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WORLD MARITIME UNIVERSITY
Malmö, Sweden

THE EMERGING ROLE OF THE CLASSIFICATION SOCIETY AS AN EXTENSION OF THE FLAG STATE ADMINISTRATION

By

ROGELIO ESTRADA VILLANUEVA, JR.
Republic of the Philippines

A dissertation submitted to the World Maritime University in partial Fulfilment of the requirements for the award of the degree of

MASTER OF SCIENCE

In

MARITIME AFFAIRS
(MARITIME ADMINISTRATION)

2004

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DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has been previously been conferred on me.

The contents of this Dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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I can still remember a passage in the Cadet's Prayer when I was still at the Academy saying that “it is better to tread the difficult paths rather than to stray on the easier ways.” Writing a dissertation in so short a period of time complicated by the requirements and responsibilities of my various extra-curricular activities seemed like an insurmountable task at first.

Nevertheless, it was a challenge I accepted despite the large number of my colleagues who decided otherwise. The completion of my work therefore is not simply a personal achievement but a collective victory of all the people who contributed their time, effort and resources in making this dissertation a reality.

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And above all, to the source of all my thoughts and deeds, to the grand architect and principal surveyor of the universe, to the Lord God above.
ABSTRACT

Title of Dissertation: The Emerging Role of the Classification Society as an Extension of the Flag State Administration

Degree: MSc

This dissertation is a study of the emerging role of the Classification Society as an extension of the Flag State Administration.

A brief review is made of the historical evolution of the Classification Society from its humble origins as a provider of technical information on ships to marine underwriters to the gradual diversification of its services as influenced by the requirements of the maritime industry under a continuously changing regulatory environment.

The changes in the international regime of maritime legislation, in particular the development of new safety regulations triggered by increasing occurrences of maritime casualties through the years has echoed a parallel change in the roles played by Classification Societies.

The relationship of the Classification Societies with the various players in the maritime industry and members of the safety chain are also considered bearing in mind the contributions of Classification Societies in every case.

The effects on the services provided by the Classification Societies brought about by the introduction of the human element in safety conventions and the shift in focus from the hardware to the software aspects of regulatory instruments are also analyzed. New concepts such as quality, safety management, crew competency and more recently security have left their imprints on the services offered by Classification Societies.

The increasing responsibilities of Flag States brought about by the myriad international instruments dealing with safety, security and environmental protection have been scrutinized. Against the backdrop of all these obligations, the difficulties encountered by the Flag States and the consequential resort to the use of recognized organizations are carefully considered.

The concluding chapter analyzes the formal relationship existing between the Flag State Administration and the Classification Societies including the rationality and implications of the emerging role of Class as an extension of the Flag State Administration. The complexities associated with this relationship may provide a glimpse of the long term viability of this partnership along with possible trends in the future roles of Classification Societies.

KEYWORDS: Classification Societies, Classification Work, Statutory Surveys, Flag State Administration, Human Element, Safety and Quality Management, Maritime Safety, Maritime Security, Class Liability, Delegation, Recognized Organization, Flag State Implementation, Conflict of Interests, Extension
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<tr>
<td>ABS</td>
<td>American Bureau of Shipping</td>
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<tr>
<td>AMSA</td>
<td>Australian Maritime Safety Agency</td>
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<tr>
<td>BCH</td>
<td>Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk</td>
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<td>BV</td>
<td>Bureau Veritas</td>
</tr>
<tr>
<td>CCS</td>
<td>China Classification Society</td>
</tr>
<tr>
<td>CMI</td>
<td>Comite Maritime International</td>
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<tr>
<td>COF</td>
<td>Convenience of Flags</td>
</tr>
<tr>
<td>COLREGS</td>
<td>Convention on the International Regulations for Preventing Collisions at Sea</td>
</tr>
<tr>
<td>CRS</td>
<td>Croatian Register of Shipping</td>
</tr>
<tr>
<td>CS</td>
<td>Classification Societies</td>
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<td>CSC</td>
<td>International Convention for Safe Containers</td>
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<td>CSI</td>
<td>Container Security Initiative</td>
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<tr>
<td>C-TPAT</td>
<td>Customs-Trade Partnership Against Terrorism</td>
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<td>DNV</td>
<td>Det Norske Veritas</td>
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<tr>
<td>DOC</td>
<td>Document of Compliance</td>
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<td>ESP</td>
<td>Enhanced Survey Program</td>
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<td>EU</td>
<td>European Union</td>
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<td>FOC</td>
<td>Flags of Convenience</td>
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<td>GL</td>
<td>Germanischer Lloyd</td>
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<td>HSC</td>
<td>International Code of Safety for High-Speed Craft</td>
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<td>IACS</td>
<td>International Association of Classification Societies</td>
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<tr>
<td>IBC</td>
<td>International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk</td>
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<td>ICS</td>
<td>International Chamber of Shipping</td>
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<tr>
<td>IGH</td>
<td>International Gas Carrier Code (IGC Code), Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk</td>
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<tr>
<td>ILLC</td>
<td>International Convention on Load Line</td>
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<td>ILO</td>
<td>International Labor Organization</td>
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<td>IMCO</td>
<td>Inter Governmental Maritime Consultative Organization</td>
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<tr>
<td>IMO</td>
<td>International Maritime Organization</td>
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<tr>
<td>IRS</td>
<td>Indian Register of Shipping</td>
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Chapter One

1. INTRODUCTION

1.1 General

From the time of their inception more than two centuries ago, Classification Societies, herein referred to as Class or Society, have played a major role in ensuring the safety of ships at sea. As one of the pillars of maritime safety, it has contributed immensely its wide technical expertise and long experience to the promotion of safer ships and cleaner seas. No other organization can lay claim to such capacity and forte to employ thousands of surveyors from a network of expanding offices in the application and enforcement of the highest technical standards of ship safety and pollution prevention.

The Class is the shipowner’s constant companion from the stage of initial design and construction in collaboration with the shipbuilder to the actual operation and continued maintenance of the ship throughout its service life. Thus, Classification Societies exert considerable influence and clout in ensuring that substandard ships are prevented from sailing and that only ships classed according to its rules and in conformity with the applicable national and international regulations are allowed to sail.

This commitment has remained constant from day one and has been formally recognized by more than a hundred IMO Member-States which had incorporated a majority of the basic Class Rules in their national legislation. The IMO on its part also recognized the vital role of the Class as stated in Chapter II-1 Reg.3-1 of the amended SOLAS Convention.¹

Expertise, experience and internationality have been the Classification Societies’ cornerstone in the effective pursuit of its safety goals. This is in contrast with the apparent lack of capacity and competence of the majority of Flag State Administrations which has led to CS being designated as recognized organizations.

¹ The EU has also recognized the vital contribution of Classification Societies. See Article 14 of Council Directive 94/57/EC.
tasked with performing statutory functions for and on behalf of Flag State Administrations along with the issuing of appropriate certificates.

The dual role of Class on safety encompasses the effective implementation of its Class Rules and at the same time the implementation of international and national legislation forming part of its statutory function. These statutory duties cover a wide range of areas in the safety and security regime of maritime regulations including the human element in maritime safety which has been totally absorbed by the classification society via its unified interpretations and procedural guidelines for the implementation of the ISM Code. The inception of security consciousness which produced the ISPS Code also saw Classification Societies assuming another new role as Recognized Security Organization of the Flag State.

While all these unfolding events in the maritime arena have created the impression that the Class is an extension of the Flag State Administration, certain questions have also arisen on the propriety and possible conflict of interest in the Classification Society’s performance of its twin roles as classification bodies and as agents of the Administration. The benefits of having a single organization performing both the classification work and statutory inspections are significant and complex. There are advantages and disadvantages. The ability to render impartial and independent class and statutory work remains the most important issue.

Liability issues related to the Class’ performance are equally intriguing. There is a diversity of opinion on this subject matter as Flag States have different contractual agreements with their recognized organizations. In fact, a Flag State may have a unique agreement with each of the Societies depending on the kind of statutory work it has delegated. The IMO and the EU has provided some guidance on the designation of Recognized Organizations acting on behalf of the Flag State Administration. Additional guidelines in the monitoring of performance of Classification Societies have also been developed. Some degree of uniformity in procedure has been achieved over time but the all important issues on the degree of

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statutory work delegated, levels of authority, and limits of liability are left to the individual agreements between the Flag States and Classification Societies.

It is hoped that this enquiry into the nature of classification work as continually evolving and influenced by the needs and requirements of Flag States will provide a clearer picture and understanding of the emerging position of the Class as an extension of the Flag State Administration.

1.2 The origin and role of Classification Societies

The history of Classification Societies dates back to the 18th century when people sharing a common interest in the operation of ships, i.e. ship owners, underwriters, shippers, and bankers gathered at a coffee-house owned by Edward Lloyd in modern Great Tower Street, London to receive information on ships. It was the ingenious coffee-house keeper who collected such information as ships’ age, characteristics, complement, etc, that were considered very valuable by the shipping businessmen of that day. It was probably the underwriter who had the greatest stake on the ship that he considered such inside information to be vital to his future business decisions. The parties concerned believed that this system of gathering and exchanging of information afforded the participants a greater degree of protection and security on ships. ³

The fundamental necessity for securing independent technical verification on the condition and seaworthiness of the ship led to the establishment of the Register’s Society in 1760 in London. A relatively crude method of classifying ships was instituted initially.⁴

Two basic principles emerged from that merger. First, it was considered that the governing body or the general committee should consist of representatives of all

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⁴ Ships were classified by letter and number according to their condition and were listed in a so-called “ Green Book” as determined by a committee of underwriters. Dissatisfaction by some shipowners due to allegations of discrimination on ships led to the creation of a separate register known as the “ Red Book “. These two registers continued to exist separately and in antagonism until 1834 when it was finally agreed to merge them and be known as Lloyd’s Register of British and Foreign Shipping as a tribute to Edward Lloyd. Ibid, at p.6.
maritime sectors such as shipowner, shipper, underwriter, etc. Secondly, a uniform standard for ship construction and subsequent maintenance should be adopted in the form of written rules. In the years that followed, other Classification Societies came into existence.\(^5\)

The backbone of any Society, and the foundation of all its expertise and functionality, is its individual body of rules. Although all Societies share a common goal of achieving a greater degree of maritime safety, each Society is free to develop its own Rules to achieve this end based on feedback received and years of in-service experience. The development of Class Rules\(^6\) was continually guided and influenced by the evolution of ships from wooden design to steel-hulled vessels and by the technology\(^7\) available at the time. Later on, as modernization occurred, the Rules were constantly upgraded to keep pace with advancements in technology and the requirements of the time.

The creation of Classification Rules also had the standard-setting effect of ensuring that safety standards were being applied from the time ships were designed, built, operated and maintained throughout their life. These standards which were published as Rules became the guiding light in the construction and operation of ships.\(^8\)

The areas generally covered by Classification Rules are structural strength and watertight integrity of the ship’s hull, and the safety and reliability of the

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\(^5\) Bureau Veritas (BV) in 1825, Registro Italiano Navale (RINA) in 1861, American Bureau of Shipping (ABS) in 1862, Det Norske Veritas (DNV) in 1864, Germanischer Lloyd (GL) in 1867 and Nippon Kaiji Kyokai (NK) in 1899. In years several others were established, including the Polish Register of Shipping (PRS) in 1936, China Classification Society (CCS) in 1956, Korean Register of Shipping (KRS) in 1960, Croatian Register of Shipping (CRS) in 1949, Russian Maritime Register of Shipping (RS) in 1932, and the Indian Register of Shipping (IRS) in 1975. See Ulf Freudendahl, DNV Senior Principal Surveyor, “Classification Societies”, Presentation at the World Maritime University, 23 January 2004.

\(^6\) The early development of classification rules started with the first technical requirements for wooden ships called “Rules for wooden ships” established in 1835 by Lloyd’s Register. Initially there was no mention of survey being conducted on ships while on construction. The safety relationship between freeboard and draft was first written in Lloyd’s Rule of 1835. In 1853, with the first rules for iron hulls, structural integrity of vessel, in place of age of vessel, became the basis of classification. The first in-works examination of production steel took place in 1855, while classification of propulsion machinery began in 1880. Class rules for steel ships were first drafted in 1888, and rules for oil-fired ships followed in 1898 --- just a year after the first steam turbine went to sea. See J.R.G. Smith, “Ship safety and pollution prevention: the regulatory regime”, London, IACS.

\(^7\) For instance, computer-based calculations and finite element methods were developed by DNV in the 1960’s. Supra, footnote 5.

\(^8\) The Classification Rules contained detailed requirements for: Materials; Ship structures; Main and auxiliary machinery; Control engineering system; and Electrical installations.
propulsion and steering gear, as well as the auxiliary systems built into the ship in order to establish and maintain basic conditions on board, thereby enabling the ship to operate in its intended service. The areas not covered by Classification Rules are the mode and power of the propulsion unit; ship operation standards such as manning and crew qualifications; navigational aids such as radar and IT equipment; lifesaving appliances and pollution prevention equipment. These areas fall under the responsibility of the shipbuilder, shipowner and the Flag State Administration.  

Concern for the seaworthiness and technical condition of the ship was not the sole interest of Classification Societies and private entities. Governments also had a major share of the responsibilities which were often much publicized as a consequence of major maritime disasters. In 1914, the first SOLAS Convention was drafted as a product of States’ increasing attention on matters affecting maritime safety and in reaction to the Titanic incident. In 1930, the Load Lines Convention was ratified by a majority of States attending the conference.

The States’ increased awareness and willingness to cooperate finally led to the establishment of the Inter Governmental Maritime Consultative Organization (IMCO) in March 1958 which was the precursor of the International Maritime Organization (IMO). Safety rules were then handed down in the form of Circulars, Protocols, Codes and Conventions which either had voluntary or binding effect on States party to the international instruments.

Prior to the establishment of IMCO, Classification Societies were beginning to realize the necessity of grouping together to provide a unified front in addressing certain issues and to protect their common interests. The first such conference of Classification Societies was hosted by Registro Italiano Navale in Rome, and was attended by representatives of the American Bureau of Shipping, Bureau Veritas, 

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10 A United Nations maritime conference was held in Geneva from 19 February to 6 March 1948 which culminated in a Convention establishing the Intergovernmental Maritime Consultative Organization (IMCO). It came into force on 17 March 1958. An amendment to this Convention in May 1982 renamed IMCO to the present International Maritime Organization (IMO).
11 The beginnings of the International Association of Classification Societies (IACS) can be traced to the International Conference on Load Line of 1930 which recommended that Societies recognized by Administrations under Article 9 of the Convention should confer from time to time with a view to securing as much uniformity as possible in the application of standards of strength upon which the freeboard is based.
Det Norske Veritas, Germanischer Lloyd, Lloyd’s Register and Nippon Kaiji Kyokai. It was agreed during this conference that further cooperation should be developed among themselves and that future conferences be convened as desirable. Surprisingly, it took 16 years before the next conference was held in Paris with Bureau Veritas as host. It was only in 1968 that a formal organization known as IACS was established in Oslo, Norway with seven Societies as founding members. At present there are 13 IACS members of which 3 are associate members.

