

# THE CODE OF CONDUCT FOR LINER CONFERENCES

(A contribution to the debate on)

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## 1. INTRODUCTORY

The convention on a code of conduct for liner conferences, which was concluded in Geneva in April 1974 under the auspices of the United Nations<sup>1</sup>, known as the «UNCTAD Code», or simply «the code» is due to come into force in the near future. This became possible after the E.E.C. council has decided for the E.E.C. countries to ratify the code though under certain important reservations.

According to article 49 of the convention, the code shall enter into force, six months after the date on which not less than 24 states, the combined tonnage of which amounts to at least 25 per cent of the world general cargo tonnage, have become contracting parties. Once the E.E.C. countries as a group, or one of the following countries United Kingdom, Japan, Greece individually, shall have become contracting parties, the code shall enter into force..

To-date, the code, has been a very much discussed topic internationally by governments, international organizations, business interests, academics and others. Despite this, it is doubtful, that the public knowledge on the subject has been improved.

There are those who maintain that, the liner conference system, would not survive the coming into force of the code and who also foresee inefficiency and increased costs in the carriage of international general cargo trade under the code. At the other side it is recalled that, in practice several major provisions of the code, have already been put into force by an increasing number of developing countries. Furthermore supporters of the code voice their view that, the code would only serve

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1) See United Nations Conference of Plenipotentiaries on a code of conduct for liner conferences. Volume II. Final Act. (UN. sales No E.75.IID.12 TD/CODE/13/Add 1).

to bring into the liner trade the long awaited change, in line with new international economic, commercial and political realities. To them, the code, despite any weaknesses it may have, can provide the vehicle for a re-organization of liner trades, based on co-operation between all interested parties (carriers and shippers in old and new maritime countries, governments), also on a balanced protection of their legitimate interests, rather than on a status imposed by the dominant market power of a limited number of liner companies and countries as it happened to-date.

A third view, appears to be to the effect that after the reservations set out by the E.E.C. council, the code would never produce the fruits which were sought by those who in 1974 worked for the conclusion of the international convention on the code.

Of the three aspects listed above, the first, which argues that the code would be very damaging for the liner conference system and for the liner trades, has attracted much more publicity than the other two. This, perhaps, happened because the literature on the code appeared mostly in certain industrial countries of the west, whose interests would be affected, much more than any body's else, if a change in the organization of international liner systems would occur.

Whatever is the case, the fact remains that a change is due to occur in the near future to the good or the worse. Therefore, the time is more ripe, than ever before to further discuss the character also the possible repercussions of the change.

## **2. THE ORIGIN OF THE NEED FOR THE CODE.**

The demand for imposing some type of control on the activities of liner conferences in order to prevent abuses of the excessive market power of conferences and/or to minimize the effects of such abuses on the shippers and the trade, is almost as old as the liner conference system itself.

In all sectors of economic activity, there are factors, motivating the desire for co-operation between private economic firms, with the aim to maximize their profits through acquiring a sufficient degree of market control rather than through competing eachother. Once economic activity is profit motivated, it looks as being a logical sequence for economic units, to feel that, their desire for profit maximization, can be better satisfied through co-operation among themselves, rather than through an unlimited competition.

In the liner trades, beyond this general tendency, there are inherent factors, tending to distort, limit or even eliminate competition.

The nature itself of the market organization of liner services, is such that it has an oligopolistic character. Liner conferences, by uniting carriers, increase their ability to acquire and exercise a very strong position in the respective markets-some times being able to establish an effective monopoly, whereas demand for liner conference services, is very widely fragmented and purely competitive.

The traditional criticism against conferences has been to the effect that liner conferences, misused their dominant market power, as to:

(a) effectively prevent the entrance of new carriers in their trades and control the supply of tonnage at levels decided by themselves, without the shippers' co-operation and irrespective of their requirements regarding frequency, type of service etc.

(b) apply pressures and restrictive practices to secure the exclusive loyalty of shippers to their services.

(c) fix their tariffs at levels significantly higher than those which might exist under competitive conditions. This might not, necessarily, mean the existence of monopolistic profits. It means, though, freight rate levels high enough, to cover the operating costs of the less efficient carrier — member of the conference, ie the one facing the highest costs of operation.

