0	0	2	0	30	3	122	0	21	4	1	151	2	24	1	45	6	0	78
F.E. Asia	81	1	0	0	3	1	86	33	2	2	4	7	3	51	41	1	3	12	8	59	124
Oceania	7	0	0	0	0	0	7	6	0	0	0	1	0	7	2	2	0	6	2	0	12
World	381	209	27	3	64	1012	1696	437	437	49	60	133	619	1735	314	673	50	110	163	925	2235

It can be observed from the first three tables that the imports of the G.C.C. states as a whole show a trend of moderate increases through the three years (which has leveled off in later periods) and that such imports originate mainly from the industrialized world of Europe, Asia and USA. The last table indicates that the G.C.C. states have very little liner type seaborne exports with other regions; yet there is a sizable volume of such trade within the region (among the G.C.C. and other Gulf states) and a growing one with Asia in general and Southern Asia in particular. Due to this element further analysis will concentrate only on imports of the G.C.C. states.

Furthermore, it needs to be noted that the year 1981 was the latest year for which relevant and complete statistical data was obtainable which imposes a limitation on the forthcoming analyses of this section of the study, as it had to be assumed by the writer that the liner seaborne trade of this year would be representative of the same at least in the near future which of course might not necessarily be the case. For such a limitation to be properly dealt with, a forecasting study which would estimate the volume of the foreign trade in general and the liner seaborne trade in particular taking into account, inter alia, the following factors:

1. The G.C.C. states' oil revenues
2. Economic growth rates in the same countries and
3. development and growth of the national/regional industrial production and its use to substitute imports.

Such a study needs to cover at least a ten-year period using appropriate forecasting models, therefore it is outside the scope of the study at hand.

Given the forementioned statistical indications as well as limitations, the year 1981 can serve as a model year to indicate the share of the G.C.C. states' liner seaborne trade carried by the G.C.C. national fleet, as the second step to determining the general affect on the fleet size of applying the Code. For this purpose, the G.C.C. national fleet can be considered to be composed mainly of United Arab Shipping Company (UASC) fleet which serves the major liner trade routes of the world with the G.C.C. states. UASC is also the officially recognized national line of all G.C.C. states except Oman which doesn't have a national line in



operation yet. The G.C.C. National fleet also includes other national liner operators namely the National Shipping Company of Saudi Arabia (NSCSA) which operates on USA - Red Sea - Far East trade route, and Qatar National Navigation and Transport Company (QNNTC) which provides liner service in the Gulf - Southern Asia trade route. (See table 3.9). The liftings of the fleet in 1981 are shown in table 3.10.

Table 3.9

G.C.C. National fleet composition 1.1.84

Company	Number of ships	Type	Capacity
UASC	6	G.C.	13,440 Dwt
	43	G.C./Container	15,000 - 22,800 Dwt; 800 TEU
	13*	Container	21,254 TEU
	62		
NSCSA	6**	RoRo	-
QNNTC	4	G.C.	17,000 Dwt (all ships)
Total	72		

\* 9 vessels of which were received during 1983 with a total capacity of 16614 TEU

\*\* 4 ships of which were received during 1983

Analysing the data in table 3.10 in more details, it can be observed that on a world wide scale (excluding inter-Gulf trading) the G.C.C. national fleet carries on average about 31% of the total world liner seaborne trade with the G.C.C. states. If this percentage is to be increased to the Code's suggested arrangement of 40%, it would mean an increase in the cargo available for lifting by the G.C.C. national fleet by about 28% from the 1981 volumes of liftings of such a fleet. (See table 3.11). When excluding the major trade routes and concentrating on the main world trade routes (most of which is presently served by a member of the G.C.C. national line) for conservatism it can be concluded that the G.C.C. national fleet currently in 1981 carries about 33% of the concerned trade which implies increased liftings of 23% from the current level if the Code's suggested 40% is to be adhered too. (See table 3.11).

Table 3.10

## G.C.C. National Fleet liftings 1981

Trading Regions	Total LSB Trade	G.C.C. Nat. fleet lift.	%	Notes
USA + Canada	2251	539	24	carried by UASC
		137	6	approx. carried by NSCSA <sup>1</sup>
		676	30	10% below Code's provisions <sup>2</sup>
C. + S. America	485	225	46	
CPE (E + A)	593	-	-	data unavailable <sup>3</sup>
UK - N. Europe	3611			
Med. (E + A)	3698			
<b>Total</b>	<b>7309</b>	<b>1918</b>	<b>26</b>	carried by UASC
Africa - Med.	135	-	-	data unavailable <sup>3</sup>
Africa - West	11	-	-	" " "
Africa - East	168	-	-	" " "
Africa - South	122	-	-	" " "
Southern Asia	684	116	17	Estimated carriage of QNNTC and UASC <sup>4</sup>
South East Asia	1333	20	2	approx. carried by UASC <sup>5</sup>
Far East Asia	4142	2362	57	carried by UASC
		143	3	
<b>Total (FE Asia)</b>		<b>2505</b>	<b>60</b>	
Oceania	235	-	-	data unavailable <sup>3</sup>
<b>Totals</b>	<b>17468</b>	<b>5460</b>	<b>31</b>	
Others (Gulf)	1920	384	20	approx. carried by UASC and and QNNTC <sup>5</sup>
<b>Total</b>	<b>19388</b>	<b>5844</b>	<b>30</b>	

Sources: 1. International Statistics and Annual Reports of UASC, QNNTC and NSCSA.

2. JAPPERCON + ACMEL STATISTICS

### Notes

1. This figure was approximated using the correlation between this year and 1982 and 1983.
2. One way to obtain the Code's level is by Bilateral Agreements.
3. Carriage by G.C.C. national fleet expected to be minimal.
4. Estimate used 8 voyage/year/ship + 85 % average utilization factor.
5. The internal data was not detailed enough.

Finally, when looking at liner seaborne trade among the G.C.C. states, it can be seen that the G.C.C. national fleet carries only about 20% of such a trade, while it can carry up to 80% of it under the Code's arrangements. The carriage of 80% of this trade by the G.C.C. national fleet mean a 300% increase from present estimated liftings (See table 3.11).

Table 3.11

Increases in demand for G.C.C. national fleet tonnage.

item	World wide scale		Major liner <sup>1</sup> Trade routes		Inter Gulf Trading	
	000 Tons	%	000 Tons	%	000 Tons	%
Total Liner Seaborne Trade in 1981	17468		16742		1920	
1981 G.C.C. national fleet liftings	5460	31	5460	33	384	20
Available for the fleet after the Code	6987	40	6697	40	1536	80
Increase in liftings	1527	28	1237	23	1152	300

1. Excluding: CPE (E + A), Africa West & South + Inter Gulf Trading (others)

In the final analysis, assuming the relative accuracy of the statistical data presented, the size of the G.C.C. national fleet is likely to expand to meet the increased demand on such a fleet if the Code is implemented - as interpreted in the preceeding chapter of this study. The level, extent or degree of expansion would depend on many factors such as degree of involvement of the fleet in new trades, degree of technological sophistication adopted, requirements of the trade regarding frequency and regularity which determines the economic size and speed of vessels and last but not least the strength and adequacy of the national and regional infrastructure in this regard, including the actual number of G.C.C. states ratifying and seriously implementing the Code. Furthermore in this regard, when assuming a fleet expansion policy, the concerned parties, specially the national lines, need to adopt a short term as well as a long term policy. The short term policy may concentrate on meeting the fleet expansion requirements through chartering, buying secondhand tonnage or rescheduling of vessels with possible adjustments in vessels' speed. On the other hand, the long term policy may stipulate a phasing out process of old tonnage aquired under the short term policy to be

The external environment means basically an adequate infrastructure, both nationally and regionally, which serves to meet two fundamental objectives, namely:

1. safeguarding efficiency of the G.C.C. national line; and
- 2, providing favorable commercial and economic environment for the national liner shipping industry to operate in.

Such an infrastructure is crucially needed if the adoption of the Code is to achieve its aims, otherwise it may backfire with regrettable results. Accordingly, this section of the study will examine the basic elements of such an infrastructure in the case of the G.C.C. states assuming a Code adoption approach is to be pursued.

Table 3.12

Example of possible increases in freight revenues to G.C.C. national fleet.