The Societies’ wide-ranging technical knowledge of the world fleet enables them to make a unique contribution to international shipping safety and maritime regulation. From their global experience, office networks and records of in-service experience of thousands of ships that they class, Classification Societies have an unrivalled technical understanding of the world’s classed merchant fleet. There is in fact no equivalent to the Class that can provide shipowners, shipbuilders, charterers, insurers and financiers with a high level technical service that covers all merchant ships from design and construction to the end of their operational lives.

Their dual role allows them to deliver classification services by providing third party engineering analyses, followed by periodical verification of the ship’s hull structure and mechanical and electrical systems, and at the same time providing statutory certification in accordance with various international and national requirements on behalf of Flag Administrations. It also acts as an impartial and expert third party facilitating the safe and efficient operation of an industry complicated by its international character and its many diverse interests. Through their extensive manpower resources, expertise and technology, Societies are able to undertake surveys, maintain records and conduct the technical reviews necessary to fulfill the requirements of the various IMO conventions.

The continuing quest for a higher level of ship safety as affected by the ever changing pace of technology and modernization has prevented the Class from

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13 For a complete list of IACS members and IACS structure and organization, see http://www.iacs.org.
14 International Association of Classification Societies, A Unique Contribution to Safe Shipping and Clean Seas, England: Permanent Secretariat.
assuming a complacent attitude as evidenced by their huge investments in research and development.\textsuperscript{16} Annual investments on research amounts to $70 million. Research into ship structural and engineering design and other safety aspects have contributed immensely to the creation of new and the updating of existing Class Rules to keep abreast of modern day challenges. Within IACS, various safety initiatives\textsuperscript{17} have been adopted such as the Enhanced Survey Program\textsuperscript{18} (ESP) and the Quality System Certification Scheme (QSCS).

Because of their distinctive character of independence, integrity and impartiality, in addition to being non-governmental and non-profit-making bodies, the Class have been recognized by the IMO as a potent force in the application of the highest standards of safety in the maritime industry. Proof of which is the granting of a consultative status to IACS in the IMO in 1969 and being the only non-governmental organization with observer status capable of developing rules.\textsuperscript{19}

In modern times, Societies have ventured out into other areas of the service-providing business.\textsuperscript{20} The leading Societies have for some time offered certification services on management systems such as ISO in addition to the ISM Code. Under the new security regime, Classification Societies have assumed the role of Recognized Security Organizations under the most recent ISPS Code. Others have ventured into the more recent risk assessment and consulting services.\textsuperscript{21}

\textsuperscript{16} See however, Dr. Helmut Sohmen “\textit{Differences in Class}”, Bimco Review 1997, p. 103 where he mentions that tradition, pride, the occasional threat that the IMO or governments might step in, and a degree of self-preservation are the main inducements for the Class to maintain above average standards of technical competence.

\textsuperscript{17} Safety initiatives include: Transfer of Class Agreement; Transparency of classification and statutory information; Procedure for suspension of class; Procedure for employment and control of non-exclusive surveyors; Procedure for Surveyor Activity Monitoring; Procedure for Qualification and Training of Surveyors; Procedure for Responding to PSC and Procedural Guidelines for the Implementation of the ISM Code.

\textsuperscript{18} The Enhanced Survey Programme requires pre-planning of periodical classification surveys, minimum requirements for thickness measurement and close-up survey of suspect areas which increase in stringency with age and mandatory maintenance of onboard documentation including survey records.

\textsuperscript{19} \textit{Supra}, footnote 9 at p. 128.

\textsuperscript{20} Technical advisory services are now available to shipowners and operators on a variety of topics such as: International conventions and national regulations; Statutory surveys and certification; Ship manoeuvring characteristics; Hull and performance monitoring; Contingency planning; Ocean Towage; Mooring and anchoring; etc.

\textsuperscript{21} See “\textit{DNV offers integrated consultancy}”, Lloyd’s List, 26 October 2000.
Chapter Two

2. CLASSIFICATION SOCIETIES AND THE INTERNATIONAL LEGAL FRAMEWORK

2.1 IMO and the Classification Societies

Shipping is perhaps the most international of all the world's great industries and one of the most hazardous. It has always been recognized that the best way of improving safety at sea is by developing international conventions that are followed by all shipping countries. From the mid-19th century onwards a number of such treaties were adopted. Several countries proposed that a permanent international body be established to promote maritime safety more effectively, but it was not until the establishment of the United Nations itself that these hopes were realized. In 1948 an international conference in Geneva adopted a convention formally establishing IMO\(^2^{22}\) (the original name was the Inter-Governmental Maritime Consultative Organization, or IMCO, but the name was changed in 1982 to International Maritime Organization (IMO))\(^{23}\).

Over the years, the IMO has produced around 40 international Conventions and Protocols in its work on maritime safety and pollution prevention. In addition, over 800 Codes and Recommendations have been developed for use by the 164 \(^{24}\) IMO Member States. Although Codes, Guidelines and Recommendations are not mandatory unlike international Conventions, they nevertheless provide additional guidance and reference for Flag States especially for those who have incorporated them in their national legislation. \(^{25}\)

The international instruments developed by IMO address in detail safety aspects other than hull structures and essential shipboard engineering systems. It is the classification that embodies the technical rules, regulations, standards,

\(^{22}\) The purposes of the Organization, as summarized by Article 1(a) of the Convention, are " to provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships ".

\(^{23}\) Supra, footnote 9 at p. 59.

\(^{24}\) The number of IMO Member States increased to 164 with the accession of Kiribati in 2003.

\(^{25}\) Dr. P.K. Mukherjee, Maritime Law lectures at the World Maritime University, Malmö, Sweden.
guidelines and associated surveys and inspections concerning the design, construction and through-life compliance of a ship’s structure and essential engineering and electrical systems. 26

The IMO has recognized the Classification Societies’ leading authority and expertise in ship structural and engineering design, construction and maintenance standards, which was first referred to in the 1966 Load Line Convention. 27 Another manifestation is in Chapter II-1, Reg. 3-1 of the SOLAS Convention. 28 In exercising this function and dealing with the structural strength of ships for classification purposes, Classification Societies have through the years consolidated their experience and expertise way beyond the capacity of the Flag States. Thus, it has been part of custom that requirements dealing with the Load Line Convention have been delegated to the Classification Societies. 29

To avoid duplication, IMO does not make class regulations and Classification Society does not duplicate the International Conventions by making separate rules for stability aspects or for safety aspects such as fire safety, lifeboat, liferaft, lifejackets and other life-saving appliance, or for navigational aids, lights and sound signals, radio equipment and pollution prevention equipment. 30

It is notable that IMO’s safety regulations and the Classification Societies’ class rules provide an overlapping and complementing relationship for increased maritime safety and pollution prevention. It is the ship that is in compliance with the requirements under both regimes which may be considered as possessing the minimum acceptable standard for ship safety and pollution prevention.

2.2 Delegation provisions under the Conventions

The industrial revolution of the 18th and 19th centuries and the upsurge in

26 Supra, footnote 14.
27 Reg. 1 of LOADLINE states that “Ships built and maintained in conformity with the requirements of a Classification Society recognized by the Administration may be considered to possess adequate strength”.
28 Reg. 3-1 of SOLAS states that “…ships shall be designed, constructed and maintained in compliance with the structural, mechanical and electrical requirements of a Classification Society…”
29 Supra, footnote 9 at page 209.
international commerce which followed resulted in the adoption of a number of international treaties related to shipping, including safety. The subjects covered included tonnage measurement, the prevention of collisions, signaling and others.

By the time IMO came into existence in 1958, several important international conventions had already been developed, including the International Convention for the Safety of Life at Sea of 1948, the International Convention for the Prevention of Pollution of the Sea by Oil of 1954, a treaty dealing with load lines and rules for the prevention of collisions at sea. ^{31} Through the years, the major IMO conventions have received widespread ratifications and are considered to have acquired the status of customary international law.^{32}

Inspite of these developments, IMO has for long recognized the onerous burden on Flag States in the performance of their obligations under the myriad international Conventions. It is this recognition of the enormous responsibilities under the Conventions and the varying capacities of Flag States to perform them that have resulted in the incorporation of certain clauses in the Conventions authorizing Flag States to delegate some of its duties to the recognized organizations.^{33}

In this respect, the traditional role of Classification Societies has changed to include a greater involvement with statutory surveys and certification of ships, as an agent of the Flag State Administration and in accordance with international Conventions. This involvement has allowed Classification Societies to effectively and efficiently cover an increasing number of matters related to safety which they have not previously dealt with. Statutory surveys are those prescribed by the following international instruments:

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^{31} See “Conventions” at http://www.imo.org/home.asp.

^{32} Appendix A shows the rate of ratification for some of the major Conventions. For a complete listing of IMO Conventions and Member States which have either signed, ratified, accepted or acceded to the Conventions see Status of Conventions – complete list at http://www.imo.org/home.asp.

^{33} Under the provisions of Regulation 1/6 of SOLAS 74, Article 13 of Load Line 66, Regulation 4 of Annex I and Regulation 10 of Annex II of MARPOL 73/78 and Article 6 of Tonnage 69, Flag States may delegate duties to recognized organizations for carrying out surveys and issuing certification as required under the Conventions on their behalf.
• International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 74)
• Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended
• Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended (MARPOL73/78)
• International Convention on Load Line, 1966 (ILLC)
• International Convention on Tonnage Measurement of Ships, (Tonnage 1969)
• Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREGS 1972)
• International Code of Safety for High-Speed Craft (HSC Code)
• International Gas Carrier Code (IGC Code), Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk
• International Convention for Safe Containers(CSC, 1972)

2.3 Relationship with the Flag State

As mentioned earlier, it is the Flag State which bears full responsibility for the overall development and implementation of safety regulations.34 The ability to perform its duties as stipulated under the international Conventions is always a sensitive issue for Flag States. For some time there had been a growing concern within the IMO that maritime accidents still occur despite the number of safety regulations already developed. This situation was later traced to the difficulties encountered by the Flag States in the implementation of the various IMO Conventions35 leading to the creation of the IMO’s Sub-Committee on Flag State Implementation and Resolution A.847(20) and the “Guidelines to assist Flag States in the implementation of IMO instruments”.

34 See “IMO standing firm on deadline: Countdown to ISM”, Lloyd’s List, 11 May 1998.
In trying to implement the prescribed international and national regulations on safety for ships flying its flag, Flag States often bear the difficulties of exercising full and continuous control over its ships which do not regularly call at their homeports. This is especially true for ships engaged in purely international voyages. In such situations, it is difficult and costly for the Flag State Administration to send inspectors overseas or to establish field inspection offices at each major foreign port.

In addition, it is widely recognized that most Flag State Administrations do not have the capacity to perform all the requirements under the Conventions. A comprehensive and credible enforcement of international and national safety standards can put considerable strain on its supply of personnel and resources.

Even if the Administration has enough resources or is widely developed, it is not possible to hire the necessary expertise to do all the various kinds of qualified technical evaluations related to ship safety. The complexity and depth of expertise and manpower resources of a Classification Society could not realistically fit in the limited plantilla of the government service.

The development of the Flags of Convenience (FOC)\(^36\) which came about as a result of the pressures on American shipowners to remain competitive, has further raised the already enormous burden on the shoulders of the Flag States in the implementation of international safety standards due to the sudden influx of a large number of shipowning countries willing to register their ships under the FOCs. As a result of the Flag State’s inability to administer and regulate its mushrooming fleet, Classification Societies became increasingly involved in providing the necessary statutory services.\(^37\)

With its global network of resources and unrivalled technical expertise, Societies have been inevitably tasked by Flag States to perform statutory duties on its behalf. As an independent group of technical think-tanks and professionals, Classification Societies have the unique character of providing a world-wide service

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\(^{36}\) Flag of Convenience is defined as a flag of a country other than its own to which a shipowner transfers the registration of his ship for tax reasons or in order to avoid the safety provisions required of ships sailing under the flag of his own country. See E.R. Hardy Ivamy, “Dictionary of Shipping Law“, London: Butterworths, 1984.

to the maritime industry in the uniform international implementation of maritime safety rules and regulations.

The Flag States’ powers of delegation have their roots in the Conventions themselves. It is a mechanism for convenience and at the same time a vehicle for ensuring that international regulations are effectively complied with by Flag States. Flag States need to establish agreements with the Classification Societies it has recognized in accordance with the guidelines issued by the IMO:

Conventions provide the basis while Guidelines contain details regarding authorization of recognized organizations acting on behalf of the Administration. However, it is the Administration that has to determine which of the international obligations it is willing to delegate to the recognized organizations. It has been the practice of Flag State Administrations to delegate surveys pertaining to Load Line and the Cargo Safety Construction Certificate while retaining other functions such as the issuance of the Safety Equipment Certificate, Mandatory Annual Surveys and ISM audits to its pool of surveyors. The degrees vary among States.

Even in cases where the Class acts on behalf of the Flag State Administration and advises on an appropriate action in a given set of circumstances, decisions pertaining to policies remain within the remit of the Flag State Administration. Where a breach of a regulation requires the application of sanctions, it is beyond the competence of the Class; this is more appropriately addressed by the Administration. Furthermore, delegation to Classification Societies does not relieve the Flag State Administration of its responsibility for enforcing safety regulations. International conventions stipulate that, in every case, the Administration shall fully guarantee the completeness and efficiency of the inspection and survey and shall undertake to ensure the necessary arrangements to satisfy this obligation.

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38 The IMO Guidelines relating to the Agreement between the Flag States and the Classification Societies are: Res A.739(18) – Guidelines for the Authorization of Organizations acting on behalf of the Administration; Res A.789(19) – Specifications on the survey and certification functions of recognized organizations acting on behalf of the Administration; MSC Circ. 710 / MEPC Cir. 307 – Model Agreement for the Authorization of Recognized Organizations acting on behalf of the Administration; and MSC Cir 788 / MEPC Cir 325 – Authorization of Recognized Organizations acting on behalf of the Administration.


40 See Mitsuo Abe “Classification Societies: Their role, duties and responsibilities” Bimco Review 2000, p.116
Aside from determining which obligations under the international conventions and national legislation may be delegated to the Class, Flag States must also decide which Societies are to be recognized in their jurisdiction. There are regulatory, commercial and political dimensions in this decision. A Flag State should base its choice depending on the operational and performance standing of each Society. Such criteria as record of performance, network of offices, level of expertise, credibility and quality systems, etc. should be considered. The Administration may also wish to consider the service the Class is prepared to provide such as dealing with temporary non compliance with the regulations following a casualty, the interpretation of Conventions and assistance in the issuing of exemption where this is left to the discretion of the Administration, the approval of equipment on its behalf, the survey of unclassed ships, and the provision of information readily on request.

In addition Flag States should seriously consider the shipowners’ right to choose its own Class to perform class surveys and statutory work required under the international conventions and national regulations. It is sufficient that Flag States enjoy the prerogative of choosing which Class to delegate statutory functions with the careful thought that it may not wish to create a monopoly of classification services and provide a healthy environment for class competition and a wider choice. It would not be conducive to the commercial interest of the shipowner and too onerous for him if he is not given some freedom to engage the Classification Society of his choice to perform class surveys and statutory work. Not being afforded a choice would entail an additional burden for the hapless shipowner if he is compelled to pay and deal with several Classification Societies. Thus, Flag States need to exert extra effort to identify which Societies are associated with which shipowner and ensure a delicate balance between the choice of an efficient recognized organization and the shipowners’ penchant for economy, convenience and ease of operation.