Experience suggests that, with relatively limited exceptions, conferences power to fix their tariffs and impose freight rate increases as decided by them, still remains in tact, irrespective of whether consultations with shippers are held or not.

A significant change could only occur, if shippers would acquire the countervailing power to negotiate on more or less equal terms with the conferences. In practice, only very large shippers, particularly industrial concerns, controlling a significant part of demand for conference services, have been able, in certain trades, to exercise such power.

Besides; shippers organizations with certain degree of power to exert pressure on conferences and influence their pricing policies, exist or might exist in industrial countries where the necessary requisites possibly exist. The most important problems and grievances, though, against conferences and their pricing policies, existed in the developing world-not in the industrial countries.

It is worth adding in this connexion that in among the industrial countries themselves, the countries buyers of liner services, have, historically, been much more sensitive to liner conference practices, rather than the countries sellers of such services. It is not surprising, therefore, that countries buyers, of liner services, have been pressing for some sort of control on conference practices, also have been among those which initiated specific action towards this end on national level.

In the case of developing countries, an additional reason tempting governments to introduce measures of control over conference activities, has been the alleged discriminatory treatment which national lines were given by conferences once they have been admitted as their members. Limited sailing and loading rights, and no rights to serve way ports' traffic, included in such discriminatory practices.

To-date, an increasing number of governments, have introduced measures tending to impose either a varying degree of regulation of liner conference practices or cargo sharing provisions. Should the tendency for individual action on national level was to continue, the danger for a disruption of the international liner services system, would be a very real one. Every one of the countries whose trade is covered by a

conference, also the countries in which the conference lines are located, might be interested to introduce regulatory legislation.

This legislation, might very well be contradictory to each other, the reason being simple. Varying interests and/or philosophies, would tend to create such a result. The picture becomes increasingly complicated, when one takes into account that, one single liner operator, or one single liner vessel may, participate the former, run the latter, in trades where more than one conferences are active and/or in trades which connect ports of quite a number of countries, which could have in force different regulatory regimes, possibly conflicting each other.

It should be recalled in this connexion, that the detrimental results of possibly conflicting unilateral national controls over conference practices, was the basic argument used by the European maritime countries themselves, when they attacked the new regulatory legislation adopted by the U.S.A. during the sixties and seventies.

Therefore, one might suggest that, once the liner conference self regulation which prevailed to-date, failed to effectively cope with the grievances of shippers or of shipping lines and/or of governments-particularly in developing countries - the alternative should be a concerted intergovernmental action, rather than control legislation on a national level. This is what has been attempted by the code.

### **3. THE MOVEMENT TOWARDS CONCLUDING THE CODE CONVENTION.**

Prior to the establishment of UNCTAD, the attitude of European maritime countries was that, they should refrain from any intervention in the liner industry, despite the allegations about abuses of the strong market power of liner conferences. Their official position was to the effect that, only in the absence of government interference and bureaucratic controls, could, international shipping, be able to accomplish its task with efficiency and/at as low as possible costs.

Clearly; this argument was very sound to the extent it referred to the bulk cargo markets-both liquid and dry-in which the supply of tonnage is, indeed, competitive and freight rates in the long run are cost oriented. It was mistaken, though, in case of liner trades, which are characterized by supply conditions varying from oligopoly to monopoly. It can be added, in this connexion, that all industrial countries have long ago enacted what is known as anti-trust legislation. Nevertheless, excepting mainly the United States, this legislation is not applied in the case of shipping trusts and cartels. Despite this attitude, there were enlightened people who were able to see that, the need for a change in and modernization of, the liner conference system, was not only inevitable, but also desirable. They realized that, despite certain, rather minor, changes, product of the second half of this century, conferences appeared to follow

the traditional patterns, while the capital structure also the dimensions of liner firms, as well as the structure and dimensions of the general cargo trade, the technology used through out the transport chain and the economic and commercial environment within which they offered their services, had enormously changed.

It was under the pressure of developing countries, perhaps in co-operation with some other countries, that, a research work on conference practices was included in the programme of work of UNCTAD since the early years of the existence of the committee on shipping of the said organization. The first stage of UNCTAD secretariat work on shipping conferences has been concluded in 1969 and the respective report<sup>2</sup> submitted to the committee on shipping, by early 1970.