Trading Regions <sup>1</sup>	present liftings 000 Tons	liftings under the Code 000 Tons	Differ- ence	Average freight revenues 1981 US\$	Freight revenues million US\$
USA + Canada	676	901	225	142.1	31,973
C. + S. America	225	194	(31)	63.4	(1,965)
UK, Europe + Med. (E+A)	1918	2924	1006	90.3	90,842
Asia (Southern, S.E. + F.E.)	2641 <sup>3</sup>	2464 <sup>4</sup>	(177)	70.7	(12,514)
Totals	5317	6483	1166		108,336

1. Only trade routes where G.C.C. national line presently have a liner service in operation, are included.
2. These averages were obtained from actual freight revenues data given by the G.C.C. states' national lines - especially UASC; as well as from some liner conferences' freight tariffs. Due to the confidentiality of such data, detailed figures could not be published in this study.
3. Present liftings see table 3.10 (000 tons)
 

Southern Asia	116	
South East Asia	20	
Far East	<u>2505</u>	<u>2641</u>
4. Total liner Seaborne Imports (table 3.10) (000 tons)
 

Southern Asia	684	
South East Asia	1333	
Far East	4142	6159
Code's Cargo-sharing arrangements		40%
Liftings under the Code		<u>2464</u>

replaced by new owned tonnage to best cater for the requirements of the trades. The long term policy may also encompass technical and commercial adjustments leading to higher efficiency, effectiveness and vessel utilization.

Therefore, there is one conclusion which can be drawn from the above analysis, namely, that the Code is likely to be a step forward to the G.C.C. states not only in terms of allowing their national fleet the opportunity to expand on an equitable basis, but also in terms of increased freight revenues associated with the increase in liftings. An example of the possible increases in freight revenues (using the previous 1981 data) is shown below in table 3.12. The additional income is likely not only to have a micro effect by strengthening the national liner shipping companies in the G.C.C. states, but also a macro effect by having a positive impact on the states' Balance of Payments Accounts; provided that such companies are operated efficiently which seems to be the case now, at least to a large extent, and also again that a good national and regional infrastructure is in place and operating adequately.

Furthermore, to fully utilize the Code from a commercial point of view, the G.C.C. national liner should actively develop and seek cross trading opportunities (with the 20% share recommended by the Code). New trade routes through which a reduced reliance on the traditional trade routes can be obtained leading to a risk-minimization and income-maximization operational wise. The aforementioned new market opportunities can be used to offset any reduced market share of the same line from the present level (1981) due to the Code's application e.g. the Far East Trade Route. (See table 3.12).

#### General National and Regional Infrastructure

The forward advancement and promotion of liner shipping in the G.C.C. states can be achieved through different approaches (See Regulations of liner conferences section), one of which is the adoption, implementation and enforcement of the Code. All such approaches can not work in a vacuum and produce fruitful results: On the contrary, the external environment on the national and even the regional level determines the degree of success and effectiveness of the applied approach.

From a micro level, the general infrastructure, basically on a national level, should attempt to safeguard the efficiency e.g. profitability of the national liner shipping companies. In this respect the present policy of the G.C.C. states of providing such companies with the needed capital to be established is a very commendable one, under the previously discussed economies of such states. A parallel yet very crucial policy to the aforementioned one is that of giving management of such companies a complete free hand in running the enterprise, within a framework of broadly predefined objectives and goals. From there the control function can begin and lead to the desired goal of safeguarding efficiency of the said companies. The first step of the control set-up emanates in the composition of the board of directors of such companies. These boards should have as members some high ranking, very knowledgeable (in the maritime industry in general and liner shipping in particular) government officials, in addition to the economic, technical, commercial etc. experts. Such members, taking into account the general world economic conditions and the conditions of the international and national maritime industry, would set more specific goals for the company to achieve e.g. a specified rate of return on capital for a given year, or set objective criteria on well founded accounting principles to effectively control the performance of the shipping company to reach the highest degrees of efficiency and thus of profits, and hold management responsible for meeting such goals and accountable otherwise. This set-up has one added advantage over and above the fore-mentioned one, that is it can provide good and clear two-way communication between the government and the companies which can lead to a better understanding and appreciation of each others needs and limitations and thus hopefully to quicker and more appropriate actions to the mutual benefits of all concerned.

The above described set-up can be used to effectively overcome the possible tendencies of companies to be inefficient and relaxing when virtually guaranteed cargo shares are allotted to them, and in turn have increased costs and lower profits. A connected point in this regard is that of subsidies. Fortunately, the G.C.C. states do not subsidise their national liner operators. That is if such lines make losses in one year, such losses are not covered by government subsidies, on the contrary,

like commercial enterprises, they have to adjust and cover such losses from profits of previous or future years. This approach should be continued with the adoption and application of the Code, at least in the G.C.C. states.

From a macro view point the required infrastructure is more complex and consist of several components, some of which are highlighted next in this section. These components aim at providing a favorable commercial and economic environment in which the G.C.C. national fleet can operate within the framework of the Code and in respect to it, and include the following:

1. legal preparations;
2. administrative components;
3. regional coordination mechanism;
4. personnel adequacy <sup>25</sup>

First, legal preparations entail mainly the ratification of the Code and the related legislation pertaining thereto. To date, out of the G.C.C. states only the Kingdom of Saudi Arabia has ratified the Code and probably will be followed soon by the State of Kuwait and the State of Qatar, while the rest of the G.C.C. states are yet to consider it. Therefore, the initial first step in this respect is for the remaining G.C.C. states to ratify the Code almost immediately. Otherwise the effective and successful application of the Code in the region would be hampered. For example, cargo can be diverted from a state applying the Code to another not applying it among the G.C.C. states which would render the effective benefits derived from applying the Code very minimal. After the ratification process is completed, the related implementing national legislation must be prepared. Since this requires the work of professional lawyers, an attempt to describe this legislation in detail will not be made. However, certain items or provisions which such a legislation must at least deal with, pertaining namely to the nature of the Code requiring some interpretative clarifications, will be highlighted at this stage.

The national implementing legislation should, inter alia, attempt to deal with the following items:

1. The definition of a liner conference under the Code, does it include operators outside the conference? (See section "definitions" in chapter 2);

2. The clarification of the delimiting boundaries for the scope of applying the cargo-sharing provisions of the Code, does it apply to the conference trade or to the whole liner trade? (See the section "Cargo-sharing in perspective in chapter 2);
3. The identification of the "appropriate authority" for the Code's purposes and the delegating of authority to it to discharge of its responsibilities under the Code;
4. The recognition of the national shipping line(s), one approach is to delegate the authority for such a task to a particular government office or officer. In the case of the G.C.C. states, if the suggested G.C.C. national line approach is to be adopted, reference to the regional agreement establishing such a line is appropriate under this item in the legislation;
5. The identification of loyalty arrangement systems considered to be lawful as per article 7 of the Code with special attention to be paid to the deferred rebate system (See the section "relations with shippers" in chapter 2 and the section "tying (loyalty) arrangements in chapter 1";
6. The rectification of the problems associated with the consultations as provided for in article 14 of the Code, namely:
  - a. one shipper, even a very small and minor to the trade, can ask for and get consultations with conferences on freight rate increases, and
  - b. the length of the period for making a request for consultations to the conference on freight rate increases after the notice by the conference to this effect is given needs to be specified along with the activities to be performed within such a period, thus having the remaining activities to be performed within the 30 days period stipulated in article 14, paragraph 5 of the Code (See discussions of article 14 of the Code under "Freight Rates" in chapter 2);and finally
7. the creation of the national office charged with the supervisory function over the application of the Code and its administration (may be by the conferences) and definitions of its authorities and functions. This office which can be called "Freight Investigation Office" is discussed later in this section.



Second; administrative components effected due to the applications of the Code in the G.C.C. states may include, among others, the maritime safety administration the ports and some national organizations or set-ups. One likely impact on the maritime safety administration in the G.C.C. states (more in some states than in others) is that their work load is likely to increase considerably due to the previously concluded expected expansion in the size of the G.C.C. national fleet. The aforesaid increase could imply a need for more manpower, which also may need to be trained to adequately carry out the required tasks e.g. surveys, inspection, certification etc. Therefore, such an impact needs preplanning on the part of the maritime safety administration as well as a higher budget to meet the added cost items, to be sufficiently and adequately dealt with.

With respect to the ports of the G.C.C. states, or of the Arabian Gulf Region, the adoption of the Code and the aforesaid expected effect on the G.C.C. national fleet increases the importance of such ports tremendously. It will be more crucial than ever before for the productivity of such ports to be at a maximum possible level. This is so because with the application of the Code, a much higher percentage of the liner vessels visiting such ports will be national vessels. Thus, inadequate productivity in such ports would in turn reflect higher costs for the G.C.C. national fleet which may constitute a hard blow to its efficiency and the development of the national liner shipping industry particularly and the national maritime industry generally in the region. In this respect the G.C.C. states ports' productivity may increase automatically due to the application of the Code, as less ships with low utilization factors would call to these ports causing congestion, as is the case now due to the fierce competition among ship owners.<sup>26</sup> However, this increase in productivity is not sufficient, as great advances in this regard can be made by adopting the capacity, technology and organization of the G.C.C. states ports to the requirements of shipping in general and that of the G.C.C. national fleet in particular. The first two elements are self explanatory, while by the third one, the writer is referring to a policy of cooperation, coordination and complementary efforts among the G.C.C. states to organize their capital investments in the region's ports in such a way that it would increase

the productivity of the region's ports as such. One approach in this direction was suggested by Dr Ibrahim Maki - President of Kuwait Port Authority, namely the adoption of Mother Port - Feeder System.<sup>27</sup> A further element of the aforesaid policy may include an introduction of a port state control system through a regional agreement similar to that concluded among the European countries under the name of the "Paris Memorandum of Understanding on Port State Control". Such a system would ensure, inter alia, that ships visiting the G.C.C. states' ports are in compliance with the applicable safety and environment protection standards, thus enhancing the efficiency and effectiveness as well as reducing the possible losses and expenditures of such ports due to accidents and pollution incidents, the high risk of which is presented by such ships when they don't comply with the aforesaid standards.