Another major consideration in the recognition of Classification Societies is the political factor. In some cases, the choice or recognition of a Classification Society...
Society is dictated by the principle of reciprocity where two States may come to an agreement on a mutual recognition of their national Classification Societies.42

The Agreement between the Flag State and the CS is a private contract between the two parties. Under the principle of freedom of contract, the parties may introduce provisions in addition to those which are recommended under the IMO’s Model Class Agreement43. Thus Flag States and CS are free to negotiate on issues pertaining to levels of authority, degree of delegation, reporting procedures, access to information and limits of liability44 among others.

2.4 Relationship with the Port State

The obvious relevance of Port State Control cannot be overemphasized.45 As part of the safety chain in the maritime world it is in fact considered as the last “safety net”.46 Where the shipowner has reneged on his duties to maintain a seaworthy ship due to a variety of reasons and where the Flag State Administration has defaulted on its mandate to ensure quality shipping47 due to the complexities of personnel and skills shortage, Port State Control remains as the last bastion of hope for ensuring that substandard ships are prevented from sailing.48 In this respect, port states have one powerful tool which they can exercise which is the ability to board vessels to prevent or interrupt unsafe operations and detain vessels.49

43 See Appendix B, IMO Model Class Agreement.
44 Supra, footnote 40.
45 See however footnote 34, where limitations of PSC are mentioned. Ships spend only a short time in port. PSC inspectors do not have access to records of construction. Problems include limited physical access to the structure of the ship and the system of “spot check” where not all the ships in port are checked.
46 See Dr.Z. Oya Ozcayir, “Port State Control” at http://denizhukuku.bilgi.edu.tr/doc/Oya%20ozcayir%20article.doc.
47 See W. Brial, “Port State Control on Non-Convention Size Ships” p. 4., where it says that the growing need for Port State Control is a reflection of the failure of the other tiers of implementation of safety standards, such as Flag State responsibilities, Classification Society standards, owner/operator responsibilities and the chartering and insurance industries.
The efficiency of PSC is influenced to a great extent by the amount of cooperation it receives from Flag States, the shipping industry, international organizations such as IMO, other PSC organizations and MOUs\(^{50}\) and the Class.

The Classification Societies’ fleet knowledge and inspection expertise allows them to interface with Port State Control operations. This cooperation allows Port States to verify the condition of foreign ships calling at their ports and their compliance with the established international conventions. Improved access to class data and a wide range of assistance available to PSC inspectors are some of the programs undertaken by IACS since 1996. They have also adopted the Procedures for PSC which define the cooperation and assistance of surveyors during PSC inspections such as providing PSC inspectors with relevant information and details of outstanding conditions of class and statutory items.

Another area of collaboration is in the training of PSC inspectors. Such collaboration attempts to enhance the skills of PSC inspectors in conducting careful inspections in mutual areas of interests. IACS members are more than willing to provide training support to PSC authorities to clarify and review the interrelationships between international conventions and established class rules. They have also assisted the IMO in the development of Regional PSC Regimes. Their close cooperation with the Tokyo Memorandum of Understanding (MOU), Paris MOU and the USCG allows prompt response to PSC queries in cases of ship deficiencies and detentions.

In cases of detentions, the Society concerned undertakes to cooperate fully in the process of correcting any class-related deficiency. This intervention, however, should not be construed as the Society’s undertaking to bear the expenses for the rectification of the class-related deficiencies noted. The Society is not empowered to direct financial expenditures necessary to correct any deficiency found.\(^{51}\) It is still the shipowner who must shoulder the costs of correcting those deficiencies which have

\(^{50}\) A PSC MOU or Memorandum of Understanding is an administrative agreement among maritime authorities from different countries for the uniform implementation of Port State Control inspections. This cooperative measure among Port States is aimed at eliminating substandard ships through the consistent application of IMO and ILO Conventions. The first PSC MOU established is the Paris MOU in 1982. Currently there are eight regional MOUs.

\(^{51}\) *Supra*, footnote 49 at p.130.
led to the detention. It is therefore of paramount importance that before attending to the detention, the shipowner is duly informed about the intentions and functions of the Classification Society.

On the other hand, the Class may only represent the vessel's Flag State Administration in cases where the nature of the deficiencies noted are of those originating from statutory services as delegated to the Class concerned. This depends primarily on the level of authorization given by the Flag State to the Class. Some Flag States require specific authorization for the Society to act on its behalf especially on cases falling beyond the scope of the formal agreement. 52

The Transfer of Class Agreement (TOCA) which was part of the safety initiatives initiated in 1995 also allowed CS to provide relevant information on transfers of class on a weekly basis in detail to a number of PSC organizations such as the Tokyo MOU, Paris MOU and the USCG. This provision of information reporting supports the PSC’s efforts in the continued monitoring of substandard ships by opening up the TOC database to PSC.

2.5 Classification Societies and other industry players

The Classification Society is but a single element in the maritime safety chain. 53 While Class plays a considerable role in the promotion of the highest standards of technical safety, the buck stops with the shipowner. It is still the shipowner who bears the ultimate responsibility for operating, maintaining and keeping the ship safe, secure and efficient. 54

Measures intended to achieve a higher level of ship safety can only find realization through the cooperation extended by the shipowner to the Class. As a service providing organization, the Class is hired by the shipowner to assure that the

52 See however “Giving Flag States a Helping Hand”, Fairplay, 01 Aug 2002, at http://www.fairplay.co.uk where legislation was enacted in Cyprus to allow IACS members to act on behalf of the government in any case of PSC detention.
53 Shipowners, shipbuilders, equipment manufacturers, underwriters, P&I clubs, charterers, Flag States, Port States and ship financiers all contribute to make ships safer and to prevent marine pollution.
54 See however “Legal Focus : Enforcing the ISM Code “, Lloyd’s ‘List, 01 July 1998 where it says unfortunately there are shipowners who avoid regulations and show more interest on profit irrespective of safety
design, construction and equipment of the ship conforms to the established classification rules and international safety regulations. It is through the proper operation and maintenance of the ship that the shipowner is able to keep it in class. Anything below the standard set or any infraction of the rules may lead to a suspension or deletion of class as the case may be.

This partnership between the shipowner and the Class, however, is not devoid of pressures. Regrettably, there have been cases where Societies has been pressured to compromise safety standards in order to save on costs. The early 80’s saw a remarkable decrease in steel weights and scantlings of ships due to the prevailing commercial pressures at the time. Although this may be partially due to inter-class competition, it was widely believed that such measures were undertaken in order to lure shipowners whose priorities were minimizing expenses.

An OECD study in 1996 stated that an owner of a typical 20-year-old bulk carrier needs to spend as much as US $7,500 / day to safely operate a ship with the highest standard of safety. If he wants to operate the ship with the bare minimum standard allowable under the IMO Conventions, then he needs to spend a lesser amount of US $3,250 / day. Surprisingly, the same ship can be operated at a cost of US $2,750 but below the prescribed international standards. Thus, the shipowner can realize savings of US $500 / day or US $182,500 / year for operating a substandard ship.

The charterer is another party which may have an indirect relationship with the Class. At present, charterers base their decisions in choosing vessels on the knowledge, experience, market factors and the relationships they may have forged with the various shipowning companies. Recent developments now show an increasing reliance of this group on the more practical information on the ship such as its class. Charterers can and will help improve standards by discriminating in favour of well built, well maintained ships, if reliable information is readily available to

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56 See “Flag States urged to standardize and publish inspection results”, Lloyd’s List, 20 November 1996.
them. But in order to gain more information on a vessel's condition in class, the charterers may have to engage the services of a Classification Society. 58

Banks and other financial institutions also have a unique role in encouraging a higher standard of marine safety by discriminating against substandard ships. Experience has shown that loans may be difficult to secure or premiums may be too high for ships which have lower safety ratings. Insurance companies have a disdain for unclassed ships or those with unsatisfactory safety records. Insurance companies and banks frequently request the services of Classification Societies to provide them with a better appreciation of the technical condition of a ship.

Such is the commitment of Classification Societies to the promotion of the highest standards of safety and quality that has produced a contagious recognition throughout the entire maritime industry. Even cargo owners and shippers have been made to believe that everything stamped with the seal of the Classification Society is associated with safety and quality. It is no wonder that the Class exerts a wide sphere of influence over other sectors of the industry. This is not at all surprising since the governing bodies of the 8 major Classification Societies themselves are composed of a cross-section of the entire industry. 59

The important role that Classification Societies perform in promoting the highest standards of ship safety has been recognized by the other players in the maritime industry and this recognition has encouraged further collaboration among them over the years. This is consistent with the view that within the maritime industry no one party is able to dictate, direct or deliver improvements on its own. 60 It is up to the responsible members of the entire industry to come together and collaborate on efforts to improve standards on shipping operations.

59 Supra, footnote 13.
60 See James Bell “ Current developments in Classification “, Bimco Review 96 at p. 124.
Chapter Three

3. CLASSIFICATION SOCIETIES AND THE HUMAN FACTOR

3.1 Human Factor in maritime accidents

The international regulatory bodies and other traditional guardians of ship safety including the Classification Societies have for a long time concentrated their work on ship design and construction and on the monitoring of the condition of ships in service. The various Conventions and Codes contain prescriptions relating to the technical aspects of ship safety. The safety programmes implemented by international organizations, States and the maritime industry in general have devoted 80% of available resources to technical and technological solutions, leaving only 20% for issues related to human beings.\(^{61}\) The Classification Rules themselves have concentrated on the structural design of the ship, its machinery and its equipment.\(^{62}\) But an analysis into the causes of maritime accidents reveals that at least 80% of the incidents were caused by human error. (See Figure 3.1)

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\(^{61}\) *Supra*, footnote 9 at p.287.

In 1996, the United States National Technical Information Service developed a comprehensive database featuring the human element contribution to maritime accidents with the following sources of information:

- UK Department of Transport – Report revealed that 90 percent of collisions and 75 percent of fires and explosions occurring in the British merchant fleet between 1970 and 1979 were caused by human error.
- Australian Department of Transport and Communication – Almost three quarters of the accidents investigated in the previous ten years were due to human error.
- United States Coast Guard – A report on accidents for the period 1983 to 1993 showed more than 80 percent were attributed to human error.
- German Institute of Shipping Economics and Logistics – Showed that 75 percent of accidents resulted from human error from an analysis of 330 accidents from 1987 to 1991 involving 481 ships.
- Canadian Transportation Safety Board – Showed 84 to 88 percent of tanker accidents between 1975 and 1992 were caused by human factors.
- United Kingdom P & I Club – Analysis of claims revealed that 60 percent of accidents were due to human error and 90 percent of all claims following collisions.

Despite the myriad safety rules that abound in the maritime arena, it is still the shipboard personnel that is the master and the crew who determine the actual safety condition of the ship during its entire service life. History has shown that double hulls, high-tensile steels, elaborate and sophisticated bridge designs and advanced firefighting systems have not guaranteed 100% safety. There is simply a limit to which technical solutions can contribute to safety. An incompetent or insufficiently trained crew can instantly turn an otherwise safe ship into a floating time bomb waiting for disaster to happen.

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63 For details on the human element contribution to maritime accidents see [http://www.ntis.gov/](http://www.ntis.gov/).
Human-related safety problems demand human-centered solutions. By being at the centre of things, the shipboard personnel are constantly affected by the developments and prescriptions caused by the factors surrounding them such as the environment, organization and the technology. (See Figure 3.2)

![Figure 3.2](image)

( Source : Dr. Jens-Uwe Schröder, “The IMO/ILO Approach to Human Element Investigation in Marine Casualties” )

The performance of the shipboard personnel is influenced by the knowledge, skills, abilities, memory, motivation and alertness of the individuals on board. The environmental factors affecting the personnel are: temperature, noise, sea state, vibration, regulations, economics, physical and mental performance, fatigue and risk-taking. The organization or the company to which an individual belongs may also exert some influence on his performance and behaviour. Organizational factors include: work practices, teamwork, risk-taking, work schedules, crew complement, training, communication and safety culture.65 Lastly, technological factors also determine the mental and physical disposition of the seafarer such as anthropometry, equipment layout, information display and ergonomics.66

Although human error accounts for about 80% of the causes of maritime accidents, the nature of fault is very often a combination of human and

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66 Ergonomics deals with the interaction between the human being and his occupational environment. See http://www.ergonomics.org.uk/ergonomics/definition.htm for definition by the Ergonomics Society.
organizational failures. Factors leading to human and organizational failures are listed below. (See Table 3.1 and 3.2)

<table>
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<tr>
<th>FACTORS : HUMAN FAILURE</th>
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<tr>
<td>Fatigue</td>
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<td>Negligence</td>
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<td>Ignorance</td>
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<td>Greed</td>
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<td>Folly</td>
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Table 3.1

<table>
<thead>
<tr>
<th>FACTORS : ORGANIZATIONAL FAILURES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time pressure</td>
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<tr>
<td>Cost / Profit</td>
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<td>Rules &amp; Regulations</td>
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Table 3.2

(Source for Fig.4&5 : Dr. Hans Payer, “The Human Factor in Ship Safety “, Bimco Review 1996)

Serious casualties are usually preceded by more frequent, less noticeable accidents or near misses. Often they are due to omissions, misunderstandings, misconduct and underestimates of hazardous situations. It is said that one fatality results out of every 2,000,000 unsafe acts (See Figure 3.3)

(Source: “Cracking the Code”, Nautical Institute)

Figure 3.3

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While most people in the maritime industry have accepted the 80% ratio for human-error related accidents, others would support a more radical view that the percentage of accidents related to the human element should be 100%. This is so because all the activities pertaining to the design, construction, operation and maintenance of the ship are under the control and supervision of the individual. The human activity spans all areas directly and indirectly involved with ship operation such as weather forecasting, management decisions, calculated risks, etc. Even the use of modern day computers have traces of operator involvement and control. Only when future technologies can create computers capable of making intelligent decisions on the safe operation of a ship can the human element be totally or partially excused from its responsibility for keeping the ships fit for their intended use.

3.2 IMO focus on the Human Element

The series of ferry accidents in the 1980s notably the *Herald of Free Enterprise* disaster in 1987 which took the lives of 195 passengers and crew led to mounting criticisms of poor management standards in shipping. Investigations into these casualties revealed major flaws in the way ships are managed. These led the IMO to introduce new measures and guidelines aimed at addressing the human element dimension in maritime accidents.

In 1993, after some revision with the previous guidelines, IMO came up with Resolution A.741(18) effectively adopting the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code). Whereas previous maritime safety regulations have focused on the hardware side of ship operation, the trend has been to consider the human aspects in ship management. The ISM Code which was included in the SOLAS Convention as Chapter IX became mandatory in 1998 with the last amendments coming into force last July 2002.

Aside from the ISM Code, the Joint Working Group on Human Element and Formal Safety Assessment IMO developed other initiatives such as the Code for

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Marine Accident Investigation, Shipboard Emergency Plans and the Formal Safety Assessment. Other IMO efforts towards the promotion of the human factor include:

- Joint IMO – ILO action on human element particularly in addressing fatigue and in investigating human factors in maritime casualties
- Joint MSC – MEPC working groups
- FSI subcommittee
- STW subcommittee

In July 1995, STCW 1978 which was the first international instrument to prescribe the standards for seafarer training, certification and watchkeeping went through a major revision in response to a recognized need to keep it up to date and to institute measures aimed at ensuring that Flag States are giving full and complete effect to the Convention. Part of the changes are in assessing seafarer competence from the perspective of knowledge-based to performance based and by adopting methods for demonstrating competence and criteria for evaluating competence.