Based on this report, the committee on shipping concluded that further improvements in the conference system were necessary to the benefit of both carriers and shippers. Taking a decisive step forward, the committee on shipping requested its subsidiary unit on Shipping Legislation to study further the matter and report in due course, as appropriate.

In 1970 a report<sup>3</sup> by a special committee of inquiry into Shipping (Rochdale Report) was published in Britain. It recommended that carriers members of various conferences, should accept a published code of practices to be applied by the conferences of which they were members. This suggestion was adopted by the Governments of group of eleven co-operating European countries and Japan, and at their invitation, shipowners associations of these countries, in consultation with the corresponding shippers' organizations, drafted and presented, what is known since then, as the CENSA<sup>4</sup> code.

The shortness of time within which the CENSA code was drafted and presented, was impressive. Apparently the target was to have this code published at an as early date as possible, as to influence the parallel work which was on the way within the framework of UNCTAD. If such was the target, it failed to succeed. The group of developing countries refused to get involved in discussions on a document (a) in the formulation of which they were not invited to take part ((b) which was based on the principle of self regulation. Hence, the CENSA code, did not provide the answer to the long existed problems, although it might have somewhat, delayed the introduction of substantial changes in the liner trades. Finally, the shipping legislation unit was directed to submit to the third conference of UNCTAD (Santiago 1972) the report it has prepared, containing 21 points needing regulation<sup>5</sup>, also two proposed texts of a code of conduct for liner conferences, drafted by the Afroasian countries the one, by the Latin American countries the other, These two drafts, have been unified in one single text during the deliberations of UNCTAD III conference at Santiago.

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2) The liner conference system (TD/B/C.4/62 Rev. 1). Un Publication. Sales No E.70.IID.9. 1970.

3) Committee of inquiry into shipping HM50, 1970.

4) Committee of European shipowners Association see.

5) The regulation of liner Conferences. TD/104. UN Publications. Sales No 72.II.D.13, 1972.

Following a decision by the General Assembly of the United Nations, received at the request of UNCTAD III conference, an international conference was convened in Geneva under the auspices of UNCTAD to formulate a code of conduct for liner conferences. The deliberations of the conference have been long and difficult. The code of conduct for shipping conferences as it has been adopted by the UNCTAD conference, has been the product of hard negotiations between groups of countries, but also between individual countries. Perhaps, it did not represent the optimum for the purpose of establishing an international system of regulation of liner conferences or of re-organizing the liner system. Nevertheless it represented the common ground on which a number of countries-developing, developed market economy countries and socialist-found it possible to agree among themselves. It was not enough for developing countries, to only have the code voted by the required increased majority during the conference. Even if the code could have enjoyed the universal support of all developing countries, it could never come into force, without the parallel support of socialist countries, also of at least certain of the major-in terms of general cargo tonnage O.E.C.D. maritime countries, because of the 25% tonnage requisite mentioned before.

A compromise text acceptable to great number of countries is very difficult to achieve and when this is succeeded, the text accepted, is not necessarily the best. It represents what was possible to be done, under given circumstances. This point, is of particular importance for the international community. It provides the evidence that the international community has entered a new era in which, solutions to international economic or political problems would tend to be sought through discussions and negotiations, rather than be dictated by the will of those countries which at a particular point of time are strong enough particular point of time as to enforce their will upon the others. To my opinion, this factor alone is enough to make the adoption and coming into force of the Code an important international achievement, the dimensions of which can be better understood, when one recalls that the code has no precedent. The whole effort started from scratch, unlike to what the case of other international conventions is.

#### **4. MAIN FEATURES OF THE CODE.**

What can be considered as being the main features of the code? An attempt is made below to briefly refer to a number of features which to the view of the author characterize the code:

(a) Elimination of conference power to decide at discretion, on the conference membership. Subject to the specific criteria established in the code<sup>6</sup>, any national line shall have the right to be a full member of

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6) Article 1 paras 1 and 2 of the code.

a conference serving the trade of its home country. Similarly, third flag shipping lines, shall have the right to membership, subject to the criteria fixed in the code for them<sup>7</sup>. Moreover; Conferences, when considering applications for admission, shall take into account the views of shippers and shippers organizations, as well as of appropriate authorities, of the countries whose trade they serve.