Finally, the national organizations or set-ups, in association with the code include mainly the following:

1. National shipowners' association;
  2. National shippers' council
  3. National freight investigation office;
- each of which warrant some comments.

The national shipowners' association is feasible, for obvious reasons, mainly in shipowning G.C.C. states such as Kuwait, Saudi Arabia and United Arab Emirates, as indicated in the aforesaid on their respective maritime industries. Such an association should be very active and able to perform many tasks, to the mutual benefits of all member national shipowners, more effectively and efficiently than if done by the shipowners individually. Some of the tasks of such an association can be to: <sup>28</sup>

1. negotiate with foreign unions or labour agents and sign collective agreements with them regarding wages, working conditions etc.; as this can result in reaching more favorable agreements on behalf of the shipowners, due to among other things the larger size of manpower demanded and negotiated for, and at lower administrative costs per company member of the association involved in the scheme;
2. support shipowners in their shipping activities for example, inter alia;
  - a. provide technical advice and assistance,

- b. carry out market surveys and make economic reports, studies and forecasts of national or regional concern;
  - c. publish periodic magazine(s) containing different types of information needed by the shipowners;
- 3. consult with the government regarding policies effecting the shipowners and thus can for instance:
  - a. promote and lobby for the adoption of the Code;
  - b. promote and lobby for any bilateral, regional or international agreement advantageous to the shipowners;
  - c. keep members of parliament, ministerial council or advisory council informed on developments in the field nationally and internationally;
- 4. work closely and negotiate with stevedoring companies and port authorities for higher productivity for the mutual benefits of all concerned;
- 5. cooperate closely with training institutions to
  - a. encourage nationals to enter the field; and
  - b. ensure that shipping companies have qualified sufficient and efficient work force both at sea (maritime academies) and ashore (universities) e.g. promote the idea of introducing maritime studies in the curriculum of the national universities; and last but not least
- 6. keep close contacts with the following:
  - a. international organizations - ensure that the interest of shipowners are known to and taken into account by the state's representatives in such organizations, if other than the association itself;
  - b. the media and the general public, with the aim of making the general public, either directly or through the media, aware of the importance of the sea and the maritime industry and of ways they can get involved in it - this can be carried out at as low a level as elementary schools level - to help develop a society more closely attached to the sea than at present.

The national shippers council should be attempted to be formed by each G.C.C. state, preferably with the assistance of the concerned government body in each state, mostly the chamber of commerce. The purposes of

such a council are basically two folds, First, to unite shippers and to give them the necessary bargaining strength to obtain adequate and efficient services at the minimum cost - liner and non-liner shipping sectors - and second, to provide shipowners or their association, government agencies and port authorities with a means of communicating with shippers and of obtaining an authoritative shipper's viewpoint.<sup>29</sup> Therefore it is very crucial for such a council to have a very good and cross sectional representation of all shippers in the state. Such a council has many tasks, in view of the aforesaid on the subject in chapter 2 of this study, only the major ones will be highlighted here. Accordingly such tasks include the following, inter alia:

1. taking full advantage of the rights and opportunities offered to shippers in the Code, and adequately performing the role of shippers in this regard e.g. negotiations, consultations and conciliations with liner shipping conferences;
2. keeping shippers informed, educated and up to date on the developments of concern to them in the field e.g. their rights under the Code, maritime fraud and latest developments in conferences' practices - this task can be carried out in cooperation with the freight investigation officer (which will be discussed next);
3. encourage shippers to buy on c.i.f. terms and sell on f.o.b. terms and choose the G.C.C. national line for shipping such goods, highlighting the advantages of such a policy especially from an overall national point of view.

Lastly, a national freight investigation officer (NFIO) should also be established in each of the G.C.C. states. Such an officer is necessated by the nature of the G.C.C. states' economies and the foreign trade sectors therein (See the section "Brief General Look at the G.C.C. Member States" in annex I). As foreign trade in the G.C.C. states is done to a large extent by a large number of private traders, G.C.C. governments' administration of the Code is not practicable. Therefore, it is best for such an administration to be left to the liner conferences and for the NFIO to supervise their actions and application of the Code. Accordingly the main tasks of the NFIO should be, inter alia, the following:

1. supervise the application and administration of the Code as carried out by liner conferences;
2. attend to complaints against liner conferences or their members raised by shippers, their council, national shipowners or others;
3. carry out investigations and prepare reports, on the different issues associated with the concerned liner conference trades, based on which the government, the national shippers' council and the national shipowners and their association can make sound policy decisions;  
(see the sections "Relations with Shippers" and "Freight rates" in chapter 2 of this study).

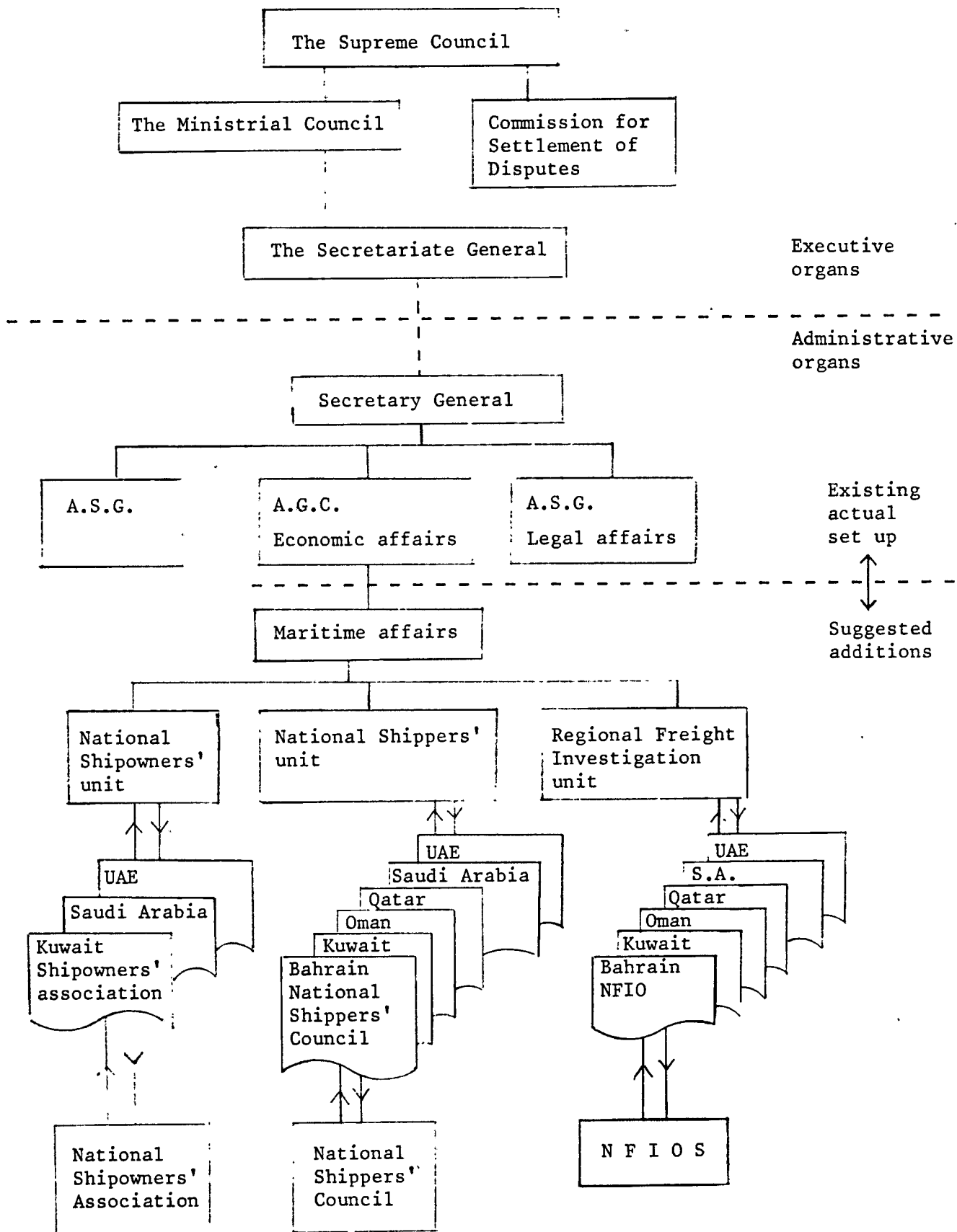
To carry out the aforementioned tasks, the NFIO must be equipped with a highly qualified investigation team, with a specialized research team and a data bank. This data bank should contain various items of information, such as:

1. liner type cargo flows in the various national trades (in metric tons);
2. liftings of the G.C.C. national line from the aforesaid cargo flow;
3. conference and non-conference (liner related) vessels and vessel movements in the various national trades; and
4. reasonable measures of shippers requirements regarding the line shipping services of concern. <sup>30</sup>

Third, regional coordination mechanism is needed in this regard for the G.C.C. states as a unit or group to attain the tremendous strength and various other benefits from coordinated common action. It is the opinion of the writer that the most suited existing organization to take on such a mechanism is the G.C.C. itself represented by its administrative organ namely the Secretariate General. Accordingly, either a new division can be created headed by an asistant secretary general for maritime affairs, or more appropriately a new department can be established under one of the existing divisions such as the economic division. (See figure 3.2). This department should have three functioning units corresponding to the three organizational set-ups on the national level, namely shipowners' unit, shippers' unit and regional freight investigation unit. Accordingly the basic tasks of the functionsl units can be summarized as follows:

Figure 3.2

Recommended additions to the G.C.C. Organizational chart.



1. coordinate the work and activities of their counterparts on the national level;
2. promote regional cooperation in the respective areas of interest;
3. attain to problems, suggestions, proposals etc, of their respective national counterpart and push them through to the executive organ of the G.C.C. for decision and action and follow up the implementation of such decisions on the respective national levels; and
4. generally perform from a regional perspective and viewpoint the tasks carried out by their respective counterparts on the national levels.

In addition, the shippers' unit should form a regional committee for negotiating with liner conferences on behalf of all the member states of the G.C.C. to avoid the problems mentioned in chapter 2 of this study (See the section "Freight Rates", article 14).

The regional freight investigation unit, having a more comprehensive and involved data bank, containing information items like the ones previously mentioned for the NFIO data bank but on regional basis, should concern itself, in addition to the aforesaid tasks, with studies of regional nature such as the feasibility of the G.C.C. states as a unit to enter into bilateral agreements with non-codist countries e.g. USA. Furthermore, such a unit can perform the accounting data analysis on the accounting reports submitted by the conferences as per article 14 of the Code, Finally, it is the opinion of the writer that the first task of the suggested maritime affairs department within the G.C.C. Secretariate General is to promote the adoption of the Code by the G.C.C. states which haven't done so yet, while the regional set-up as a whole should carry broader functions such as the formation of a united stand or opinion to be presented in international forums e.g. the Review Conference for the Code.

Fourth and last macro level element of the national and regional infrastructure, personnel adequacy, which is a very serious issue, concerns the numerical quantity and professional quality of G.C.C. states nationals in the maritime field in general and in liner shipping in particular. There is an acute shortage of such personnel not only at sea (e.g. to man the G.C.C. national fleet) but also ashore (e.g. to manage the G.C.C. national line). The relatively easy affluent and attractive life ashore compared

to the harsh life at sea is no doubt the biggest factor behind the aforesaid acute shortage. In addition, society, since the development of an oil economy has not been attached to the sea; thus the sea's importance and relevance to people's lives are not apparent and seldom directly felt by the general public which in turn reduced the public's deep interest in the sea and its related shore activities except maybe for fishing.

Confronted with this situation, the G.C.C. states must act rapidly and decisively to rectify it for the benefit of a faster, healthier and stable real terms development in their maritime fields in general and better utilization of the possible benefits from applying the Code in particular. Accordingly, even though there is not much that could be done to alter the economic structure of the G.C.C. states, at least not in the short run, nationals still can be motivated to go to sea through educational programs and incentive schemes including the, previously mentioned, Mother port(s) - feeder system proposal by Dr Maki which may ease up the harshness of sea life.<sup>31</sup> Yet, by and large, this portion of the problem can mainly be solved by time and the related slow natural changes in the economic and social fabrics of society. However, regarding the portion of the problem relating to the shore personnel (management) there is much more that should be and could be done by the G.C.C. states.' Such actions include among other the adoption of a very active maritime education and training policy of nationals, which entails:

- a. Introduction of maritime studies in the public schools and national universities to develop as an independent discipline
- b. Availing for nationals of the G.C.C. states graduate and post graduate education scholarships in the different maritime fields; such programs can be financed by
  - the G.C.C. states themselves e.g. ministries of education;
  - the different maritime institutions in the G.C.C. states e.g. shipping companies; and
  - G.C.C. Maritime Affairs Department fund contributed into by all the G.C.C. states.

The result of this most important investment of all, is that the G.C.C. states would have sufficient qualified nationals to manage and run the National shipping companies, the ports, the maritime administrations and other national components of the maritime industry, including those related to the successful adoption and working of the Code, which is the real measure of the development of a country or a region.



### Industrialization of the Region

The proceeding discussions, on the G.C.C. states within the framework of the Code adoption approach, lead to the realization that the adoption and proper application of the Code in the G.C.C. states is likely to result in an increase in the G.C.C. national fleet. This increase along with the proposed provisions for the general national and regional infrastructure would result in a more rapid, efficient and effective development of national shipping, especially liner shipping, in the same states. Advancing a step further, the aforesaid development can in turn cause a strong and relatively rapid growth in the maritime industry as a whole in such states. In other words given the features of the G.C.C. states' economies, a large and rapidly growing efficient and effective national fleet operating within a proper and adequate maritime related national and regional infrastructure, is likely to be very conclusive for the establishment and growth of other components of the maritime industry in the G.C.C. states. Examples of such components include:

1. ship building and repair yards;
2. marine insurance;
3. container repairs and maintenance yards;
4. vessel spare parts manufacture;
5. fishing industries;

The large national fleet of the G.C.C. states (not limited to liner fleet only) would use the above listed industries, even if they are up to 10% higher in price than outsiders,<sup>32</sup> which should help such industries to establish a strong foothold from which they can grow and prosper thereafter.

Thereon, the maritime industry along with the fairly well developed oil industry in the G.C.C. states can serve as a solid industrial base relied upon by other industries in providing the necessary elements of success. These two industries would supply, inter alia, the skilled labour, the technical know-how and the professional skilled management from G.C.C. states nationals along with their modern available technologies to the newly developing industries. The end results of such a process would be the gradual but steady industrialization of the G.C.C. states in particular and of the Arabian Gulf region in general, especially if such a process develops within the framework of regional cooperation, coordination and integration, a goal set forth, as mentioned before, in the G.C.C. charter.

The aforementioned process of industrialization is very crucial for the G.C.C. states in general, the more so to some than to others, not only from a purely economic point of view but also from a social and even political stability point of view. Such is particularly the case in light of the latest depression in the oil revenues of such states, which makes it extremely difficult for them to emerge out of the indicated depression without broadening their economic base more rapidly and effectively. The G.C.C. states in general (Kuwait and Bahrain in particular) have, as previously alluded to, a relatively high and growing percentage of the native population which are well educated youth possessing a fair level of political consciousness thus expecting real economic growth with sectors that will keep more of the countries wealth in such countries, distribute it more broadly and create real jobs for such youths. One avenue of meeting the aforesaid expectations, thus realizing an element of social and political stability, is through a strong commitment to industrialization to offspring from the maritime industry on the basis of, among other things, the Code.

## Foot Notes/Chapter III

1. "Kuwait Hastes the Meeting of the Supreme Council of the Cooperation Council of the Arab States of the Gulf in its 5th Session", Al-Barag, Kuwait, November 1984, p 18 (Arabic)
2. Ibid.
3. Charter of the Cooperation Council for the Arab States of the Gulf, Bahr Al,Klam Press,Riyadh, p 5,6.
4. Ibid, Article 4, p 7, 8.
5. Ibid, Article 6, p 8.
6. Ibid, Article 8, p 10.
7. Ibid, Article 12, p 13, 14.
8. Ibid, Article 14, p 16.
9. Ibid, Article 10, p 12.
10. Rules of Procedures - Commission for Settlement of Disputes, Bahr Al, Klam Press, Riyadh, article 4.
11. The Unified Economic Agreement - Cooperation Council for the Arab States of the Gulf, Bahr Al, Klam Press, Riyadh, p 2.
12. Ibid, p 5.
13. Ibid, p 7.
14. Ibid, p 8.
15. Ibid, p 12.
16. "Kuwait Hastes the Meeting ...", Ibid, p 20.
17. DR. Ibrahim Maki, "The Future of Cooperation among the Arabian Ports of the Gulf", Studies of the Gulf and the Arabian Peninsula, 25th issue, 7th year, Kuwait, 1981, p 49 (Arabic).
18. Al, Bahrain, The Fourth Yearly Book, Bahrain, Ministry of Information, December 1981, Issue number 640, p 26 (Arabic).
19. Sea Trade - Arab shipping guide, 1984