At its 20th session in Nov 1997, the IMO Assembly adopted Res A.850(20) on the Human Element Vision, Principles and Goals for the Organization. This acknowledged the need for increased focus on human-related activities in the safe operation of ships, and the need to achieve and maintain high standards of safety and environmental protection for the purpose of reducing maritime casualties.

### 3.3 STCW 95 and its implications

By the 1980s and early 1990s investigations on shipping casualties and pollution incidents and public inquiries into shipping disasters repeatedly identified human error in the operation of the ship as the major contributory factor. This further eroded any remaining confidence in the value of STCW 78. Member States of the IMO and the members of the shipping industry were one in calling for immediate drastic measures to be taken in an international level. Even the media highlighted the urgent need for uniform action to address the human error aspect in accidents.

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70 Full text of the IMO’s Human Element Vision, Principles and Goals can be found at [http://www.imo.org/home.asp](http://www.imo.org/home.asp).

At the sixty-first session of the MSC in December 1992, it instructed the STW Sub-Committee to undertake preparatory work for the comprehensive review of the 1978 STCW Convention.72

Conscious of the various flaws and weaknesses in the original STCW 78 Convention, the drafters of the 1995 amendments73 carefully noted the compromises previously made particularly on the wide-ranging flexibility and responsibility for determining standards which was left to the discretion or satisfaction of the Administration.

In effect, STCW 95 provided a more uniform implementation of standards for seafarers’ training, certification and watchkeeping by removing the flexibilities and ambiguities inherent in the previous Convention. At the same time, the amendments have promoted greater uniformity of application among Flag States by imposing strict obligations upon parties regarding implementation of the Convention’s provisions with a view to ensuring that certificates of competency issued by national administrations meet the requirements of the Convention. In particular, parties are required to provide detailed information to the IMO concerning administrative measures taken to ensure compliance with the Convention by establishing that they have the administrative, training and certification resources necessary for its implementation, thus enabling one Flag State to place reliance or recognition on certificates of competency issued by another State.74

This recognition regime for certificates under the STCW 1995 Convention has produced considerable ramifications on the maritime education and training and certification aspect related to the implementation of the Convention, part of which is the obligation of a recognizing State to confirm through inspections of facilities and procedures that the issuing State has fully observed the requirements pertaining to standards of competence including the issue and endorsement of certificates and the proper maintenance of records. This provision although it was well meant can put so much pressure on the already limited resources and personnel of the Flag State

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72 It is to the credit of the former IMO Secretary General William O’ Neil that the process of amending STCW 78 was greatly expedited.
73 For more info on the aims of the 1995 amendments, Supra, footnote 71 at pp.24-25.
Administration. It is submitted that this provision is not cast in stone or mandatory per se. However there are no other means in sight to achieve the objective. A solution offered by some scholars is through the use of cooperative agreements through groups formed regionally or through the mutual exchange of reports.\textsuperscript{75} This is also an area where Classification Societies can contribute their network of resources and expertise and it is only a matter of time when more Societies will start performing assessments of training programmes and issue the necessary certification\textsuperscript{76}.

A very important feature of the STCW 95 Convention is that for the first time it allowed the IMO to assume a direct role in monitoring and ensuring compliance of the State parties to STCW 95 Convention. Started in August 1, 1998, State Parties were required to submit evidence that they have given full and complete effect to the Convention for evaluation of the Imo and inclusion in the so-called “White List”.

The effects of STCW 95 in promoting the significance of the human element will continue to be felt within the industry. Flag States especially the labour-producing States need to constantly upgrade the standards of training and certification of their seafarers. Classification Societies will also have to recognize the human element implications of the Convention and harmonize the rules they make and the services that they offer.\textsuperscript{77}

3.4 ISM Code and its impact on maritime safety

The ISM Code came into existence in 1993 as Res. A.741(18), following two previous Res. A.647(16) and A.680(17). In 1994 IMO adopted a new chapter IX to the SOLAS Convention which made the Code mandatory for passenger ships from


\textsuperscript{76} DNV has started offering certification for seafarer training programmes. See “DNV to class crews”, Fairplay, 06 Nov 2003 at http://www.fairplay.co.uk

\textsuperscript{77} Bureau Veritas introduced its voluntary crew certification scheme covering the following areas: quality assurance systems applied by training agencies, standards adopted by shipowners for initial and further training, individual assessments by training agencies under the superintendence of the CS and shipowners’ further training scheme. See Pierre de Livois, “Towards a Total Safety Concept”, Bimco Review 1996 at p.144. In the case of DNV, it has started its Certification for Competence Management Systems under its SeaSkill Standard for Certification of Learning Programmes and Standards for the assessment and certification of training courses delivered in the Asia Pacific Region. For details see DNV News at http://www.dnv.com
July 1, 1998. All other ships including cargo ships and offshore mobile drilling units were covered beginning last July 1, 2002.

The Code’s origins go back to the late 1980s when there was mounting concern over the spate of high profile incidents involving ships that were sufficiently manned by qualified crews and technically complying with convention standards and classification rules. The resulting investigations into these accidents revealed major errors on the part of management. The Herald of Free Enterprise disaster in 1987 reinforced the belief on the deficiencies in the management and operation of ro-ro passenger ferries. 78

It was quite perplexing for the Administrations to note that despite the obvious number of international safety regulations, sea mishaps particularly on ro-ro passenger ferries would still continue to occur. Thus, there was an urgent need to examine the deficiencies and weaknesses behind shipboard and shore-based management or simply put, the ship-company79 relationship.

The ISM Code was therefore adopted to provide a blueprint for the way shipping companies manage and operate their ships and to promote the development of a widespread safety culture and environmental conscience in shipping. By defining the company’s responsibility for safety and ensuring that senior management were committed to enhanced safety and environmental protection and could more easily be held accountable keeping in mind that safety should be given top priority.

The philosophy behind the Code is to reduce to the greatest possible extent uncertainties about duties and responsibilities, the flow of information and communication, and to establish clear procedures for action in case of emergencies80. Likewise measures to comply with the Code need to be documented and kept open for verification by the Flag State Administration or by a recognized organization. Under the Port State Control regime, foreign ships are also subject to

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79 A company means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship …and has agreed to take over the duties and responsibilities imposed by the ISM Code.
inspection relating to compliance with the ISM Code as covered under MSC Circular 890 and MEPC Circular 354 on the “Interim Guidelines for Port State Control Related to the ISM Code.

Non-compliance with the Code have serious repercussions such as ships being banned from ports\textsuperscript{81}; insurance coverage being withdrawn\textsuperscript{82}; difficulty in finding cargo; and getting very low freight rates even if they can get cargo because majority of shippers would prefer shipping companies that have ISM certification.

On the other hand, companies who have religiously implemented the provisions of the ISM Code have reported amazing results and advantages.\textsuperscript{83} Even statistics published by the Swedish Club in 2002 show that insurance claims concerning ships applying the Code have fallen significantly compared with those who do not apply the Code. The difference is approximately 30%.\textsuperscript{84} (See figure 3.4)

![Figure 3.4 – Hull and P & I Claims development since 1995/96 for Phase One ships in relation to Phase Two ships](http://www.fairplay.co.uk/secure/display.asp)

Furthermore, the aggressive implementation of the safety management system led to the development of safety awareness and environmental consciousness. Many Flag States and companies have reported a significant reduction in the number of accidents and incidents.\textsuperscript{85} In Korea, there was a decrease

\textsuperscript{81} See “O’Neil in ISM warning: Slow implementation of safety code will hurt shipping lines “, Lloyd’s List, 04 September 1997.
\textsuperscript{82} See “P&I clubs warn clients on ISM certification “, Lloyd’s List, 18 September 1998.
\textsuperscript{83} See Michael Grey, “ISM Code can offer real gains finds study “, Lloyd’s List, 16 Oct 2003 where a leading national flag tanker directly attributes a $1M per ship savings to the ISM Code.
\textsuperscript{84} See “ISM Code pays dividends “, Fairplay, 18 Oct 2001 at http://www.fairplay.co.uk/secure/display.asp.
in the total number of losses in 2000 and the average amount compensated per loss decreased by 65 percent.\textsuperscript{86} PSC reports reveal promising results in the implementation of the Code and fewer detention rates for ships complying with the Code. Australia’s PSC body, the Australian Maritime Safety Agency (AMSA) reported that ISM may be contributing to a downward trend in detention rates, which went down from 8.5 percent in 1996 to 4.3 percent in 2000\textsuperscript{87}. As of May 2004, IACS was able to issue at least 6,000 DOCs and 23,000 SMCs.\textsuperscript{88}

The other side of the coin shows that almost six years after the implementation of the ISM Code, in some sectors it has been concluded that the Code has been reduced to a mere paper exercise and that the objective of achieving safer shipping was not attained at all.\textsuperscript{89} The objectives of the Code to improve safety at sea in general seem partly to have failed as the global marine insurance market now reports a loss ratio increase up to 200 per cent and the Port State Control regime tells of an increase of 150 percent in numbers of detained ISM Code ships.\textsuperscript{90} 

The 2001 Paris MOU Annual Report recorded 18,681 inspections carried out on 11,658 ships. Deficiencies related to safety management recorded an increase of 150\% over a three-year period.\textsuperscript{91} (See figure 3.5)

Figure 3.5 – Ratio of deficiencies to individual ships x 100 (Source: Paris MOU Annual Report 2001)

A more recent study on the effects of the ISM Code on vessel performance during PSC inspections was made using Swedish PSC statistics. According to the study the Code can have a potentially positive impact on vessel safety if implemented properly. See Figure 3.6.

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\textsuperscript{87} See “Systems work, but humans fail”, Fairplay 21 Feb 2002 at \url{http://www.fairplay.co.uk/secure/display.asp}.
\textsuperscript{88} See “ISM Code List” at \url{http://www.iacs.org.uk/whitelist/wlindex.htm}.
\textsuperscript{89} See “Papering over the cracks”, Fairplay, 23 August 2001 at \url{http://fairplay.co.uk/secure/display.asp}.
\textsuperscript{90} See “The effectiveness of the ISM Code requires an urgent review”, Lloyd’s List, 16 May 2003.
\textsuperscript{91} See Paris MOU Annual Report 2001.
\end{flushright}
The findings of the study revealed that the Code had positive effects on the safety performance of ships immediately before, during and after the first phase of implementation. Ships preparing for the Phase 2 implementation of the Code also showed marked improvements in safety. The statistics also show that safety performance begins to diminish after some time probably due to waning interest. The method used and the data gathered are not enough to make a conclusive statements or generalizations on the effects of the ISM Code except to suggest that the Code can have a potentially positive impact on the safety performance of ships if all those involved make a serious commitment for its consistent application.92

Supporters of the Code have this to say to its critics: The Code should not be construed as a panacea93 or cure all for ship-related problems much more an overnight solution to the monstrous challenges affecting the shipping industry. Rather, it is a continuing process of implementing and maintaining a safety management system that provides the framework for the safe operation and management of ships and for pollution prevention.94 A properly implemented Safety Management System under the Code can work and actually bring about

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improvements. What happens next much depends on the how the players of the maritime industry believe the Code will work and actually work to make it a reality.

3.5 Role of Classification Societies in the implementation of the ISM Code

To meet the challenge of implementing the ISM Code, IACS has taken the initiative by developing Procedural Guidelines and Unified Interpretations of the Code, together with related requirements for the training and qualification of compliance auditors.

There are several justifications for the Class taking on the task of certifying compliance to the ISM Code on behalf of Flag State Administrations:

- IACS classification societies have set up a harmonized system for the interpretation of the ISM Code and the certification of compliance with it.
- Through uniform standards for the training of ISM Code auditors, the shipping industry is offered a body of competent auditors with the same level of qualification and with a harmonized view on the requirements.
- With their international network of inspection offices, Societies can offer their ISM Code certification capabilities in a consistent way worldwide.

Societies recognized by Flag State Administrations perform most of the ISM certification on behalf of the Administration including the issuance of the SMCs to ships and DOCs to the shore-based company. As required under the Code, the certification process includes the necessary verifications such as initial, periodical or intermediate and renewal verification. The audit of a company’s safety management

95 See however “Astonishing fall in non-OECD maritime accidents since ISM”, Lloyd’s List, 02 Nov 2001 where it was said that improvements due to ISM were more prominent in non-OECD countries. There was some arrogance in OECD countries which felt that they were managing safety issues fairly well in the first place.


97 There were three sets of Guidelines for the implementation of the Code namely: those issued by IMO for the use of Administrations; ICS Guidelines for use of shipping companies; and IACS Guidelines for the use of Classification Societies.

system is likewise necessary to verify compliance with the requirements of the Code for the safe operation of the ship and for pollution prevention.

There are similarities in verifying compliance with the ISM and the ISO in the sense that compliance with the Code demonstrates that the company’s management systems are structured in such a way that they also comply with the ISO 9000 standard. The difference lies in that the Code deals with quality management of safety and pollution prevention matters, whereas the scope of ISO 9000 standards is wider and covers also customer oriented requirements. Quality is meeting a specified or implied need while safety deals with control of accidental loss. There is however a strong link between the two concepts because it would be difficult to think of quality without factoring in safety especially for industries that provide not only products but also services such as shipping. A safety management system is 75 percent of a quality management system.

It is notable that the work done by the Class under the ISM Code is limited to the assessment of systems and the associated audit trails because the Code itself is restricted in its application as a management system programme. It is not a means of assessing the operational performance or technical adequacy of the ship management. These concepts remain under the responsibility of the shipowner.

In order to prevent conflicts of interest arising out of their twin roles of performing ISM certification and consultancy services, Classification Societies should ensure that independence exists between personnel performing ISM audit and consultancy services as stated also in Procedural Guideline No. 9 of the IACS. This is regularly checked through the IACS' Quality System Certification Scheme.

Regarding allegations that the traditional classification / statutory certification of the ship is in conflict with the auditing and certification of the safety management system under the ISM Code, it is arguable that these two facets of ship examination are actually complementary in practice. While the ISM Code prescribes that a

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102 Supra, footnote 98.
safety management system is in place to ensure compliance with the established rules and regulations on the safe operation of ships and pollution prevention, these requirements can only be realized if the ships and their equipment are structurally and mechanically fit for their purpose which is a function of the classification / statutory certification.\textsuperscript{104} The ISM work performed by the Class also allows them to take a holistic view of the vessel’s management.

It should be noted also that the Code was not intended to duplicate or substitute traditional class or statutory surveys. The Code was developed to ensure that there exists a system in the ship providing for the effective compliance to mandated rules and regulations.\textsuperscript{105} Classification and statutory surveys on the other hand concentrate on the fitness for purpose of ships and compliance with technical specifications for safety and environmental protection or the hardware side.

The activities of Classification Societies relating to the implementation of the ISM Code herald its expanding role from the traditional fields such as the survey and certification of ship structures and machinery to new fields such as the development of ship designs and interface with human ergonomics, improving ship performance and quality assurance. The transition in focus from the “hardware side” to the “software side” is a continuing progression towards systems covering the total safety of ships in response to the demands of the members of the maritime community.\textsuperscript{106} Since the ISM Code is considered as the biggest achievement on the human element in modern history, the role of Societies in this field is likewise considered a landmark achievement in the sphere of work of Classification Societies.