(b) The freight and volume sharing provisions, also the provisions which establish equal rights for all member lines in the decision making procedures of a conference. The code establishes the right of national lines of each two trading countries, to equally participate in the freight and volume of the traffic generated by their trade. The code, also, recognizes and safeguards the right of third flag carriers to acquire a significant part — «such as 20 per cent» — in the freight and volume of that traffic.

The code, further, establishes the principle that decision making procedures within a conference, shall be based on equality of all full members and it also includes particular provisions to safeguard this equality (art3, also article 2 para 13-17).

(c) Abolishment of the secrecy which surrounded conference agreements, tariffs and other related documents, Conference agreements shall be made available to appropriate authorities of countries whose trade is served by them, also of countries whose shipping lines are members of a conference.

Similarly, tariffs and other related documents shall be made available, on request, to shippers, shippers' organizations and other parties concerned at reasonable cost; and they shall be available for examination at the offices of shipping lines and their agents.

Obviously; the more one can know of the conference agreements, tariffs regulations and/or conditions, the more one tend to be able to effectively protect his interests as a shipper, shippers' organization or even as a government of a country whose trade is served by a conference.

(d) Protection of shippers' interests - Consultation — Freight rate determination. The code opens the way for a substantial participation of shippers' organizations and where practicable, of shippers designated for the purpose by appropriate authorities in the decision making procedures of conferences on matters of common interest. This shall be done in the form of consultations, and these consultations shall, as a rule, be held before final decisions are taken, whenever they are requested by one of the parties concerned. The list of matters which may be the subject of consultations as set out in article 11 of the code, is not restrictive and, in general terms it includes terms and conditions of supply of the

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7) Article 1 para 3 of the code.

conference services, levels of freight rates, freight rate increases, surcharges, adequacy of liner services, changes in the pattern of services, dispensation etc.

It is true that, consultations between carriers and shippers organizations, are being held also to-date. But there are a number of very important differences. Number one; The code provides for the appropriate authorities to fully participate in the consultations; number two; the scope of consultations is much wider in the code, than it has been to date; Number three; under the code, whenever the result of the consultations held, would not be satisfactory for one of the parties, then a mandatory international conciliation machinery could be set in motion at the request of one of the parties.

Clearly the code tends to reduce, if not to eliminate, the power of the liner conferences to impose their will on the national lines of a country at either end of the trade.

It is worth noting that, appropriate authorities ie governments, shall have the right not only to fully participate in the consultation procedures and machinery, but also to intervene and make their views known to the parties concerned for their consideration (art. 2 para 14), in case of such matters as disagreements regarding pooling arrangements. Finally, appropriate authorities can participate in the conciliation procedure in support of one of the parties involved.

(e) **Criteria and procedures for freight rate determination.** The code specifies that in arriving at a decision on questions of tariff policies, in all cases mentioned in the code, a number of criteria shall be taken into account. In particular, the code specifies 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. To this effect, the cost of operations, shall be evaluated on the basis of round voyage concept. The provisions regarding criteria and the procedures for fixing of freight rates, taken together with those concerning the classification of freight rates in the tariffs; also with those concerning the advance notice for freight rate increases, also regarding the consultation and conciliation machineries and the right of appropriate authorities to participate in these machineries in support of shippers, constitute a combination of stipulations which, when effectively applied, should adequately safeguard the shippers' interests from any abuses by conferences.

(f) **The provisions for settlement of disputes.** The code does not provide for a system of local and international arbitration as it has been proposed by the UNCTAD secretariat. It provides, instead, for what it specifies as a conciliation machinery. It appears that this machinery has the usual characteristics of an arbitration system, except that the award is not binding for the parties concerned unless these have so agreed. The international conciliation machinery is mandatory. It shall be used whenever a request to that effect, is initiated by one of the interested parties. Almost all cases of disagreement can become the subject of international conciliation



mechanism Subjects such as conference membership; inconsistency of a conference agreement with the code; participation in trade; freight rates, and loyalty agreements, which have not been resolved through an exchange of views or direct negotiations, can be referred to international mandatory conciliation.

The code does not specifically provides for local conciliation procedures, but a resolution annexed to the code, requests the first. Review Conference-we shall talk about it later in this paper-to give priority to the subject of establishing procedures which should be applied for resolving disputes at a local level.