20. Secretariate General of the G.C.C. - Information Centre, The Statistical Directory for the Cooperation Council for the Arab States of the Gulf, Bahr Al, Klam, Riyadh, 1983. (Arabic)
21. Ibid.
22. Ragali El. Malakh, Economic Development and Regional Cooperation - Kuwait, Chicago, The University of Chicago Press, 1970, p 1, 2.
23. The separate national lines would agree to redistribute their allotted shares among themselves in accordance with article 2, paragraph 3 of the Code.
24. Due to the immense difficulties in obtaining relevant, comparable, complete and detailed up to date statistical data for the G.C.C. member states, only the years 1979, 1980 and 1981 could be analysed and included for the purposes of this study, within the time limits set for the same.
25. Professor P.S. Vanchiswar, Establishment/Administration of Maritime Affairs in Developing Countries, Volume I, Malmö, Sweden, 1984, p 22. In addition to a personal interview with professor Vanchiswar on April 2nd, 1984.
26. DR. Ibrahim Make, "The Future of Cooperation ...", Ibid, p 62 (Arabic).
27. Ibid, pp 57 - 62.
28. Some of the items on the list are taken from a presentation made by representatives of the Swedish Shipowners' Association, at the World Maritime University, on May 4th, 1984.
29. UNCTAD, Protection of Shippers Interests - Guidelines for Developing Countries, New York, U.N., 1976, p 15. (TD/B/C.4/176).
30. Ibid, pp 26 - 28.
31. DR. Ibrahim Maki, "The Future of Cooperation ..." Ibid, p 62 (Arabic).
32. H. Thulfikar - Deputy Chief Executive (liner) UASC, Personal Interview on the Code of Conduct for Liner Conferences, Kuwait, December 1984.

THE SUMMARY AND MAIN CONCLUSION  
OF THE STUDY

### Summary and Conclusions

The impact of the sea on the human life, culture and development through the ages is fascinating, One of the many endeavors of man with the sea is shipping, and since the 1820's its branch liner shipping, The historical development of liner shipping represented in its three periods: the foundation, the expansion and the concentration, manifests an ever continuing struggle for survival and supremacy. The tools of the aforesaid struggle are numerous and included colonization, protectionism, technological advances and liner conferences.

The nature and characteristics of the liner shipping market made liner shipping conferences, of one form or another, indispensable and able to withstand the regulatory challenges to it. This situation exists even in the present times, with containerization dominating many liner trades thus making the industry more capital intensive and concentrated than ever before, the need for the control of the supply side of the market is still evident. However, the monopolistic and oligoholistic powers and restrictive practices of liner conferences were intolerable by the developing countries as the same were detrimental to the maritime and thus economic development of the said countries. Therefore the aforesaid countries rose up, demanded and fought for fundamental reforms of the then existing liner conference system. The result of such efforts was the birth of the U.N. Convention on a Code of Conduct for Liner Conferences in 1974, which entered into force in 1983.

The Code's provisions attempted to achieve the following vis-à-vis liner shipping conferences:

1. restructure the basis for admitting new lines into the conference, particularly national lines;
2. develop an internationally agreed basis for the allocation of cargoes in liner trades;
3. bring into the open the level of conference freight rates and the process of decision-making;
4. restrict the power of cartels formed of lines, usually foreign to the country concerned, to take unilateral decisions on matters vitally effecting the trade and economic development of those countries - and virtually eliminating such powers; and

5. establish an independent tribunal to which parties with complaints about the operation of the system could have recourse, which is manifested in the Code's International Mandatory Conciliation System.

In this regard the main provisions of the Code requiring interpretation are the controversial participation in trade provisions. Relying on the records of the conference of plenipotentiaries and the objectives and principles of the Code, the writer interprets these provisions to apply to the entire liner trade between two countries, if to apply at all as the Code merely suggests such an arrangement and doesn't mandate it. In this respect the Code can be interpreted also to call for strong and rational liner conferences which also administer the cargo-sharing provisions with the concerned government assuming a supervisory role over such an administration: Other provisions of the Code pertaining to shippers and liner freight rates as well as to the I.M.C. don't require much in the way of interpretation, yet they deserve a lot of attention, especially from governmental bodies responsible for the implementation of such provisions, as they entail a lot of implications, the most important of which are examined in some details in the study.

The conclusion of this part of the study given the abovementioned, is that the Code should be perceived by the developing countries as a tool - under the circumstances the best available international instrument but not necessarily the best possible one - and as a means for an end and not an end by itself. Accordingly, the Code is an opportunity which if properly and adequately utilized can bring fruitful benefits to a given developing country or group of countries the conditions in which are suitable and ripe enough for maritime and economic developments and growth.

With this, the first aim of the study was met. Such an aim was to develop an understanding of the Code within the framework of developments in liner shipping and the liner conference system and to seek, by relying on such an understanding and the available relevant records and data (interviews), an interpretation of the main provisions of the Code - within the set guidelines of the intentions of the drafters or reasonableness given the stated objectives and principles of the Code.

Regarding the second aim of the study, pertaining to the specific case of the G.C.C. states, the writer recognizing the basic features and structure of the G.C.C. states' economies - oil economies with steps taken toward national income diversification - the foreign trade pattern of the same - exporting mainly oil and related products while importing capital, consumer and manufactured goods - and the maritime endeavours of such states which varies among the states but generally successful and promising, recommends that the G.C.C. states ratify, implement and enforce the Code as early as possible; yet, they should perceive it as recommended in the aforesaid to developing countries in general.

The reasons for such a recommendation are several. In addition to backing the developing countries in their efforts in this field, such an approach is likely to lead to an increase in the size of the G.C.C. national fleet. Furthermore, when such an increase is fully utilized and taken advantage of through the adoption of several provisions pertaining to the national and regional infrastructure in the G.C.C. states, the result would be not only very efficient and effective national liner shipping establishments but also a rapid growth in the national/regional maritime industry with an overall push toward industrialization of the region from a very solid maritime associated industrial base.

The abovementioned national and regional infrastructure entails many aspects, the most important of which are the following:

1. adopting a policy of requiring the G.C.C. national line to be efficient and effective with a control mechanism to ensure the same;
2. provide for the legal framework related to the adoption of the Code;
3. satisfy the different administrative requirements including
  - a. ensure sufficient and qualified manpower in the MSA + GMA
  - b. ensure the adequacy and high productivity of the G.C.C. States ports
  - c. set up and adequately develop certain national organizations such as - a national shipowners' association,
    - a national shippers' council, and
    - national freight investigation office
4. provide for a regional coordination mechanism - preferably within the framework of the G.C.C. - Secretariate General; and finally
5. ensure an adequate supply of nationals in the field both at sea and ashore.



ANNEX I

A BRIEF OVERVIEW OF THE G.C.C.  
MEMBER STATES

For the reader of this study who is not fully familiar with the G.C.C. member states especially with their economies, this annex can be very beneficial in providing the same. The presentation of the information in this supplementary part of the study will be as follows for each member state:

1. Introduction
2. The economy in general, and
3. The foreign trade

## The State of Bahrain:

### Introduction:

The State of Bahrain consists of a group of more than 30 low-lying islands, only five of which are inhabited. (See map). Bahrain has been a pioneering state in the field of education with modern type schooling starting back in 1892.<sup>1</sup> In addition, education has been and still is perceived to be of great importance by Bahrainians. Therefore, such factors have reflected on the literary rate of the population as Bahrain is relatively highly placed in the literacy league with a literacy rate for all over ten years of age of 77,7%<sup>2</sup> Thus Bahrain can offer a fertile supply of a well-educated manpower force of nationals in the different fields including vocational and industrial areas which can complement the other economic resources of the remaining G.C.C. member states, like capital, land etc., thus promote the Council's drive for regional economic integration as previously mentioned in its charter.