Added to this is the total safety concept\textsuperscript{107} promoted by the Class which encompasses all areas of maritime activities that may have a bearing on the ships’ safety standards and pollution prevention capabilities including the vital link between the hardware and software side of ship operation of which ISM is a major element.\textsuperscript{108} The total safety concept of the Class is also an amalgamation of all established

\begin{footnotes}
\item[^104] Supra, footnote 98.
\item[^105] Supra, footnote 103.
\item[^106] Supra, footnote 40.
\item[^107] Supra, footnote 9 at p.132.
\end{footnotes}
classification rules and the safety and pollution prevention regulations as enshrined in the relevant IMO Conventions.

It should be noted that the delegation of ISM duties by Flag States to recognized organizations is not a package deal. A number of Flag States also reserve some ISM functions under their direct control for a variety of reasons but mainly to ensure that the Administration retains its influence and authority in discharging its premier responsibility of implementing international Conventions. An example is the case of France where safety management documents are issued by the Flag State Administration. ISM certification is also directly handled by the MSA in the United Kingdom. The practice of some States on the other side of the fulcrum is to enlist the services of independent experts and professionals such as non-maritime certification organizations.

There are two possible trends in the future. The first is that Flag States which have decided to perform some functions under the ISM certification process initially will gradually delegate these functions to recognized organizations such as Classification Societies. Secondly, Flag States which have delegated ISM

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<th>Footnote</th>
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<td>109</td>
<td>See “ISM Code has led to 3-way effect throughout industry”, Lloyd’s List 29 July 2000.</td>
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<td>110</td>
<td>See Philippe Boisson, “The ISM Code and Flag State Obligations”, Bureau Veritas, Paris p.24 where it is mentioned that ISM assessments, as well as the delivery of corresponding documents and certificates remain the sole responsibility of the national administration.</td>
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<td>111</td>
<td>In a phone interview conducted with Peter Escherich, Deputy Head of Section of Maritime Safety, German Federal Ministry of Transport, Building and Housing on 14 July 2004, it was said that responsibility for undertaking statutory certification including ISM rests with the national administration under EC Directive and German national law. There is only partial delegation for Class Societies as certain functions are prohibited from being delegated under German national law. Assessments performed by Class on ISM compliance are submitted as reports to the Administration which has the sole discretion whether to use them or not.</td>
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<td>112</td>
<td>See “IMO urged to get tough with Flag States over ISM Code”, Lloyd’s List 14 May 2002, where it was said that the IMO should ensure that Flag States are actively responsible for monitoring ISM implementation and compliance by making safety audits “non-delegatable”. Responsibility for ISM Code should fall squarely on the shipowner and the Flag State Administration.</td>
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<td>113</td>
<td>See however “UK confident that it will meet ISM Code deadline”, Lloyd’s List, 23 June 1997 where it mentions that where a UK ship trades virtually exclusively outside the UK, provision can be made for an external surveyor to act on behalf of the Administration.</td>
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<td>115</td>
<td>See “New independent auditing body aims to enter the ISM field”, Lloyd’s List, 04 November 1996 where it says that an independent auditing body named International Association of Independent Marine Auditors was set up in Hong Kong to serve as an independent ISM accreditation body. The Association aims to employ independent auditors skilled and experienced in specific technical and management areas of shipping. Auditors employed by the Association would be totally independent from the shipping companies they are auditing.</td>
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<td>118</td>
<td>Part of Hong Kong’s efforts to reform its services is the Flag State Quality Control System which called for all inspection and certification services to be delegated to recognized organizations to minimize Flag State interference. See K.L. Lee, “Flag State Quality Control System”, Bimco Review 2001, p.41.</td>
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functions to the Class from early on may decide to get back those functions to be performed by the Administrations themselves.

There are greater chances that the first scenario will prevail since Classification Societies have through the years proven their excellent capacity to perform statutory certification work through their network of resources and vast technical and managerial expertise. Flag States who have delegated ISM work to the Class justify their actions by saying that delegation does not equate with transferring responsibility which ultimately remains with the Flag State. As long as there are effective means of monitoring the work of the Classification Societies on ISM work, Flag States are justified with their actions.\textsuperscript{119} For the second scenario, there are some signals mostly coming from the European continent indicating an increasing desire and preference of legislators to consolidate the implementation of safety rules within the realm of the Administrations. Whether this will gain momentum or lose steam is yet to be seen. One thing is certain and that is Classification Societies will view this as the biggest challenge to the longstanding recognition of the roles and contributions of the organization.

\textsuperscript{119} Supra, footnote 112.
Chapter Four

4. THE ROLE OF CLASSIFICATION SOCIETIES IN MARITIME SECURITY

4.1 Security concerns in the maritime world after September 11

The tragic events of the September 11, 2001 attack on the World Trade Center in New York have created significant concerns in the maritime world that maritime targets may be next. Studies show a considerable potential for ships to be prime targets or used as tools or medium for launching terrorist attacks capable of inflicting widespread damage to property and tremendous loss of human lives.\(^{120}\)

Because of its inherent mobility and capacity for causing extensive damage to life, property, the environment, the transportation and economic infrastructure, shipping has inevitably been considered as the most vulnerable target\(^{121}\) along with rail transportation.\(^{122}\) This vulnerability is further highlighted by the lack of security consciousness within the industry probably as evidenced by the scarcity of international regulations dealing with the security concept.

It can be recalled that from among the more than 40 IMO Conventions and until recently, it was only the 1988 Convention on the Suppression of Unlawful Acts (SUA Convention) which considered the problems encountered by the industry in the context of security. The said convention is a significant departure from the previous conventions because it provided for the first time, criminal prosecution for the offences identified in the convention. Sanctions however remain within the ambit of State Parties to the convention.

The SUA Convention was aimed at providing a regime for the suppression of unlawful acts against the safety of maritime navigation which endanger innocent human lives, jeopardize the safety of persons and property, seriously affect the operation of maritime services and thus are of grave concern to the international community as a whole. The purpose of this Convention is to ensure that appropriate

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\(^{120}\) See H. Hesse, “IMO activities to enhance maritime security” at http://www.imo.org/home.asp.
\(^{121}\) See John Schoen, “Ships and ports are terrorism’s new frontier” at http://www.msnbc.com.
\(^{122}\) Speech of IMO SecGen Efthimios Mitropolous at the “12th FSI Sub-Committee Meeting “15-19 Mar 2004.
action is taken against persons committing unlawful acts against ships. Of particular interest is the attempt to fill the void in the regulations aimed at addressing piratical attacks in areas other than the high seas. SUA provided the regime to cover acts of violence and a multitude of other offenses including hijacking on maritime zones other than the high seas.

It can be said that the tragedy of September 11 and the succeeding events highlighted the necessity of instituting drastic measures to ensure the safe and secure operation of ships. The threats of maritime violence and the changing face of piracy have led to the notion of modern seaborne terrorism. Whereas before, security measures were directed to suppress unlawful acts directed against the ship and its crew, the current security situation demands more than the protection of the ship itself. The ship because of its characteristics and the nature of its operation have become a most potent medium for terrorist actions. Now more than ever, the safety, security and viability of maritime transport and trade is seriously threatened.

4.2 Maritime concepts of safety and security

In general, safety is described as the condition or state resulting from the absence of exposure to danger, and the summation of all contributing factors to achieve that state. The level of safety depends on the interplay of the various players working within the industry to achieve that purpose.

In the maritime context, safety can be defined as those measures employed by owners, operators, and administrators of vessels, port facilities, offshore installations, and other marine organizations or establishments to prevent mishaps or incidents that may be caused by substandard ships or incompetent seafarers. Maritime safety is also described by one author as the process of implementing

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125 See, however “Maritime threats could be overplayed” in Lloyd’s List, 02 July 2004 where it is said that the threat of maritime terrorism has been overplayed...The real threat to shipping was not therefore terrorism but piracy.

126 Supra, footnote 9 at p.31.

internationally and nationally agreed rules with the objective of minimizing the risks to people, property and the environment.128

The concept of safety can be considered as consisting of two components—structural safety and operational safety. Structural safety depends upon the integrity of design principles, the validity of calculations, the quality of materials and the standards of their fabrication within the design concept, and also on the degree of maintenance applied throughout the life of the structure. Operational safety depends upon the care with which the unit and its equipment are operated, and embraces such factors as maneuvering and handling in harsh weather conditions, and the operation of onboard machinery and equipment such as winches, lifting equipment, diving equipment, lifeboats and others.129

The quest for maritime safety has been the driving force behind the establishment of the earliest rules for classification and the advent of international safety regulations under the IMO Conventions. It can be said that the establishment of maritime safety administrations came about as a result of the Flag States’ undeniable and inescapable responsibility for maritime safety as bestowed upon by both international and national safety regulations.130

On the other hand, maritime security is a contemporary issue with an ancient lineage.131 It was brought about by the evolving threats to safe and secure operation of ships, offshore structures and port facilities. The traditional concept of maritime security focused mainly on issues related to the existing problems of piracy, stowaways and armed robbery at sea132. The modern concept of maritime security encompasses a wider coverage of emerging threats to the safe operation of ships,

131 See “Hasty security worries shipping”, Fairplay, 05 Dec 2002 where it says that maritime security is not a new issue. Thieves, pirates, smugglers, stowaways, and fraudsters have been targeting shipping long before. See also Max Mejia, “Defining maritime violence and maritime security”, Proceedings of the International Symposium on Maritime Violence and other Security Issues at Sea “World Maritime University, Malmö, Sweden, 26-30 August 2002”, where he says that the events of Sept. 11 by no means invented the issues of maritime security. It has been a serious concern of the IMO since the 1980’s. What Sept. 11 has done is to intensify focus on this issue…
offshore structures and port facilities. In addition to the perennial threats of piracy\textsuperscript{133}, modern maritime security now includes the more recent threats of sabotage, terrorism and other unlawful acts. The stimuli for engaging in unlawful acts against ships has also widened to include political and ideological factors in addition to the economic consideration.\textsuperscript{134}

Hawkes offers a very useful definition of “maritime security measures” as those measures employed by owners, operators, and administrators of vessels, port facilities, offshore installations, and other marine organizations or establishments to protect against seizure, sabotage, piracy, pilferage, annoyance, or surprise. It can also be considered as embracing all measures taken to prevent hostile interference with lawful operations.\textsuperscript{135}

Proper maritime security measures create a condition which establishes and maintains a certain degree of protection against threats of acts described above. These protective measures, while they may vary markedly from one organization to another depending on its nature, must be capable in all instances of performing two absolutely imperative tasks. They must provide timely and accurate warning of an impending threat, and they must be capable of removing or neutralizing that threat.

The two elements of maritime security therefore are: adequate warning and timely reaction. Adequate warning is essential to timely reaction. Timely reaction is likewise important so as not to render the warning useless. These two elements of security can only be achieved through proper security indoctrination and training of personnel.\textsuperscript{136}

There are important similarities and connections between maritime safety and maritime security in that measures undertaken for both are destined to ensure the well-being of the people operating the maritime adventure. The effects and ramifications of failing to institute an acceptable level of safety and security in the

\textsuperscript{133} See “Piracy makes an unwelcome return”, Fairplay, 16 January 2003 at http://www.fairplay.co.uk.
\textsuperscript{136} Ibid.
maritime arena are both extensive and damaging in the highly sensitive nature of the maritime industry.

It is said that despite the myriad international and national safety regulations, a 100 percent safety condition in shipping operations is almost impossible to achieve.\textsuperscript{137} Maritime incidents will continue to happen and it is the objective of the current web of maritime safety rules and regulations to attempt to limit accidents and minimize their effects.

Maritime security works in the same perspective. Even though extensive and elaborate security systems are put in place, perfect or absolute security can never be fully realized. There exists no vessel, installation or facility that is so well protected it cannot be seized, damaged or destroyed. Consequently, the purpose of maritime security is to make access to the target so difficult as to discourage the attempt and, if the attempt is made, to minimize the damages and ensure the attempt remains an attempt. In other words, maritime security measures aims to make the ship a hard target for attacks.

### 4.3 ISPS Code and its impact on maritime security

Initial discussions on the area of maritime security as brought about by the Sept 11 attacks started at the IMO Assembly meeting held in November 2001. By then, the majority of IMO Member States were unanimous in recognizing the necessity for establishing an entirely new framework of rules covering maritime security. The costs of not having the proper security measures in place in the maritime industry is extremely high as shipping was considered as a likely target of terrorist attacks in near future. The consequences of an attack are simply unimaginable with the possibility of sea transport, on which the movement of more than 90 percent\textsuperscript{138} of the world’s goods depends, grounding to a complete halt.\textsuperscript{139}

\textsuperscript{137} See “Lions without teeth”, Fairplay, 24 Aug 2000 at http://www.fairplay.co.uk where its says that it is desirable, if perhaps unattainable goal to eradicate substandard ship and substandard operator…but if we cannot completely eradicate substandard ships, we can make life very difficult. Once it becomes more expensive to operate at substandard than at high standards, they maybe these rustbuckets will disappear.


\textsuperscript{139} Estimates say at least 6Bn tones of cargo are moved annually by ships involving 250M containers. For details see “Agency warns of ISPS shortfall”, Fairplay 24 June 2004 at http://www.fairplay.co.uk.
Preparations for drafting an international instrument dealing with maritime security intensified within the maritime security working group under the Maritime Safety Committee and even in the intercessional working group established for this purpose. IMO’s efforts on security culminated with the holding of a Diplomatic Conference in December 2002 which successfully adopted the ISPS Code.

The objectives of the Code\textsuperscript{140} can be achieved through the designation of personnel onboard ships, in port facilities and within the shipping company who will perform the security requirements as stated in the Code including the preparation and implementation of ship security plans and port facility security plans which are subject to approval by the contracting Government. Compliance with the Code includes the issuing of an International Ship Security Certificate valid for not more than five years or an Interim Certificate valid for not more than six months.

Shipowners and companies face an uphill struggle to comply with the mandatory provisions of the Code. The pressure to comply with the Code stretches across the entire maritime industry. The challenge rests mainly on the following considerations\textsuperscript{141}:

- About 40,000 Ship Security Assessments and Plans need to be completed before compliance certificates can be issued
- 130,000 company, ship and port facility security officers need to be trained
- About 16,000 port facilities need to be inspected and assessed
- Government security inspectors and port state security control officers need to be trained and certified
- Necessity on the part of the Contracting Government to develop the infrastructure needed for advising security level
- Arrangements for responses to security alerts from ships need to be put in place
- Funding requirements

\textsuperscript{140} For details on the Objectives of the ISPS Code, see “International Ship and Port Facility Security Code “, 2003, IMO, London.

The impact of the ISPS Code on maritime security remains to be seen. On the eve of the entry into force of the Code, IMO announced a status of compliance of 53.2% for ships from the responses of 46 Governments and 53.4% for port facilities from the responses of 86 Governments who responded to the IMO survey.142

Costs vary quite considerably, but estimates for initial implementation range from $20,000 to $37,000 per vessel, plus $12,000 a year in maintenance. The OECD has pegged the cost of implementing the ISPS Code at $30,000 per vessel. Government spending for security measures aimed at complying with the Code vary from one country to another with the United States admitting it plans to spend at $1.6Bn for the first year of implementation and at least $6Bn over the next ten years143 to provide a comprehensive security blanket for its 61 ports. Other countries facing serious fiscal problems may not have enough resources to establish the infrastructure necessary to comply with the security requirements. In many cases, terminal operators have already started applying surcharges to their customers144.