## 5. SPECIFIC PROBLEMS RELATED TO THE CODE

One of the most important criticism against the code, is to the effect that it introduces rigid cargo sharing, by which bilaterism is enforced in the liner trades. As a consequence, the same argument goes on, century old commercial practices and arrangements, freely formulated to the best interest of both carriers and shippers, will be destroyed to the detriment of the world liner trades. Realities are quite different. The code does not enforce bilaterism, since it safeguards the right of third third flag carriers to participate in all liner trades.

Further; cargo sharing has been used in all trades where pooling applied, long before the code was concluded. The main difference, though, seems to be that, to date, what is meant by the term «commercial practices» is simply that, loading rights, sailing rights, revenue sharing etc, have been dependent on ones power or weakness to make his demand accepted within a conference. Clearly, factors like efficiency of operations, quality of service, shippers preferences, and competitiveness play a very limited, if any, role in the determination of relevant rights of the member lines of a conference. Hence, seen from this angle, the code sharing provisions should be considered to bring an improvement. Besides, it appears that the substance of the 40:40:20 formula itself pre-existed the code. It has been applied by at least one major group of conferences. Nothing catastrophic happened neither in the trades served by these conferences, nor in those trades where the 40:40:20 formula was introduced after the code has been signed in 1974. Under these circumstances, one can see no reason why the 40:40:20 formula would be, by necessity, detrimental, if applied under the code in other trades too.

There is another question related to the point just discussed.

Will the code, bring to an end, the tendency, for any developing country, to demand a 50:50 participation in the carriage of its foreign liner cargo trade? More than this, Will, after the code comes into force, the countries which have applied a 50:50 formula, be prepared to retreat to the 40:40:20 formula?

To my opinion, the answer to the first part of the question posed should be yes; no one, though, could give with reason, a straight answer to the second part of the question at this stage. Nevertheless, two observations, can usefully be made.

Firstly; to date, a number of developing countries have applied a 50:50 participation formula, some of them particularly in Latin America long before the code convention was adopted. One cannot avoid thinking that this development could have been avoided, should the code had come into force earlier. The fierce opposition of certain major maritime countries to the code, also their clear effort to undermine it, as to minimize the possibility for the code to come into force, forced several developing countries to react in this way as to improve the negotiating position of their national lines, vis-a-vis the conferences.

Secondly; Experience to-date, suggests that, developing countries policies tend to abide with international laws and policies established with their own active cooperation and with their own votes. For this reason, trust that, although it might take some time, the code provisions, provided that the formerly opponen to the code, countries, would also earnestly work for the full implementation of the code. Another important question, appears to be the one which refers to whether the activities of non-conference lines fall within the frame of the code or not. In other words, the questions, to whom the 20% share allocated by the code for the third flag carriers, applies? To the third flag conference member lines only or to nonconference lines as well? There seems to be only one relevant stipulation in the code; the one of para 17 of article 2 which specifies that the provisions of this article which refer to the right of participation in a trade, also to the cargo sharing «concern all goods.....with the exception of military equipment for national defence purposes» The fact that the wording of this paragraph, as it stands, was adopted at the last movent of the conference, by a majority vote indicates that it has a particular significance-though not particularly explicite-to the effect that the cargo sharing provisions concern the whole traffic in a trade, rather than the traffic carried by a conference only.

On the other hand, the resolution of the conference on «nonconference shipping lines», states that nothing in the convention shall be construed so as to deny shippers an option in the choice between conference and nonconference shipping lines, subject to loyalton arrangements. Further, it stipulates that «in the interest of sound development of liner shipping service, non-conference lines should not be prevented from operating....» These recommendations of the resolution, which any way, lacking legal force, could easily be satisfied, as long as the conferences would allow independenty to operate within the 20% part of the total traffic generated by two countries, whose trade is served by a conference. It seems that certain countries will stick to statement they made at the closing session of the conference, to the effect that traffic carried by national lines on the basis of government-to government (at both side) agreements should be excluded from the code provisions.

It appears that some of the E.E.C. countries which supported the code, have done so, inter alia, in order to acquire the means to check the activities of the third flag non-conferences lines in the carriage of their trade. It this interpretation is correct as it very proballigis it is likely that these governments would, also support

that the 40:40:20 formula should be meant, to include all cargo moved in their particular trades, including the cargo carried by non conference lines. Indeed, the literature produced to-date in the E.E.C. countries, also the deliberations within E.E.C., as these are reported from time to time in the press, suggest that these countries expect to bring under control-through the code in their liner trades, the activities of east european lines.