Bahrain has been a British protectorate until 1971 when it gained its independence as the British withdrew from the area in accordance with the British East of the Suez policy of 1960 in which they decided to withdraw from all their colonies and protectorates east of the Suez Canal. Presently, the State of Bahrain is a constitutional monarchy.<sup>3</sup> The constitution, some articles of which are suspended, was published in June 1973 and provides for equality and freedom of speech and religious belief and introduces a democratic style government in its call for the formation of a national assembly composed of the cabinet and 30 publicly elected members.<sup>4</sup>

### The Economy of Bahrain:

Traditionally, the people of Bahrain have earned their livelihood from three main sources, namely, pearl-fishing, agriculture and trade.<sup>5</sup> Thus, the modern era of Bahrain's economy was founded upon the discovery in 1932 and exploitation of oil beginning with the first commercial production in 1934. Consequent to this foundation was the growth of the refining and construction industries. The production and refining have dominated the economy for decades and still does as it constitutes a large portion of the Gross Domestic Product (GDP) of the state. (See tables A.1 and A.2). However, there has been a gradual recognition that there must be a diversification of economic activities since 1954.<sup>6</sup> Such a recognition is manifested, inter alia, in such fields as the industrial, financial and

Table A.1 GCC Proven Crude Oil Reserves, 1970-1980  
(Millions of Barrels)

	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
Kuwait	79950	78198	72900	72750	81450	71200	70550	70100	69440	68530	67930
Qatar	4300	6000	7000	6500	6000	5850	5700	5600	4000	3760	3585
Saudi Arabia	141350	157475	146000	140750	173150	151800	153150	153100	168940	166480	168030
UAE	12783	20502	22768	25500	33920	32200	31200	32425	31316	29411	30410
Oman*	1100	1000	1500	1700	1600	1500	1500	1800	2000	2300	2400
Bahrain*	330	360	380	360	330	310	311	290	270	251	233
G.C.C.	112613	121535	250548	247560	296450	262860	262411	263315	275966	270732	272588
OPEC	412431.0	430983.0	428373.0	421815.0	484970.0	449870.0	438995.0	439915.0	444936.0	435591.3	434355.0
World	611397.5	631856.2	666883.3	627856.5	715697.2	658685.7	636990.3	645847.9	641607.8	641623.5	648524.7
GCC/OPEC (%)	27.3	28.2	58.5	58.7	61.1	58.4	59.8	60.0	62.0	62.2	62.8
GCC/World (%)	18.4	19.2	37.6	39.4	41.4	39.9	41.2	40.8	43.0	42.2	42.0

Source: Oil and Gas Journal, various issues; in the cases of Oman and Bahrain, data are taken from World Production and Reserve Statistics, Oil and Natural Gas, 1980 (Petroconsultants SA).

Taken from: A-Kubrusi, The Economies of the Arabian Gulf - a statistical sourcebook



agricultural sectors of the economy. In the industrial fields Bahrain has a hydrocarbon (refinery and liquification) plant, aluminium, petrochemical, iron and steel industries ranking this sector second only to oil in Bahrain's economy. In the financial arena, Bahrain is a clear example of an international financial centre with its extensive off-shore banking units which open the State's door to the international financial markets. Agriculture hasn't received much attention, but the State's first 5-year economic and social plan, introduced in 1981, recognizes its importance and provides resources for its improvement. In summary, Bahrain's economy has been a healthy one as it showed an annual economic growth rate of 26% during the 70's. (See table A.3).

Table A.3

Bahrain's growth rates of Economic Sectors + Shares in GDP over the 70's.

Source: Economic Encyclopedia

Sector	Annual Growth Rate %	Share in GDP
Oil	26.9	77.3
Agriculture and Fisheries	13.1	0.5
Industry	20.1	0.7
Construction	20.1	1.3
Electricity and Gas	17.7	1.3
Communications	19.6	0.6
Wholesale and Retail Trade	20.0	4.1
Banking and Insurance	10.4	0.9
Services	19.9	1.3
Others	29.0	12.1

## Foreign Trade

The unique geographical position of Bahrain has been an asset in creating of it an important and historically wellknown trade-transit route. Accordingly, foreign trade represents a major element in Bahrain's economy. The country depends heavily on crude oil imports for its refinery, the production capacity of which is four times the domestic oil production. Thus in terms of value oil imports account for 48% of oil and non-oil overall imports.<sup>8</sup> ( See table A.4). In addition to oil, the main import commodities to Bahrain are machinery and equipment, manufactured goods, followed by food stuffs. Such imports come chiefly from European countries, Asian countries and the two Americas. Bahrain's exports, on the other hand, consist mainly of aluminium production, machinery and equipment as well as chemical and petroleum products including LPG + LNG. Such items find their major markets in Arab countries which account for 75% of the overall exports.

The effect of foreign trade on the country's balance of payment has not been too favorable. Even though Bahrain's Balance of Payments registered a surplus since 1978, its Trade Account registered a deficit since 1970. The period from 1970-1981 contained four years fo trade-balance surpluses only. (See table A.5).

Table A.4

Bahrain - Total imports by Commodity Classification (Value in 000 BD)

Commodity Classific.	1978	1980
Food and live animals	132.2	16.9
Beverages and Tobacco	28.3	39.9
Crude Materials, inedible, except fuels	23.4	27.0
Mineral Fuels and lubricants	879.8	2029.3
Animal and vegetable oils and fats	3.1	5.8
Chemicals	100.7	132.9
Manufactured goods	262.7	346.4
Machinery and Transport equipment	442.4	522.4
Miscellaneous Manufactured articles	159.7	176.7
Commodities and Transactions not classed	.7	4.4
Totals	2032.9	3479.3

Table A.5

Bahrain - Trade Balance Account 1970-1981

Source: Atif Kubrusi, The Economies of the Arabian Gulf

Item	Y E A R											
	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981
Export of goods & services	231.4	285.4	369.1	509.2	1351.0	1277.9	1629.2	1997.5	2128.5	2699.6	4113.4	4950.6
Import of goods & services	261.9	330.5	398.8	547.0	1194.5	1269.3	1753.3	2133.2	2216.0	2610.2	3699.2	4977.2
Difference	-30.5	-45.1	-29.7	-37.8	156.5	8.6	-124.1	-135.7	-87.5	89.4	414.2	-26.6



## The State of Kuwait

### Introduction

The state of Kuwait consists of a land area of 17,818 sq km at the head of the Arabian Gulf in addition to nine islands totaling 1600 sq km in area. Virtually the whole of the population is concentrated in an urban complex extending along the shores of Kuwait Bay and the Gulf. The population make up consists of a large non-Kuwaiti population providing more than 70% of the work force in the country. Kuwait has paid great attention to the field of education since the early 1950's,<sup>9</sup> thus reached a leading position with a university, several higher education institutes, more than 500 public and private schools and relatively high overall literacy rate.<sup>10</sup>

Even though the area where Kuwait is located now has a history which extends back to 2500 BC<sup>11</sup>, its modern history era has begun toward the end of the nineteenth century. In 1899 the ruler of Kuwait signed a protectorate treaty with Britain. Then in 1940 Kuwait received a self-rule followed by independence in February 1961. The political system in the State of Kuwait is also a democratic monarchy with the Amir being the ruler of the country and its head of state. This set-up providing for the Amir to be from Al Suhah family is declared in the country's constitution which was proclaimed on November 11, 1962. The constitution also calls for a National Assembly which acts as Kuwait's legislative body consisting of 50 members elected for four years term by adult males other than servicemen and policemen. The first such assembly was formed in January 29, 1963, while the latest was elected on February 20, 1985.

### The Economy of Kuwait:

Traditionally, the Kuwaiti economy was based on pearl fishing and trade. Trading was done both by land and sea which made of Kuwait a very important trading and shipping centre and of Kuwaitis professional boat builders and seamen. However, in 1946, Kuwait started to export oil and its growing revenues resulted in radical changes as the rapid development of the oil industry played an important role in the national economy's new era. This era, even though dominated by oil developments, has witnessed the same diversification of the economy with the developments in the other economic fields. Industry, for example, has grown to compose the hydrocarbon (refining gas liquification and petrochemicals), construction material

manufacturing, food (dairy, flour mills, soft drinks etc) paper, plastic and several other industries.<sup>12</sup> Another example is the financial sector which is so advanced, comprehensive and developed that it makes of the state a highly respected international financial centre.

The oil and gas sector represents a very high portion of the GDP (See table A.6), however other sectors are showing potentials of being major ones e.g. the industrial and financial sector. The crude oil production in Kuwait has been subjected to a conscious attempt of control policy by the state since 1972 mainly to realize two main objectives:

1. prolong the life span of oil resources (See table A.1)
2. expand the refining capacity to ensure a rising growth of the industrial sector in Kuwait and export refined products for their relatively high value (prices) in world markets. (See table A.7)

Table A.6

Kuwait: GDP by industrial origin 1970-1980

Sector	Nomira value of production KDM		Average annual growth rate %	Contribution to GDP (%)	
	1970	1980		1970	1980
Oil sector	618.8	5156.8	24	60.3	69.9
Non-oil sector	407.51	2216.9	18	39.7	30.1
Agriculture	2.92	17.5	19	0.28	.24
Industry	42.78	439.6	26	4.2	5.6
Electricity	7.22	27.10	14	0.72	.36
Construction	28.1	185.0	20	2.7	2.5
Trade	81	375.50	17	7.9	5.1
Transportation	29.29	119.4	15	2.9	1.6
Finance	20.92	199.1	25	2.0	2.7
Others	195.28	853.7	16	19	12
GDP	1026.31	7373.7	22	100	100

Source: Economic Encyclopedia ...