The tasks presented by the Code in trying to establish a complete security blanket for the entire maritime industry is both formidable and challenging. Aside from the huge financial requirements to put the Code into effect such as those relating to the establishment of infrastructures and security devices onboard ships, countries need to create the necessary legislation and reorganize their MARAD.

Some observers and critics argue that the hastily passed ISPS Code is a reflex action or self-defense mechanism of the US trying to establish greater control over global maritime transportation as an offshoot of the September 11 attacks. History supports the view that the US has a strong penchant for unilateral action145 like in the case of OPA 90.146 The ISPS Code is an international solution for implementing the unilateral motives of a State requiring immediate self-protection. Although contentious, it may not be totally misplaced as every State possesses the right of self-preservation and the IMO is the most logical international forum to ventilate such aspirations. However there are also other initiatives to realize this

142 See “ISPS Code status update No. 5” at http://www.imo.org/home.asp.
143 See “Owners face frightening figures “, Fairplay, 13 March 2003 at http://www.fairplay.co.uk.
144 See “Is it time to get off the security bandwagon? “, Lloyd’s List, 20 July 2004.
146 See “Consternation over security “, Fairplay, 03 April 2003 at http://www.fairplay.co.uk.
such as the US Container Security Initiative (CSI), Customs-Trade Partnership Against Terrorism (C-TPAT) and the 25-nation led Proliferation Security Initiative.  

4.4 Criteria and Duties of Recognized Security Organizations

A Recognized Security Organization or RSO is defined under Solas Chapter XI-2/1 as an organization with appropriate expertise in security matters and with appropriate knowledge of ship and port operations authorized to carry out an assessment, or a verification, or an approval or a certification activity as required under the ISPS Code.

Under the provisions of SOLAS Reg. I/6 and, inter alia, SOLAS Reg. XI-2/1.16 Contracting Governments can authorize recognized security organizations to perform the certain work in behalf of the Administration either in whole or in part:

- Approval of ship security plans, or amendments thereto, on behalf of the Administration
- Verification and certification of compliance of ships with the requirements of chapter XI-2 and part A of the Code on behalf of the Administration
- Conducting port facility security assessments
- Issuing and endorsement of International Ship Security Certificates

Because of the peculiarity of the security-related functions delegable under the ISPS Code and its remarkable departure from the ordinary safety-oriented duties previously delegated to recognized organizations under the earlier IMO conventions, IMO guidelines and specifications of the work of recognized organizations acting on behalf of the Administration Res. A.739(18) and Res. A.(789) needed to be reinforced with a criteria system specific to the security nature of the ISPS Code.

According to Section 4.5 of Part B of the Code, Contracting Governments should give due consideration to the competency of an RSO when authorizing it to perform work on its behalf. Because of the strict criteria for an RSO and the sensitive

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147 See “IMO struggles to keep members united“, Fairplay, 20 Feb 2003 at http://www.fairplay.co.uk.
148 For details on competencies required from an RSO, see the Sec.4.5 Part B of the ISPS Code.
nature of relationship between the Flag State and the RSO, great care should be
taken by the former in choosing a reliable and credible RSO. In the United States, it
was said that among the reasons why a ship may be delayed in a US port is the
choice of an RSO with a poor service and security record. Such incident will surely
be detrimental to the interests of the shipowner and the free movement of ships.

Although this can be viewed as a simple threat by a major maritime power to
warn Flag States and shipowners against engaging the services of an ill-repute
RSO, such measures are totally misplaced and outrightly illegal. One is therefore
reminded of the illegal practice of ship targeting\textsuperscript{149} by Port State Control authorities
based on a ship’s Class\textsuperscript{150} or Flag\textsuperscript{151}. Flag targeting, although illegal is widely
practiced in many PSC regimes due to the apparent weakness in the appeals
procedure\textsuperscript{152} of the PSC coupled with the lack of interest in the proper enforcement
of international laws. PSC authorities also find a shield in the very thin line
separating the illegal practice of Class and Flag targeting and their perceived right to
develop criteria for identifying priority ships targeted for a more rigorous inspection.

It has often been said that the ultimate responsibility for ensuring compliance
with international conventions rests with the Flag State. In the same vein, it is the
Flag State or the Contracting Government in the case of the ISPS Code which bears
the ultimate responsibility for ensuring that security requirements under the Code are
properly met in spite of the delegations made to recognized security organizations.

4.5 Designation of Classification Societies as Recognized Security
Organizations

The designation of Classification Societies as RSOs under the security regime
is a significant departure from their traditional role as safety specialists. Traditionally

\textsuperscript{149} Originally, targeting was based on preconceived ideas of poor quality and was concentrated initially on open
registries. Presently, the various PSC MOUs have developed their own system and criteria for targeting. In the
U.S. for example, they have developed a matrix that awards points depending on flag, ship type, ship’s PSC
record, Class and owner/operator. For details see “Where are all the substandard ships “, Fairplay, 07 Feb 2002.
\textsuperscript{150} A targeted Classification Society is any that have at least 10 distinct arrivals in the previous 12 months and a
detention ratio above the overall average or have less than 10 distinct arrivals and are associated with any
detention over the previous 2 years. See George Nacarra, “ PSC in the United States and the interaction with
\textsuperscript{151} See “ Japan PSC move angers North Korea “, Fairplay, 03 July 2003 at http://www.fairplay.co.uk.
\textsuperscript{152} See “ Port State shortcomings admitted “, Fairplay, 09 February 2004 at http://www.fairplay.co.uk.
Societies have been engaged in the formulation and uniform implementation of classification rules based on ships’ structural safety standards. Societies have also been authorized by Flag States to perform statutory surveys and certifications.

The concept of the RSO introduces the Class to an entirely different arena of security assessments. It is a radical shift and a most contentious issue simply because Classification Societies were not conceived as specialists in performing security services in the first place. It took the Class more than two centuries to establish their credibility and reputation as global standard-setters for ship safety. Their performance continuously improved and perfected through years of in-service experience, massive resources build-up and aggressive research programs.

Security services as a new menu offered by the Class will pose a great challenge to their already established image and reputation. It is a challenge and at the same time a strategic opportunity for the Class to diversify the services it offers from being mere condition inspectors to risk assessors. There are doubts, however, as to the qualification and competence of Classification Societies to assume their extended role as security assessors as is evident from the steps taken by some Flag States.

In fact, some countries like the UK and Australia have not identified any Classification Society to perform the role of RSOs. It is the Maritime and Coast Guard Agency (MCA) which is tasked to perform security assessments in UK with its 35 surveyors tasked to inspect 561 merchant ships. In Australia, it is the Transport Security Division under the Department of Transport and Regional Services which is responsible for certifying and auditing Australian-flagged ships for ISPS Code compliance. Elsewhere in Panama, the Maritime Authority limited the delegation to IACS members to the auditing process under the Code and reserved the approval of Ship Security Plans to security consultants: Phoenix Management Services which is based in Florida, London-based Universe Security and Singapore-based Singapore

153 See “Security should not be a class issue”, Fairplay, 03 April 2003 where it mentions that the mad scramble of Classification Societies to be accredited as Recognized Security Organizations under the ISPS Code has been motivated by the earnings potential.
154 Ibid.
155 Ibid.
156 See “Managers face tight ISPS deadline”, Fairplay, 01 May 2003 at http://www.fairplay.co.uk.
Technologies which function as Recognized Security Organizations. Others States believe that security matters are best left to the military and police organizations or to security consultants.

Inspite of this, the leading Societies have embarked on a serious capacity and resources build-up in order to accommodate the demand for security services. A number of them have recruited security consultants and intelligence specialists into their fold. Existing surveyors and auditors were made to undergo rigid trainings on security courses. Model courses and training modules have been designed to cater to the requirements for ship security officers and company security officers.

Societies also possess inherent strengths and advantages such as their capacity to fulfill the major requirements in the Interim Guidelines for the Authorization of RSOs acting on behalf of the Administration and/or Designated Authority of the Contracting Government or MSC Cir.1074. Under the said guidelines an RSO should have an adequate technical, managerial and support staff and a sufficient number of qualified staff capable of providing the required services on an adequate geographical coverage. In addition the quality system of the RSO should comply with the ISO requirements. These qualities have long been identified with the Class and can actually give credence to their designation as RSOs.

Furthermore, the drafting of Part B of the ISPS Code seems to support the choice of Classification Societies as RSO in particular Section 4.5.2 which states that an RSO should be able to demonstrate appropriate knowledge of ship and port operations, including knowledge of ship design. Clearly, Classification Societies tend to benefit from this provision through their long history of maritime involvement.

From another perspective, it can be argued that the security bandwagon resulting from the September 11 incident also offered another golden opportunity for

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158 See however Graham Botterill, “Rushing ISPS compliance will lead to a useless piece of paper”, Lloyd’s List, 14 July 2004, where it mentions that the training and qualifications of plan approvers and RSOs is open to question.
the Class to make a good business venture\textsuperscript{161} out of the prevailing requirements of the industry. This has been the comment of some sectors when the Class first came out to offer ISM services.\textsuperscript{162} The RSO concept now offers the same incentive\textsuperscript{163}.

The general trend is that Classification Societies especially IACS members will continue to dominate the field as RSOs because of the work they have also done under SOLAS. As an example, Lloyd’s Register received RSO status from more than 30 States\textsuperscript{164}. Germanischer Lloyd has been authorized as an RSO for 20 States\textsuperscript{165} while DNV has received RSO status from 52 Flag States\textsuperscript{166}. Other leading Classification Societies also share the same recognition. The world’s busiest port, Hong Kong authorized eight Classification Societies as RSOs.\textsuperscript{167}

Judging from the experience in the introduction of the ISM Code, the likelihood is that it will also take more years before a satisfactory level of compliance for the ISPS Code is reached among States. It took the industry 10 years to appreciate and apply the ISM Code, it took only 18 months to enforce the Code\textsuperscript{168}.

To address this problem, IMO has issued some guidelines\textsuperscript{169} to ensure the smooth implementation of the ISPS Code. In addition to these Guidelines, the IMO should also establish methods and criteria for evaluating the performance of RSOs. Regional organizations such as the EU are also likely to issue Directives on the same subject. At the same time IACS must issue its procedural guidelines and uniform interpretation of the Code.

\textsuperscript{161} See “\textit{High fees behind ISPS delay} “, Fairplay 05 Nov 2003 at \url{http://www.fairplay.co.uk}.


\textsuperscript{163} Hans van Leuven “\textit{Port and Maritime Security, the Approach of Netherlands} “, Presentation on the occasion of the visit of WMU students to the Port of Rotterdam, 09 March 2004.

\textsuperscript{164} See “\textit{RSO status} “ at \url{http://www.lr.org/market_sector/marine/maritime-security/rso_status.htm}.

\textsuperscript{165} Supra, footnote 160.

\textsuperscript{166} Email from Mr. Per Oscar Saugestad, Principal Surveyor/Security Surveyor, MTPN0879, Naval Ships and Ships Security, DNV, dated 23 August 2004.

\textsuperscript{167} See “\textit{Asia gears up for the inevitable} “, Fairplay, 18 March 2004 at \url{http://www.fairplay.co.uk}.

\textsuperscript{168} Supra, footnote 158.

\textsuperscript{169} IMO Guidelines include : MSC Circular 1097 - Guidelines for the implementation of Chapter XI-2 and the ISPS Code ; MSC Circular 1111 – Guidance relating to the implementation of Chapter XI-2 and the ISPS Code; MSC Circular 1074 – Interim Guidelines for the Authorization of RSOs acting on behalf of the Administration and/or Designated Authority of a Contracting GovernmentResolution MSC.159(78) – Interim Guidance on control and Compliance Measures to Enhance Maritime Security.
There are several other issues pertaining to the implementation of the ISPS Code such as the prevention of conflicts of interest in the case of RSOs. An RSO or a Classification Society involved in the preparation of security plans and assessments should in no way be involved in the approval of the same. Another issue is the liability of the RSO which will be the subject of the formal written agreement concluded between the Flag State Administration and the recognized security organization. Other issues and concerns will come to light as the entire maritime world begins to feel the effects of the ISPS Code coming into force.
Chapter Five

5. RELATIONSHIP BETWEEN THE CLASSIFICATION SOCIETY AND THE FLAG STATE ADMINISTRATION

5.1 Capacity of Flag State Administrations to perform international and national obligations

Since its inception in 1958, one of the major functions of the IMO has been the development of international maritime law and regulations. It is said that the IMO is the proper forum for the development of international instruments relating to the safe operation of ships and for pollution prevention. Likewise the phrase “competent international organization” as used in UNCLOS applies exclusively to IMO. As the UN system’s regulatory agency for the maritime sector with a global mandate to ensure safer shipping and cleaner oceans, IMO pursues that mandate by adopting international maritime rules and standards that are then implemented and enforced by Governments in the exercise of Flag, Port and Coastal State jurisdiction. The task of implementing IMO conventions is within the purview of State-Parties who are expected to promulgate laws and regulations and to take all other steps necessary to give these instruments full and complete effect.

This obligation is more commonly known as Flag State Implementation (FSI) of IMO instruments. From the point of view of FSI, the most significant IMO instruments are: SOLAS, MARPOL, LOADLINES, STCW, COLREG and TONNAGE. The problem with flag state implementation is that some countries lack the expertise, experience and resources necessary to do this properly. This is unfortunate because the effectiveness of IMO safety and pollution prevention instruments depend primarily on the application and enforcement of their requirements by the States party to them and that many have experienced difficulties

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171 See “Implications of the entry into force of the UNCLOS for the IMO”, IMO, London at p.2.
172 “Comprehensive Analysis of Difficulties encountered in the Implementation of IMO instruments”, Sub-Committee on FSI, 12th Session, Agenda Item No. 8, IMO, London.
173 The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession or by any other means if so agreed. See “1969 Vienna Convention on the Law of Treaties”, Article 11.
in complying fully with the provisions of those instruments. It is also notable that States that become Parties to the conventions fail to derive any benefits due to their failure to implement them into their national legislation.

In the area of expertise, Flag States have varying capacities but majority of them have had to rely on the expertise of external sources such as Classification Societies especially on technical matters relating to ship design, construction and operation. There are many reasons why Administrations have not been able to develop and maintain their pool of experts. A major factor of which is the cost of employing a sufficient number of highly qualified technical people such as surveyors, nautical personnel, naval architects, marine engineers, maritime lawyers and other specialists. In developing countries, the motivation of skilled people and new graduates is to seek high paying jobs, something which the government services find difficult to offer and which private companies such as Classification Societies have consistently exploited. The promise of higher pay and unlimited opportunities for career advancement and self-improvement are simply too irresistible to ignore. It is important to note that it is not only the quantity of experts which is lacking in the Administration. An equally significant factor that should be considered is the quality of people employed. As an institution for advanced maritime training, the World Maritime University is geared towards the rectification of this problem. It is dangerous to make such generalizations or sweeping statements but in some labour-producing countries, this is what they call “brain

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177 The qualifications required for Flag State surveyors based on educational background and experience are listed in the Draft Code for the Implementation of IMO Instruments. Obligations of Flag States to ensure qualifications of surveyors including the establishment and maintenance of training programs and conducting assessments may be burdensome for Flag States. See “Responsibilities of Governments and Measures to encourage Flag State Compliance”, Sub-Committee on FSI Implementation, 12th Session, Agenda Item No. 7.