It is significant that, traditional maritime countries expect the code to remedy situations created under the conference system as it existed to-date. As explained earlier, the same observation is also, applied with regard the interest of traditional maritime countries to seek, through the code, the elimination of the 50:50 sharing practices which emerged also, under the pre-existed organization of liner trades.

It is worth to recall in this connexion, that, the increasing penetration of state owned eastern european lines in the trades of certain western countries, also in cross trades, has been something which the liner conference system, as it operates to-date, was not able to prevent. Some further things can usefully be added with regard to the position of non-conference lines, once the code enters into force the code aims at a re-organization of liner trades, as to create a balanced system which would equally protect the interests of all parties concerned; in particular to serve «the special needs and problems of developing countries with respect to the activities of liner conferences serving their foreign trades» (quoted from the objectives and principles of the code convention) Further; the code stipulates (article 42), 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.

Experience to-date, suggests that conference freight rates tended to be relatively lower in trades where outside competition or conditions of potential competition existed as a relatively long term characteristic. Indeed, the higher is the elasticity of demand for conference services, arising from the possible availability of alternative means of transport, the greater is the pressure upon the conference to charge lower, than otherwise, freight rates. In principle, therefore, the existence of non conference-lines in a trade, is beneficial for this trade concerned.

Assuming that the code would affect non-conference lines activities, by bringing them within the 20% share, it would be useful to consider whether this would be damaging to shippers, as compared with the impact of the possible existence of outside competition under regime existed to-date.

The inclusion of the non-conference lines within the 40:40:20 participation formula, should strengthen the code as an instrument and as vehicle for a re-organization of liner system, while it would not touch the right of independent lines to exist. Nevertheless such a development, would create strong incentive for the entry of the independents into the conferences, rather than to remain outside, since, by entering the conferences, they might be able to better protect their interests, through their participation in the conference decision making.

As pointed out earlier, the code aims to ensure a balanced protection of the interests of both carriers and shippers and it has specific provisions for this purpose. It imposes restrictions on and controls over conference practices. The question, therefore, arises, is the protection of shippers' interests as provided by the code, particularly when combined with the right of outsiders to carry part of the 20% share allocated to third carriers of less importance for the users of liner trades, than the possible benefits which could be derived through the possibility of outside competition, particularly in view of the extent at which such possibility existed in certain trades to-date?

To my view, an effective implementation of the code regarding for instance, freight rate fixing, consultation and conciliation with, where appropriate, government participation, might exert an effective pressure on freight rate levels, also on the frequency and extent of freight rate increases and tend to keep both cost oriented. Whereas, the existence of non-conference competition might only mean, freight rates possibly moving on a curve somewhat lower level than, but parallel to that of conference rates.

If this interpretation is correct, the full implementation of the code should be of much greater importance for shippers-particularly in developing countries-than the presence of outside competition as this is experienced to-date. This should be the more so, since quite often, the outsider remains as such, only as long as it is sufficient for the conference concerned to be convinced that a mutually acceptable deal with him, would be less damaging for the conference interests, than the continuation of his independent activities. Alternatively it might happen that the outsider find himself compelled to withdraw under the pressure of losses incurred, then freight rates are brought back to the levels desired by the conference concerned.

In view of the above discussion, it seems that, the only traffic which would, almost certainly, remain outside the code scope, would be the traffic carried by national lines, on the basis of government to government (at both sides) agreements. This has been part of the price which developing countries had to pay to socialist countries of eastern Europe in order to secure their support for the code.

## **6. CONCLUSIONS.**

What could be the alternative to the code? It is clear. Many countries-not only developing countries-would tend to introduce legislation empowering governments to exercise unilateral control over shipping conferences-to curtail their alleged monopolistic market power. The result of such a trend could only be negative for the international liner services system. The reason seems to be obvious. Regulatory measures which would have been adopted by a country could, by necessity, tend to correspond to the particular requirements of the country concerned-as these would have been determined by the subjective judgment of the respective government. One

can not, though, impose unilateral individual country control on a characteristically international industry, as liner shipping is without running a high risk of contributing to the establishment conflicting regulatory regimes, to the detriment of the efficiency of the liner system. The ultimate result should have been increased costs.