## Foreign Trade

Kuwait's foreign trade plays a substantial role in the state's economic activities, for example in the period 1973/74 - 1977/78 the annual relative weight of foreign trade in economic activity averaged around 83%. Crude oil is the predominant export commodity of Kuwait. (See table A.7). The national exports consist of re-exports and exports of Kuwaiti origin. The re-exports items include machinery and transport equipment, hides, rubber, wood, cork, textile, steel, cast iron and miscellaneous manufactured goods and go mostly to Saudi Arabia, Iraq and Iran. The Kuwaiti exports comprise items such as fertilizers, other chemicals, shrimps and metal pipes which are exported mainly to the E.E.C. countries, Asian countries including Japan, Arab and Oceanic countries. Kuwaiti origin exports, even though growing, have made up only 1/3 of the non-oil exports during 1973-80. Imports to Kuwait consist mainly of consumption goods and capital and manufactured goods coming mainly from Japan, U.S.A., U.K. and West Germany. Such imports have also been growing in value but kept stable steady growth. (See table A.7). Foreign trade in Kuwait has been having a very favorable impact on the state's Balance of Payments Account. The foreign trade account always showed a surplus which contributed effectively to producing a Balance of Payments Surplus also.

Table A.7.

Kuwait Foreign Trade (value in million KD )

Year	Exports			Imports	Trade Balance
	Oil	Non-oil	Total		
1969	527.0	23.1	550.1	230.8	319.3
1970	564.5	26.4	590.9	223.3	367.6
1971	859.4	34.4	893.8	232.3	661.5
1972	931.7	49.6	981.3	262.2	719.1
1973	1059.9	69.8	129.7	310.6	819.1
1974	3097.5	117.2	3214.7	455.1	2759.6
1975	2492.6	170.4	2663.0	693.2	1969.8
1976	2658.9	215.5	2874.4	972.0	1902.4
1977	2557.1	235.5	2792.6	1387.1	1405.5
1978	2628.7	235.4	2864.1	1263.9	1600.2
1979	4735.7	307.4	5043.1	1437.0	3606.1

## The Sultanate of Oman

### Introduction

The Sultanate of Oman with a total area of about 300 000 sq km, a coast line of over 1700 km along the Gulf of Oman and the Arabian Sea, occupies the southeastern corner of the Arabian Peninsula along with Ras Mussandam peninsula guarding the strategic entrance to the Gulf.<sup>13</sup> According to U.N. estimates the population of Oman is 1.5 million while other statistics put it around one million.<sup>14</sup> There has been an immense advance in education recently but it has not reached a compatible stage with the other G.C.C. member states as most of the population are illiterates.<sup>15</sup>

The Sultanate of Muscat and the Emirate of Oman have been separate entities with different political structures and philosophies, with a long history of conflict involving the British until 1970.<sup>16</sup> In 1970, the then British protected Sultanate since 1932,<sup>17</sup> entered a new historical phase when the present Sultan Qaboos came into power and signed a treaty with the British. The treaty gave the British, inter alia, some economic concessions.<sup>18</sup> Presently, Oman is an Absolute Monarchy with the Sultan as the Head of State and Prime Minister appointing a Council of Ministers responsible to him and ruling by Royal decrees.

### The Economy of Oman

The traditional economy of Oman was based mainly on agriculture, trade and commerce and very old historically rooted maritime industry including seafaring. Even though oil prospecting started in 1934, the first findings in commercial quantities were in 1964 and the effect on the Omani economy started around 1970. (See table A.1, A.2). Despite running a budget deficit since 1982, Oman's economy remains reasonably stable with inflation of around 10% and the oil & gas sector being the most productive source of the G.D.P. which is likely to continue to be so for many years to come (See table A.8).

### Foreign Trade

Oman has adopted a free trade policy since the seventies which can account for the sharp increase in the country's foreign trade. The most dominant export of Oman is oil, while the non-oil exports, which are

mainly fresh fruits and vegetables, dates, frozen and dry fish, and some other manufactured goods, made up a very small portion of the total exports. (See table A.9). The destinations of the oil exports are mainly Japan, U.S.A. and E.E.C. countries, while the non-oil exports are marketed mainly in the Gulf countries and India. Like the other G.C.C. members Oman's imports consist mainly of food stuff, manufactured and capital goods originating mostly in the E.E.C. countries, Japan and Middle Eastern countries. Such imports have increased tremendously in the last decade from 12.0 MDR in 1970 to 614.9 MDR in 1980.<sup>19</sup> With the increase of oil prices, foreign trade is having a positive impact on the country's Balance of Payment Account.

Table A.8

Oman's Economic Sectors' activities 1970, 1980

Source: Economic Encyclopedia p 178

Sector	Production value (mill O.R)		Annual rate %	% Share in GDP	
	1970	1980		1970	1980
Oil	71.6	1,241.0	33.0	68.4	69.2
Agriculture	16.6	36.5	8.2	15.9	2.0
Industry	0.2	17.5	56.4	0.2	1.0
Construction	8.5	111.3	29.3	8.1	5.5
Transport	0.7	40.7	50.1	0.7	2.9
Electricity	0.1	12.2	61.7	0.1	0.7
Internal Trade	1.6	99.6	51.2	1.5	5.6
Banking	0.6	25.7	45.6	0.6	1.1
House Rents	1.5	32.9	36.2	1.4	1.8
Government Depts.	2.3	188.3	55.4	2.2	9.2
Other services	1.0	17.6	33.2	1.0	1.1

Table A.9

Oman's Foreign Trade 1970-1980 (Million O.R.)

Source: Economic Encyclopedia

Year	E X P O R T S				Imports	Balance of trade
	oil	non oil	Total	% oil		
1970	91.6	0.4	92.0	99.6	12.0	80.0
1971	87.6	0.4	88.0	99.6	40.2	47.8
1972	88.2	0.4	88.6	99.6	61.6	27.0
1973	114.3	0.6	114.9	99.5	85.8	29.1
1974	418.7	0.4	419.1	99.9	211.7	207.4
1975	488.1	1.1	489.2	99.8	348.4	140.8
1976	543.8	7.4*	551.2	98.7	383.8	167.4
1977	545.9	13.5	559.4	97.6	392.9	166.5
1978	521.8	30.2	552.0	94.5	438.3	113.7
1979	745.7	41.7	787.4	94.7	493.2	294.2
1980	1244,6	50,0	1294.6	96.1	614.9	679.7

\* all volume 1976 - 1980 include reexport mostly to UAE.

## The State of Qatar

### Introduction

The State of Qatar is situated half way along the western coast of the Arabian Gulf. The country is a peninsula with a set of islands and coral reefs off the coast.<sup>20</sup> The socio-economic structure of the country has developed gradually since Qatar's modern era began in the 1950's. Such development is manifested in fields such as education as there exist a modern schooling system, a university and an overall literacy rate of over 51%.<sup>21</sup> Regarding the country's political history, Qatar has entered into a protection treaty with Britain in 1916 which lasted until September 1st 1971, when Qatar received its independence.<sup>22</sup> Currently, the State of Qatar has a constitutional monarchy with the Amir being the Head of State assisted by a Ministerial Council and an Advisory Council both of which are called for by the State's constitution of 1970.<sup>23</sup>

## The Economy of Qatar

Prior to the discovery of oil, Qatar's subsistence economy depended on pearl fishing and fishing for the coastal population, camel rearing and associated textile production for the mainly nomadic people of the interior and a negligible amount of agriculture.<sup>24</sup> After oil was discovered in the mid 1930's and crude oil production and exports started in 1949, the economy became an oil economy. However, aware of the dangers of being dependent on one major source of revenue, the state of Qatar began to direct its economic policy towards diversification of the sources of national income. Accordingly, industrialization was chosen as the catalyst to develop resources and generate balanced development of all the economic sectors in the state.<sup>25</sup> Therefore the State of Qatar has such industries as refinery, cement, fertilizers, iron and steel, petrochemicals and gas liquefaction.<sup>26</sup>

The oil and gas sector constitutes around 75% of the state's GDP. This sector encompasses mainly crude oil production, from both onshore and offshore oil fields, most of which is exported (See table A.2) to Western Europe and the Far East and relatively modest proven crude oil reserves. (See table A.1). It also includes the production of petroleum products by two refineries the total capacity of which is more than 10 000 BID. Most of the petroleum products production is consumed locally. In addition, Qatar has rich natural gas resources the utilization of which has been increasing steadily either for the local industries or for exportation in the form of propane, butane and natural benzene.<sup>27</sup>

## Foreign Trade

Foreign trade is a very important component in Qatar's economy as it involves the export of crude oil on which revenues the country's economy is dependent. The destination of these oil exports is mainly Japan and some E.E.C. countries. Qatar's non-oil exports include fertilizers mostly to India, to India and China, iron and steel to Jordan and Saudi Arabia as well as small but increasing quantities of LPG. (See table A.10) Like all other oil exporting countries in the gulf, Qatar imports chiefly equipment, machinery, consumption goods and manufactured goods. These imports come from Japan, U.K., U.S.A. and West Germany in order.