178 According to C.P. Srivastava, former IMO Secretary General and WMU Chancellor, the problem of inadequate maritime expertise could not possibly be resolved just by organizing seminars and workshops or visits of advisers and consultants. The people occupying the maritime infrastructure of developing States need to attend and pass 2-year long advanced post-graduate courses in relevant disciplines of maritime technology. This is one of the major reasons for the establishment of the World Maritime University. For more details see C.P. Srivastava, “World Maritime University : First 20 Years”, Thomson Press, India, 2003 at page 28 and page 44.

where the best and the brightest people are lost by the government to the other sectors or to other industries.

In terms of experience, the traditional maritime States may have had an upper hand supported by years of exposure to the day to day requirements of operating their fleets under a body of international rules and regulations already existing. There are however a large number of Flag States who lack the regulatory capacity to transform international conventions into their national legislations. This is evidenced by their failure to establish effective organizations and thereby sacrificing proper implementation and enforcement of international rules and regulations. The fragmentation of maritime responsibilities in different government agencies and departments have resulted in a less coordinated and harmonized implementation of safety regulations. The privatization of certain maritime infrastructures such as port terminals has also resulted in the blurring of responsibilities between the public and the private sectors.

Another major handicap of most Flag State Administrations is the lack of resources necessary to give full and complete effect to the Conventions. Compliance with IMO Conventions require significant investments in infrastructure, equipment and technology. For developing States the costs associated with these requirements are simply beyond their reach. For developed States who may have the resources but have not decided to perform their obligations directly, it is just a question of priorities on where to best utilize their limited resources. For others who may have the capacity but have not performed at par with the expectations, this can be attributed either to negligence or plain indifference.

180 The expression 'brain-drain migration' was popularised in the 1960s with the loss of skilled labour-power from a number of poor countries, notably India. Of particular concern was the emigration of those with scarce professional skills, like doctors and engineers, who had been trained at considerable expense by means of taxpayers' subsidies to higher education. See Robin Cohen, “Brain Drain Migration“ at http://www.queensu.ca/samp/transform/Cohen1.htm.

181 Regulatory capacity is defined as the capacity of a Flag State to issue and enforce rules and procedures resulting in compliance with international maritime law, international conventions and best operational practice.

182 See however J. Guy, “Class distinction”, Fairplay, 09 January 1986 where it mentions that budgetary restrictions are not limited to developing countries but also to leading seagoing nations.

183 Socio-economic aspects may require special attention to be given to sectors such as agriculture, education, health and housing. See footnote 172 for more details.

184 The indifference may come as a result of an inadequate appreciation of the benefits and impact of global maritime standards on the preservation and protection of national interests. See footnote 172.
There may be other reasons for the Flag States’ halfhearted performance of its obligations. For one, there are States who believe that their interests align more appropriately with shipowners and are therefore reluctant to commit to rigorous enforcement of regulations.\textsuperscript{186} The combination of variable Flag State performance and inattentive policing of standards often leads to a tiered response to regulations.\textsuperscript{187}

The FOC phenomenon further elucidated the inability of Flag State Administrations to deliver an effective implementation and enforcement of international maritime safety regulations. The decline of traditional flag administrations and the growth of open registers has altered the balance between the size of the Administration and the size of the registered fleet.\textsuperscript{188} The lack of a comprehensive Administration has led to an improperly managed fleet.\textsuperscript{189} The relaxation of safety standards whether by design or by default is quite common among open registers.\textsuperscript{190} This is not to say that all FOCs are inefficient or irresponsible in the performance of their duties. It is just the character of FOCs as being flexible, less expensive and with increasing reliance on Societies for the enforcement of international safety regulations\textsuperscript{191}. There are also quite a number of quality FOCs living up to their obligations\textsuperscript{192} such as Liberia.\textsuperscript{193}

The problems encountered by Flag States associated with implementation of international instruments\textsuperscript{194} have been recognized by the IMO. Such recognition has led to the creation of the IMO Sub-Committee of FSI.\textsuperscript{195} A number of measures\textsuperscript{196} were also initiated by the IMO such as the adoption of Res. A.946(23) IMO Voluntary Member State Audit Scheme, Flag State Self-Assessment Form and the Code for

\textsuperscript{186} There are allegations that some Flag States have limited their auditing scope for ISM to just four hours even for large companies. See \textquote{ISM has led to 3-way effect throughout industry }, Lloyd’s List, 29 July 2000.
\textsuperscript{187} \textit{Supra}, footnote 54.
\textsuperscript{188} See \textquote{IMO standing firm on deadline: Countdown to ISM }, Lloyd’s List, 11 May 1998
\textsuperscript{189} See however \textquote{ISM dilemmas revealed in new survey }, Lloyd’s List, 10 June 1998 where it mentions that the relative shortage of qualified personnel is not a problem limited to Flag of Convenience States.
\textsuperscript{190} See Chris Horrocks, \textquote{Stiffening the Resolve of the Flag States }, Bimco Review, 1996 at page 234.
\textsuperscript{191} \textit{Supra}, footnote 9 at p.405.
\textsuperscript{192} \textit{Supra}, footnote 190.
\textsuperscript{193} See Herbert, C., \textquote{The Liberian Shipping Registry: Strategies to Improve Flag State Implementation and Increase Market Competitiveness }, Unpublished master’s thesis, World Maritime University, Malmö, Sweden
\textsuperscript{194} Flag States also have the responsibility for the implementation and enforcement of rules adopted by other intergovernmental bodies such as the International Labor Organization (ILO) and the IOPC Fund.
\textsuperscript{195} \textit{Supra}, footnote 190.
\textsuperscript{196} Other measures include Resolution A. 847(20), Resolution A.912(22) and Resolution A.914(22).
the Implementation of IMO Instruments which is currently being worked out in the IMO\textsuperscript{197}. The Roundtable of shipping industry organizations has also published its “Shipping Industry Guidelines on Flag State Performance”. \textsuperscript{198}

\subsection*{5.2 Expertise, Experience and Internationality of Classification Societies}

As mentioned before, the Classification Societies enjoy the distinction of having developed a large base of highly qualified technical experts covering a very wide array of specializations which is quite difficult for Flag States to achieve. Over the years, Classification Societies have achieved a great degree of success in recruiting and maintaining highly competent people through the industry-level salary they offer to prospective applicants. In addition, they have also instituted certain programs to attract quality people such as graduate training programs and undergraduate sponsorships\textsuperscript{199}. Some offer extensive in-house training, job security and even tuition fee reimbursements\textsuperscript{200}. Such incentives ensure to the Class a consistent supply of highly qualified and satisfied people.

It is evident that the expertise of Classification Societies has been a consequence of years of experience in performing surveys and statutory work for the maritime industry. The Societies have gained much credibility and confidence through years of in-service experience and feedback from the various industry players. As a criteria for evaluating Classification Societies, it can be stated categorically that experience is an area where they are not lacking.

Much has been said also of the international nature of the Class with their global network of almost 1,600 offices comprised of at least 6,000 surveyors supported by 6,000 technical staff. This international network of Classification Societies allows them to apply regulatory requirements in a uniform way. IACS Societies are authorized by more than 100 IMO member States to perform statutory

\textsuperscript{197} Supra, footnote 175.
\textsuperscript{199} See “Jobs in Lloyd’s Register Group” at http://www.lr.org/corporate_information/jobs/index.htm.
international and national regulation compliance surveys and to issue the necessary certification on their behalf. 201

5.3 IMO Guidelines on Recognized Organizations acting on behalf of the Administration

Being conscious of the need for Flag States to delegate some of the obligations from the IMO Conventions to certain organizations, IMO has adopted a number of guidelines to ensure an effective and uniform system of delegation by Flag States such as Res. A.739(18)202 Guidelines for the Authorization of Organizations acting on behalf of the Administration203.

Under this Resolution, national administrations are recommended to follow certain requirements such as to check that the recognized organization has adequate technical, management and research resources to carry out its delegated tasks, have a formal written agreement204 with the organization, including the main aspects of delegation operation, provide instructions detailing actions to be followed when the ship is regarded as unfit to proceed to sea, provide the organization with all appropriate elements of national law, and finally to specify that the organization should maintain records to assist in the interpretation of convention regulations.205

Another requirement is for the Administration to establish a system for monitoring and verifying the performance of recognized organizations including provisions for the conduct of additional ship inspections by the Flag State, audits and proper communication procedures. 206

An amendment to the Resolution is currently being considered by the FSI Subcommittee to include a provision requiring recognized organizations to use only exclusive surveyors and auditors with the only exemption allowed for radio surveys.

201 Supra, footnote 14.
202 See Appendix C.
204 See “Model Agreement for the Authorization of Recognized Organizations acting on behalf of the Administration ”, MSC Cir. 710 / MEPC Cir. 307 dated 09 October 1995, Appendix B.
205 Supra, footnote 9 at p.408.
206 Ibid.
In addition, IMO also issued Res. A.789(19) Specifications on the survey and certification functions of recognized organizations acting on behalf of the Administration. The specifications are divided into 4 sections namely management, technical appraisal of services, surveys and qualification and training of surveyors.

5.4 EU Guidelines on Recognized Organizations acting on behalf of the Administration

The guidelines adopted by the IMO on the authorization of ROs, delegation procedures, specifications of survey and certification functions of ROs and Model Agreement had a positive effect on efforts to create uniformity, procedurally and substantially, in the delegation of statutory survey functions. It is submitted that these guidelines were able to establish a workable framework from which individual Flag States can base their formal relationship with the Classification Society.

It is no surprise therefore when regional organizations such as the EU have similarly adopted the IMO guidelines on the authorization of recognized organizations acting on behalf of the Administration. But the EU has done more than adopting the IMO guidelines. It has created its own Directive effectively establishing common rules and standards for ship inspection and survey organizations and for the relevant activities of the maritime administration. It is intended to involve national administrations more closely in the process of ship certification and surveying, requiring Member States to introduce a recognition procedure.\textsuperscript{207} Council Directive 94/57/EC\textsuperscript{208} was adopted on 22 November 1994 and Member States were required to bring the requirements of the Directive into force through national legislation by the end of 1995.\textsuperscript{209}

It is important to note that the Directive specifically obliges its Member States to delegate its statutory duties only to recognized organizations. Further, States are to ensure that ships flying their flag are constructed and maintained according to the rules of a recognized Classification Society. A distinctive feature of the Directive is

\textsuperscript{207} \textit{Ibid}, at p. 409.
\textsuperscript{208} See Appendix D, Council Directive 94/57/EC.
\textsuperscript{209} \textit{Supra}, footnote 41 at p.6.
that it goes beyond the guidelines set by the IMO Resolutions by prescribing quantitative and qualitative criteria for obtaining recognition. 210

Experience in the past have shown the strong inclination of the EU law-making system to prescribe rules and standards higher than those which are set by other competent international organizations such as the IMO in order to protect its vast interests211 in maritime transport. Stricter rules and higher standards contained in the Community-wide recognition regime for Classification Societies equate to weeding out players who may not have sufficient expertise, experience and resources. One effect of the Directive is that it has intentionally limited the choice of Member States to Societies with vast resources including the number of exclusive surveyors and covering a wide range of clientele or with an enormous size of classed fleet.212 The overall objective of course is to ensure that only highly reliable and professionally competent Societies are authorized to act on behalf of EU Member States.213 Similar to IMO Resolutions, the Directive provides for the monitoring of performance of recognized organizations to ensure that they continue to meet the provisions of the Directive as well as to assess their quality performance.

It should be noted that there were some weaknesses discovered during the implementation of the Directive such as the lack of harmonization in the recognition procedures for the Class which were left to the Member States and a centralized control for the recognition of Classification Societies as per the Directive. In view of these, a proposal to amend the Directive is currently being considered by EC. 214

5.5 Internal and External methods of monitoring and assessing Classification Societies' performance

210 Supra, footnote 9 at p.409. See also Appendix E for the list of EU-recognized Classification Societies.  
211 Over 90% of external trade and some 43% of internal trade of EU goes by sea. More than 1 billion tonnes of freight a year are loaded and unloaded in EU ports. More than 2.5 million people are employed by the maritime transport sector. See Maritime Transport at http://www.europa.eu.int/comm/transport/maritime/index_en.htm.  
212 However, the Directive also contains a procedure under which organizations which meet the qualitative but not the quantitative criteria may be granted a provisional recognition within a Member State for a period of three years. Supra, footnote 41 at p.7.  
213 Supra, footnote 211.  
214 See Appendix E, Proposed Amendments to 94/57/EC.
To ensure the integrity and the highest standards in ship classification practice, IACS adopted its Quality Management System Certification Scheme (QSCS) in 1991. This scheme requires that IACS members develop their own internal quality management system relating to both classification and statutory work. The requirements included in the system conform with the requirements of ISO Standard 9001, EN 45004, IMO Resolutions A.739(18) and A.789(19) and other applicable standards. Compliance of Member Societies with the requirements are checked through the conduct of review and evaluation of the system documentation and audit of the system implementation. Proof of compliance is evidenced with the issue of a Quality Management System Certificate of Conformity. Non-compliance with the requirements may result to a withdrawal or suspension of the certificate.215

As mentioned earlier, IMO Res. A.739(18) has provided the guidelines by which Flag States may authorize recognized organizations to act on its behalf. Included also in the guidelines is the requirement for Flag States to establish a system to ensure the adequacy of work performed by the recognized organization including monitoring and verification of class related matters.

According to the IMO’s Model Agreement, the Administration will be given the opportunity to satisfy itself that the RO’s quality system continues to comply with the requirements of Appendix 1 to the Annex to Res. A.739(18). The Administration has the discretion whether to recognize the audits of an independent audit group or perform the audits itself and determine the frequency thereof. This may be conducted randomly or as scheduled depending on the agreement.

Perhaps the most controversial method of assessing Class performance is through the Port State Control mechanism. Analysis of statistics, in particular the list of detentions may provide additional tools for evaluating the performance of the Class. This procedure supports the practice of Class targeting by some PSC authorities. Related to this but is not really a reliable tool to gauge Class performance are the reports played up by media especially in the aftermath of casualty incidents. Media reports which can be biased are usually bereft of scientific

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evidence to support their claims and may not only be misleading but also unfair to the Classification Societies.

Regional measures to assess Class performance may also be initiated as in the EU. Under Council Directive 94/57/EC a common minimum criteria was established for the recognition of organizations acting on behalf of the Administration. Under the said Directive, each Member State should periodically assess the performance of recognized organizations and submit to the Commission precise information relating to such performance. The Commission may decide whether it will request the Member State concerned to withdraw the recognition of organizations which are no longer fulfilling the common minimum criteria adopted.216

5.6 Conflict of interests between performing statutory duties and classification work

The Classification Societies’ wearing of two hats by being agents to both the shipowner and the Administration at the same time has led to some speculations on the possible conflicts of interest arising from these relationships. As an organization providing classification services to the shipowner, the Classification Society is expected to promote the best interests of the shipowner in terms of the quality of the services rendered and at the same time to give careful consideration to the shipowner’s preference for frugality. As a representative of the Administration, the Class is mandated to apply, interpret and enforce the Conventions as if the Administration is directly performing the statutory obligations itself.