The aforesaid, should not be taken as suggesting that the code is a masterpiece. This point has been discussed earlier and it was concluded that the code having been the result of a political compromise, can not but have loopholes, obscure points and ambiguities. Which all, might create of difficulties in the implementation of the code. Further difficulties, are to be created, by the E.E.C. council regulation, which, in itself, is also a compromise. The council regulation no 954/79 which opened the way for the access of E.E.C. countries to the code, when applied in the E.E.C. and possibly in other O.E.C.D. countries liner trades, would in substance result in the application of two distinct codes-with regards to several important areas such as: participation; freight rates and conciliation machinery. It appears that, the code as it stands, would apply only in the trades between developing countries, also . In the trades to and from developing countries, irrespective of what the country at the otherend would be . This should be a serious weakness for the code, in view of that more than two-thirds of the international general cargo trade, takes place between western Europe, the United States and Japan.

Clearly; what might remain in force, in the trades between O.E.C.D countries after the E.E.C. reservations are applied, would be only a part of the code. It would be an E.E.C. style code. Hence, some developing countries, might hesitate to give up what they have gained to-date, if there would be no concrete compensatory benefits for them, accruing from the coming into force of the code.

From this point of view it should be essential for the E.E.C. and other developed countries to back the implementation of the code in their trades to and from developing countries in such an adequate manner, as to establish the confidence in developing countries that, in what concerns the foreign trades, these latter countries the code shall be effectivelly applied and their interests, shall be fully protected.

The whole pecture would be very much improve for the code, it japan would, finally, rafily the code convention, without the E.E.C. reservations. This possibility can be exclude-as yet.

In several occasions the code has been criticised as creating a straight jacket for liner conferences. In this connexian one, should underline that in fact, several important provisions of the code shall be applicable «unless otherwise mutually agreed (art 2 para 4 regarding participation) or «unless otherwise provided (art 12, art 14 para 9) regarding freight rates, or «procedures other than those established in that article 23» are introduced by mutual agreement of the parties concerned (article 25 regarding the conciliation machinely).

Therefore the alleged rigidity does not seem-to exist. Let us assume, though, that the

alleged rigidity does exist despite the escape valves which, if properly used, could make the code a flexible instrument.

Article 52 of the code stipulates that a review conference, shall be convened five years from the date on which the code comes into force, to review the working of the code and consider amendments as it might be found necessary. Such review conferences shall be convened every five years thereafter or at any time after the first review conference, at the request of one third of the contracting parties, unless the first Review Conference decides otherwise.

Therefore, once the code enters into force, it will be possible on the basis of the operational knowledge and experience to be gained to amend those provisions which will be proved in practice that they warrant a modification, with the aim to attain the maximum benefit from the implementation of the code for the international liner trade.

It all would depend on the willingness of contracting parties to positively cooperate to this end, by providing the information and views which should be necessary to throw light as to what were the difficulties encountered in the implementation of the code also on what grounds amendments might be necessary.

On the basis of all the above said, I should suggest that the new period which will start with the coming into force of the code, would be characterised not by chaos or anything similar, as by an increased dialogue between all parties concerned also by increasingly balanced relationship between liner operators and their customers.

In this connexion, some more suggestions can usefully be made.

*First.* Those developing countries which have available the potential and requisites to establish and expand to a significant extent their own networks of liner services, have already, done so, applying varying policies, corresponding to their philosophies, also to their needs. India, Pakistan, Indonesia, Philippines to mention only four in Asia, have worked for their liner shipping development, by providing full support to their shipping lines, but without resorting to policies of cargo reservation. To some degree similar remark is applicable with regard to certain African countries, particularly those in West Africa.

Most of Latin American countries on the other hand-headed by Brazil, have applied 50% cargo-reservation policies, with no better results, though, than those recorded by the Asian countries.

*Second* Further developments in the liner shipping of developing countries would tend to correspond to the overall economic development-in particular the development of their trade. What matters, any more, in this connexion is that the liner shipping development of these countries, would follow the international pattern established by the code.