Finally, Qatar's trade balance has been showing very large surpluses, due mainly to the high level of oil prices, which has helped the State's Balance of Payment Account.

Table A.10

Qatar - Imports and Exports value 1975-1981 (million US\$)

Year	Exports	Imports	Difference
1975	1815.7	409.4	1406.3
1976	2209.4	833.0	1376.4
1977	2324.1	1225.1	1099.0
1978	2318.0	1183.9	1134.1
1979	3406.2	1425.2	1981.0
1980	4464.9	1439.8	3025.1
1981	3978.1	1570.8	2407.3

Source: Atif Kubrusi , The Economies of the Arabian Gulf

## The Kingdom of Saudi Arabia

### Introduction

Saudi Arabia, the largest country in the Middle East in area with coasts on both the Arabian Gulf and the Red Sea, geographically has a combination of desert plateau, plains, mountains and vast areas of desert. About 40% of the population live in urban areas, 35% in rural areas and 25% are nomadic or semi-nomadic.<sup>28</sup> The huge inflows of oil revenues helped develop the country very rapidly specially in such areas as education and infrastructure. Politically, the modern era is connected mainly with the efforts of Al-Saud (the present ruling family) to unify the different areas of the Peninsula leading up to the official emergence of the Kingdom in 1932. Thus Saudi Arabia is an absolute monarchy with the Islamic Shariah being officially the constitution of the country. The state is headed by a king who is aided by a Ministerial Council.

### The Economy of Saudi Arabia

Like all other Gulf states, the Saudi economy is predominantly an oil dependent one as oil generates almost all the state's revenues.



To overcome the dangers of such dependency, diversification of national income plans have been put in action. Such plans concentrate, among other areas, on industry and agriculture. Accordingly, the basic aim in the country's drive for industrialization is to detach the industrial from the hydrocarbons sector (refineries, gas liquification plants etc.) and make the former stand on its own two feet.<sup>29</sup> Attempts to achieve this have been pursued through the establishment of huge corporations or private enterprising groups to undertake several industrial projects under one umbrella within a framework of joint ventures with foreign concerns. Accordingly, the Saudi industrial activities include the production of methanol, fertilizers, iron and steel, construction material, consumer goods, chemicals, plastics, engineering equipment, nails and screws and aluminium. Regarding the field of agriculture, the government has been giving special priority to this sector for strategic reasons. The results of such emphasis and government incentive programs were a tremendous growth of the sector and a rapid development of agribusiness all leading Saudi Arabia to being almost self-sufficient in food items such as wheat, dairy and livestock.

Yet, Saudi Arabia has a prominent standing among oil producing and exporting nations due to its huge oil reserves (25% of world proven reserves) (See table A.1) and its high relative production (See table A.2), 5% of which is used domestically while the rest is exported mainly to the industrialized world. In addition, Saudi Arabia has five refineries in operation with a total capacity of 1.03 million BID, and four others either planned or under construction with a total capacity of over one million BID. The refined products are also mostly exported mainly to the Far East and Western Europe. (See table A.2). The second part of this sector, namely natural gas, the country's reserve of which account for 4% of the total world proven reserves, is used as feedstock in oil facilities and for processing LPG. The LPG production (See table A.2) will be expanded greatly when the 700 thousand BID planned facilities are completed.<sup>30</sup>

### Foreign Trade

The limited trade economy of the country prior to the discovery of oil was radically changed after its discovery and the adoption of a free open-door economy in this regard. Basically, Saudi Arabia exports crude

oil, gas and refined oil products. Such exports go mainly to Japan, U.S.A. and Western Europe. On the other hand, Saudi Arabia, like the other G.C.C. member states depends heavily on imports for satisfying local needs of consumption goods, capital goods and manufactured products; such a dependency is likely to continue in the coming years. The abovementioned imports come mainly from Europe, the Far East, U.S.A. and South East Asia. The foreign trade balance has always provided a large positive amount to the country's Balance of Payments Accounts.

## United Arab Emirates (UAE)

### Introduction

The independent state of UAE is a union of seven emirates which came about during the months before the British withdrawal from the Gulf, in 1971.<sup>31</sup> It comprises an area of extremely shallow seas with offshore islands and coral reefs and often an intricate pattern of sandbanks, and small gulfs as a coastline.<sup>32</sup> Since its formation, UAE have been concentrating extensively on building its infrastructure as well as human resources which is manifested in the rapid development of education in the state.<sup>33</sup>

The political structure of the union is defined in its Provisional Constitution. It vests the authority for the general policy decisions and ratifications of union laws in the Supreme Council - a body composed of the Rulers of the seven emirates - which also elects the country's President and Vice-President for a 5-year term in office. Then the President appoints the Prime Minister, and in consultation with him, also appoints the individual ministers forming the Council of Ministers. Finally the country has a parliament, based on the National Council, with powers to propose amendments to legislations initiated by the Cabinet and powers to debate other issues of public interest, but without legislative powers as such.

### The Economy of UAE

Before the gradual transformation of the economy into an oil one beginning after World War II, the economy was predominantly based on fishing, pearl trade and animal rearing. However, with large proven reserves of oil and gas and high production and exports thereof, the

economy of UAE almost completely relies on the oil and hydrocarbon related industries. (See table A.1 and A.2). Yet, other sectors of the economy are developing and growing such as the industrial sector with industries like cement, aluminium, iron and steel and cables manufacturing. In addition, the agricultural sector has been developing greatly, making of UAE a pioneer in desert agriculture.<sup>34</sup>

### Foreign Trade

The growth and development of this sector have paralleled that of the economy in general. Accordingly, oil has been the dominating export item, mainly destined to Japan and Western European countries. The non-oil exports of UAE including dates, dry fish, metal scraps and steel frames constitute a minor part of total exports and serve mainly the neighbouring Gulf states' markets. UAE also maintains a re-export trade of capital, consumer and semi-manufactured goods which is sizable and growing. The imports of UAE are typical of the G.C.C. states comprising mainly consumer goods, manufactured goods and capital goods, Such imports come mainly from Western Europe (about 80% in 1978). The foreign trade account has, in recent years, reflected foreign trade surplus and thus contributed positively to the country's Balance of Payment Account. (See table A.11).

Table A.11

UAE - Imports, Exports and Trade Balance 1975-1981 (million US\$)

Year	Total Exports	Total Imports	Difference
1975	5964.0	2754.0	3210.0
1976	8591.0	3420.0	5171.0
1977	9637.0	5186.0	4451.0
1978	9125.0	5385.0	3740.0
1979	13652.0	6971.0	6681.0
1980	21662.0	8848.0	12814.0
1981	20939.0	9549.0	11390.0

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14. - No Census has ever been conducted in the Sultanate of Oman:
  - The U.N. Estimates are taken from Reference No.13 above, p 8.
  - The one million figure is obtained from a G.C.C. Secretariate General publication, namely "The Statistical Directory for the Cooperation Council for the Arab States of the Gulf", p 43. - See also Bibliography list to this chapter.
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ANNEX II

THE E.E.C. BRUSSELS PACKAGE

## COUNCIL REGULATION (EEC) No 954/79

of 15 May 1979

concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences

## THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof.

Having regard to the draft Regulation submitted by the Commission.

Having regard to the opinion of the European Parliament.<sup>1</sup>

Having regard to the opinion of the Economic and Social Committee.<sup>2</sup>

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

#### Article 1

1. When ratifying the United Nations Convention on a Code of Conduct for Liner Conferences, or when acceding thereto, Member States shall inform the Secretary-General of the United Nations in writing that such ratification or accession has taken place in accordance with this Regulation.
2. The instrument of ratification or accession shall be accompanied by the reservations set out in Annex I.

#### Article 2

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

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

2. Where the negotiations referred to in paragraph 1 fail to result in agreement, each Member State may, at the request of one of the lines concerned and after hearing all of them, take the necessary steps to settle the dispute.
3. Each Member State shall ensure that all vessel-operating shipping lines established on its territory under the Treaty establishing the European Economic Community are treated in the same way as lines which have their management head office on its territory and the effective control of which is exercised there.

#### Article 3

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

- b) past performances of the shipping lines in the trade covered by the pool;
- c) the volume of the cargo carried by the conference and shipped through the ports of the Member States;
- d) the needs of the shippers whose cargoes are carried by the conference.

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

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

#### Article 4

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

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

3. Paragraph 2 of this Article shall not affect the opportunities for participation as third country shipping lines in such trades, in accordance with the principles reflected in Article 2 of the Code of Conduct, of the shipping lines of a developing country which are recognized as national shipping lines under the Code and which are:

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

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

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

#### Article 5

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

#### Article 6

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

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

Done at Brussels, 15 May 1979

For the Council

The President

R. BOULIN