*Third.* Misgivings would eventually go and the possibility for an orderly development of the liner system, in particular of the conference system, would be open. On-

ce the right of each country to equally participate in the carriage its national liner trade would established internationally, there should be every hope and reason that policies contradicting the code would be abandoned. This, in itself, when succeeded would be a progress of enormous significance.

From a more general point of view, I suggest that developing countries should tend to exert pressure for a significant change in the regime existed to date in the liner trades and the conference system, through a full implementation of the letter and the spirit of the code. At the other side, liner companies in the traditional maritime countries should press for the prevalence of commercial criteria in the conference decision making. The counteraction of the two tendencies-which to my view are complimentary, rather than contradictory to each other-Would tend towards rationalizing the organization and operation of the international network of liner services to the benefit of the world community.

#### REFERENCES

- G. BREUER, Code of Conoluct: legal aspects. (In: The future of liner shipping, Bremen 1976).
- W. BOSIES and W. GREEN, «The liner conference cenvention»: Launching an international regulatory 1974.
- EEC, (The United Naciones Convention on a Code of Conduct for liner conferences. Counàl of Europe – Parliamentary Assembly – Report on European shipping Policy (DOC 3662), 1975.
- EEC, Reglement du conseil concernant la ratification par les États membres, de la convention des Nations Unies relative à un code de conduite des conférences maritimes ou l'adhésion de ces états à la convention.
- K. FASBENDER / WOLFGANG WAGNER, Shipping Conferences, Rate Policy and Developing Countriè» H.WWA, Hambivig 1973.
- G. GEORGANDOPOULOS, «THE CONTROL OF MONOPOLISTIC PRACTICES IN THE LINER TRADES» Piraeus 1964 (In Greece).
- L. HUDSON, «Implications of the UN Code of Conduct for conferences, 1976.
- C. HINZ, Implications of the convention on a code of conduct for liner conferences 1976.
- INSTITUTE OF SHIPPING ECONOMICS, Liner shipping in the eighties. (Proceeding of a conference), Bremen 1980.
- UNCTAD, success in shipping. Policy oris in among tractitional maritime nations. Reprint from vol. 4, No 4, Journal of World Trade Law, 1970.
- St. NEFF, «The UN Code of Conduct for liner conferences» in Journal of World Trade Law. Vol. 14, No 5, Oct. 1980.
- T.K. SARAGAN, Liner Code Convention: Case for global acceptance (The Marine times 15, Nov. 1975).
- M.S. SHAH and S.G. STURMEY, «Code of conduct for Liner conferences» in Svensk Sgofarts Tidnig 12 1975.
- S.G. STURMEY, The UNCTAD code of conduct for Liner conferences» Bremen 1974.
- S.G. STURMEY, Economic Consequences of the Code of Conduct. The future of liner shipping, Bremen 1976.
- S.G. STURMEY, Cargo sharing in the code of conduct, London 1979.
- S.G. STURMEY, The Code: The next five years, Bremen 1980.

UNCTAD, The liner conference system (TD/B/C 4/62 Rev. 1). UN Publication. Sales No E10.II D 9  
N. York 1970.

United Nations Conference on a Code of conduct for liner conferences:

(a) Report the preparatory committee

- on the first session. TD/CODE/1 / 1973
- on the second session. TD/CODE/2 / 1973

(b) Report of the conference:

- on the first part of the session. TD/CODE/7
- on the second part of the session. TD/CODE/10 (Vol. I & II Add I .

United Nations Conference of Plenipotentiaries on a code of conduct for liner conferences. Vol. I and II  
UN Publication Sales No E.75.II D. II (TD/CODE/13) and E.75.II. D. 12 TD/CODE/13.

Facrplay: Issues of 10 July 1975, 13 April 1978, 10 and 17 May 1979, 14 June 1979, 5 July 1979, 21  
August 1980.

Journal de la Marine Marchande: Issues: 3054, 3076, 3090, 3095, 3099, 3100, 3102, 3121, 3159, 3160  
3161, 3168.

Journal pour le transport international: Issues: 27/1977, 28/1977, 43/1977, 45/1977, 13/1978  
28/1978, 4/1979, 10/1979, 20/1979, 22/1979, 47/1979, 39/80.

Lloyd'r Amversois: 24 Nov. 1978, 20 Febr. 1979, 21 Febr. 1979.

Norwegian shipping News: No 13/1980.

Seatiade: July 1978, Nov. 1978.