The international safety rules and regulations have been drafted in such a way as to avoid ambiguities in interpretations, at least this was the objective. In some cases where it could not be avoided, the remedy has been for the IMO to issue additional guidelines for a more uniform implementation. IACS for its part also issues its Unified Interpretations and Procedural Guidelines to ensure a consistent approach to safety regulations. Inspite of this, the actual enforcement of regulations still rely on the subjective interpretation of rules by the surveyor attending to a particular ship. The uniform and consistent application of classification rules and

216 Supra, footnote 203.
international regulations is dependent not only on the strength and resources of the Societies but also on the skill, judgement and motivation of the individual surveyor exercising his professional experience. The danger of course is that any pressure on the surveyor or classification society may have significant influence on the ability to render professional advice and fair judgement.\footnote{Supra, footnote 41 at p.11.}

It is therefore of paramount importance that Class surveyors are able to make a clear distinction between undertaking pure classification work and statutory surveys. Likewise it is important to make sure that there is a system of checks and balance and that proper safeguards are in place to monitor performance of the two distinct but related duties of the classification society. Societies need to remember that reputation based on credibility is the stock of their trade. Failure to internalize the significant differences between the Classification Societies’ twin roles may result to loss of credibility and may open the floodgates of liability litigation if a maritime casualty occurs as a consequence.

5.7 Liability of Classification Societies

The issue of liability has been a very sensitive issue not only for the Class but also for the other major players in the maritime industry with whom Class have direct or indirect relationship. Proponents of Class liability argue that in addition to the responsibility for ensuring quality and transparency, the Class should also have some degree of accountability. This accountability is anchored on the fact that the Societies having established the design criteria for all the structure and much machinery also has the responsibility for periodically conducting condition surveys.

On the other side, opponents of the liability concept argue that liability resulting from gross negligence on the part of the Society may be difficult to prove. Demonstrated compliance with published standards-provided they are adopted by a fairly wide representation of the shipping industry as a whole and not merely by the Societies themselves - could be well regarded as \textit{prima facie} evidence that the
relevant society had not acted negligently and should be excused from any liability.\textsuperscript{218}

It is submitted that a balance has to be made on the two diverging views regarding the imposition of Class liability. Firstly, most Societies are small organizations at least financially speaking and they need to be protected against the threat of multi-million dollar suits otherwise they will go out of business. Unless a limited liability regime is in place, the only recourse would be to withdraw or limit the services they perform which will be detrimental to the industry.\textsuperscript{219}

Secondly, the notion of a limited liability is generally much preferred due to a number of reasons which is supported by the CMI. Unlike the shipowners who are subject to limited liability based on ships’ tonnage under the Limitation of Liability Convention, Classification Societies should not be subjected to the same scheme primarily because unlike shipowners, they do not control the level of maintenance, training, manning, trade routes and choice of cargo. The fees charged by the CS relate to the services rendered and are unconnected with the size of asset value.\textsuperscript{220}

Thirdly, the Class do not contribute to the risk level. Their purpose is only to reduce the risk and mistake only occurs in cases of omission or gross negligence. Due to their wide exposure to several third parties, the potential for failure is also greater. Like the government, the Class works in public interest and deserves some degree of protection.\textsuperscript{221}

Fourthly, on the question of whether the Class owed a duty of care to third parties such as passengers or cargo, it was held in the recent judgement of the House of Lords in \textit{Nicholas H}, that such persons are not the intended beneficiaries

\textsuperscript{219} Increased liabilities may also lead to increased costs due to greater insurance coverage which will ultimately translate to higher service fees. See Gilberto Chaves, “\textit{The issue of liability “}, Bimco Review, 1998 at p.114.
\textsuperscript{220} Ibid.
\textsuperscript{221} In the \textit{Sundancer} and \textit{Scandinavian Star} cases, the defendant Societies have successfully asserted their entitlement to immunity from liability under the law of the Flag (Bahamas) in respect of statutory surveys. Where such immunity is not provided in the State’s legislation, the agreement between the Class and the government should provide that the CS working as an agent of the government should be entitled to all of the defenses and protection of law normally available to the government. See footnote 218.
of the rules of classification.\textsuperscript{222} If the Class owed them a duty of care, it springs only from the national and international law on the safety of ships rather than classification. As a direct customer it is the shipowner which the Class owes a duty of care.\textsuperscript{223}

Finally, Classification Societies need to be reminded of their commitment to enforce higher standards of safety in the face of industry-level competition. Despite the pressures from shipowners to economize in their design features and shipyard preferences for lesser scantlings, safety should not be compromised. The Class needs to maintain its independence, integrity and impartiality in all aspects. The risk of incurring liabilities promotes a more pragmatic and rational approach to classification work. It seems acceptable that Classification Societies may be deprived of their right to limit liability in cases of willful fault or gross negligence\textsuperscript{224}. But in cases of simple negligence, it should be able to invoke limited liability.

A model for the limited liability concept is the case of Det Norske Veritas which included a clause in its contract saying that the company will compensate any person who suffers from a proved direct loss or damage due to DNV’s negligent act or omission. Started in 1997, DNV can grant compensation up to 10 times the fee charged for the service but shall not exceed US $ 2 million.\textsuperscript{225} On the other hand EU Directive 94/57 provides limitation of liability to ROs of up to EURO 5 million and 2.5 million for loss of life and property respectively.\textsuperscript{226}

Discussions and debates on the topic of Class liability will continue in the future due to the Classification Societies’ wide geographical coverage, industry-wide exposure and continuously expanding services. Due to States’ varied legal systems, Classification Societies remain prone to legal actions especially those who view them as deep-pocket sources.\textsuperscript{227} A balance of interests, although difficult to achieve

\textsuperscript{222} Tort liability of Class towards third parties may be claimed under United States law where negligence is proven and provided there is a causal link between the offence and the injury suffered. \textit{Supra}, footnote 9 p. 397.

\textsuperscript{223} \textit{Supra}, footnote 218.

\textsuperscript{224} Three main claims are possible under the terms of contractual liability namely: breach of contract, gross negligence and negligent misrepresentation. See footnote 9 at p.396.

\textsuperscript{225} See William Gray, \textit{“Why don’t Classification Societies admit Liability”}, Bimco Review 1998 at p.109.


\textsuperscript{227} CMI endeavoured to address this concern by drafting model contract clauses and principles of conduct to define the role and obligations of Classification Societies towards the shipowner and other third parties. See footnote 9 at p.398.
within the industry, is indispensable if we are to prevent the disappearance of Classification Societies or at any rate, in weakening them, to the great detriment of safety on all the seas.\footnote{The notion of criminal liability for Classification Societies is included in the proposed EU Directive on the introduction of criminal sanctions for ship-source pollution. Under the proposed Directive, any Classification Society that may have caused or participated in causing illegal pollution intentionally or by gross negligence must be subject to sanctions. See \url{http://europa.eu.int/scadplus/leg/en/lvb/l24123.htm}}

\textbf{5.8 The Classification Society as an Extension of the Flag State Administration: Its rationality and implications}

Much has already been said about the obligations of Flag States relating to the implementation and enforcement of international instruments arising from the multitude of IMO and ILO Conventions. The objective of achieving a higher level of safety and pollution prevention rests on the Flag States’ capacity to give full and complete effect to the various international conventions. Towards this end, history has shown the difficulties associated with Flag States’ fulfillment of their mandate.\footnote{\textit{Supra}, footnote 178 at p.14.}

Flag State Administrations come in different shapes and sizes. Some have very intricate and complex structures. Others are straightforward and rudimentary. States have varying capacities in the performance of their international safety obligations. Underdeveloped Administrations and those which lack the capacity and resources necessary for an efficient and credible Flag State Implementation have found convenience in delegating their functions to Recognized Organizations.\footnote{The decline of the traditional maritime administrations, and the shedding of experienced seagoing and shore-based staff, meant that the responsibilities of Classification Societies had become far greater than ever before – almost by default. See “\textit{Putting its house in order under harsh safety spotlight \textquotedblright}, Lloyd’s List, 27 June 1994, p.4} This is not to say however that it is only the Administrations which are lacking in capacity and resources that have utilized the services of recognized organizations. There are also a number of developed Administrations especially those from the traditional maritime nations that have decided to delegate some of their functions to the recognized organizations.

It is worth mentioning that the growth of Flag State Administrations has been preceded\footnote{\textit{Supra}, footnote 41 at p.1.} by the evolution of the Classification Society which were the first formal
standard-setting organization for ship safety on technical matters. Throughout the history of maritime trade, Societies have gained the reputation of being the premier authority for adopting the highest technical standards for ship safety and pollution prevention. It is the universal recognition of the Societies’ expertise, experience and internationality that has been the cornerstone of its continued patronage and acceptance within the maritime industry.

With the inexorable obligation of implementing international instruments as a background, the combination of the Flag State Administrations’ weaknesses and the Classification Societies’ obvious strengths have led to the existing understanding and cooperation between the two major pillars of maritime safety. From its original purpose of providing accurate and reliable information on the technical condition of ships, the work of Classification Societies have been stretched to cover the other areas relating to the regulation of ship operation such as the performance of statutory functions originating from the various international conventions. Further recognition on the potentials of the Class was manifested in the additional role given to them under the ISM. It should be noted that certification and auditing under the ISM Code is substantially different from the nature of classification work. The Societies have also showed potentials for delivering other services such as crew training certification, competence management certification and green standards for classification. The most recent and perhaps the most controversial addition to their work is the role of RSO under the ISPS Code.

The deficiencies, unwillingness, lack of interest and the other significant reasons for the inability of Flag State Administrations to assume their obligations under the international conventions have been compensated by the delegation of some functions to the Classification Society who are in better position to perform the requirements under the conventions. For the Administration, it is a matter of convenience and at the same time exigency of ensuring the conventions to which the Flag State is party to are given full and complete effect by the Administration.

233 Supra, footnote 76.
The special relationship that has evolved through years of close collaboration and association between the Flag State Administration and the Classification Societies has created the notion of the Class as an extension of the Flag State Administration. This impression stems from the Flag States’ consistent reliance on the Class for technical, management and security related services. As an extension of the Flag State Administration, the Class aims to fill the void in services caused by the apparent incapacities of the Administration. The relationship has been mutual. The Administration finds convenience in the expertise of Societies for the proper implementation of statutory obligations, hence the term Convenience of Flags (COF) should be introduced. To avoid incurring huge financial costs associated with additional investments on infrastructure, manpower recruitment and government reorganization, Flag States are more likely to find it convenient to delegate their statutory functions to the Classification Societies.

On the other hand, the Class enjoy the financial benefits and more importantly, global recognition of the indispensable role of Classification Societies in the promotion of maritime safety and security and the prevention of marine pollution.

An implication of this relationship between the Flag State Administration and the Classification Society is that the international maritime community may view this as an overreliance of Flag States on the Class for the safety obligations which they were originally bound to perform. An unwanted consequence may be the hampering of the growth of the Administration as brought about by increased complacency associated with Class delegation. Flag States will then have to face the risk of losing credibility in the eyes of the international maritime community and from being branded as the weakest link in the maritime safety chain.

If, on the other hand, the close cooperation between the Administration and the Class can lead to more productive results such as an improved Flag State Implementation and performance, then the Flag State’s safety reputation may benefit in the long run.236

236 Liberia has proved, by a consistently improving performance that it can ensure a generally high standard of operation across its fleet, achieved by appropriate centralized control and supervised delegation of statutory survey work to the Classification Societies. Supra, footnote 190.
As for Classification Societies, it is submitted that there are both advantages and disadvantages resulting from this relationship. Allegations of conflicts of interests, loss of independence and impartiality have to be balanced against the benefits of gaining wider recognition for the Societies’ role in promoting a safety culture, security and environmental consciousness. The benefit of State protection afforded to the Classification Society as an extension of the Flag State Administration is also a significant factor.
Chapter Six

6. CONCLUSION

The history of Classification Societies spanning two centuries of active contribution to the promotion of the highest standards of ship safety covers a wide area of involvement from the development of classification rules to performance of delegated statutory survey work and certification including work on such matters as safety management, human element, crew competency and most recently, security.

The fact that Classification Societies have endured the challenges to their very existence and relevance in the industry is manifested in the ever increasing roles that they have to assume. There is confidence therefore in saying that the unique features and strengths of the Classification Societies have made them an indispensable link in the maritime safety chain.

The efficiency and diligence with which Classification Societies have developed and applied their rules have earned them the recognition of the Flag States, Port States, the IMO and other international organizations and the entire industry. Their records of competence have likewise earned them the respect of Flag State Administrations who have looked to the Societies for their expertise, experience and vast network of resources.

As more and more regulations continue to be generated from the IMO and other international organizations, the onus is on the Flag State Administration to ensure that these regulations to which they are Party are given full and complete effect. The problem herein lies in the fact that the legislative mechanism of the IMO and other international organizations have developed quite dramatically over the past years and have overtaken the development of maritime administrations. It is arguable that there were some delays in the entry into force of a number of international instruments but these may partly be due to the hesitation of Flag States to ratify the conventions due to lack of necessary infrastructure including an underdeveloped maritime administration. For those Flag States parties to the conventions, the more obvious task of implementing them is the primordial concern.
The rising popularity of open registries have all the more highlighted the reliance of Flag States on Classification Societies.237 It is the combination of the Flag States’ lack of capacity to implement the conventions and the strength of Classification Societies which continue to govern the existing relationship between the Administration and the Classification Societies.

Developing States often face the dilemma of either delegating most of the statutory functions to Classification Societies or to perform the obligations themselves at the risk of sacrificing the quantity and quality of statutory work. More often than not, the choice will be for the former with the hope that gradually, the Administration may be able to develop its own expertise and resources to undertake the obligations they were bound to perform in the first place. With limited financial resources, developing States face an uphill battle for self-reliance and improvement often plagued with the problem of prioritizing its limited budget.

For traditional maritime States and other developed States, the decision to delegate most of the statutory functions to Classification Societies is simply a matter of choice and convenience owing to the well established reputation of Classification Societies and the efficiency with which they operate.

There are no restrictions on the maximum amount of statutory functions that can be delegated to the Classification Societies although these are limited to international instruments providing for such delegation. Guidelines on authorization of recognized organizations and specifications of survey and certification have been adopted by IMO but there are no clear cut guidelines on the limit to which Flag States can delegate all their statutory functions. This issue is therefore left to the good judgement of the Flag State as to their ability to monitor the work of Classification Societies and at the same time to ensure that international conventions are given full and complete effect through the various methods of assessing the performance of Classification Societies. These subjects are usually incorporated in the respective Class Agreements concluded between Flag States and individual Classification Societies.238

237 Supra, footnote 37.
238 See Appendix F, Examples of Class Agreements.
Flag States will continue to use Classification Societies as agents for performing their statutory obligations under the increasing body of international instruments constantly being developed within the IMO. Classification Societies have proven that they can be relied upon to assume the multitude of diverse tasks associated with their delegated statutory work. Flag States find comfort in this and in realizing that the Societies have adapted quite well to the challenges brought about by the introduction of new regulations crafted at the IMO. The ability to mutate, to assume newer roles and to extend its arms to cover wider areas of maritime interests makes the Classification Society a most suitable extension of the Flag State Administration.

The Classification Societies have become so well entrenched that it is difficult to imagine a maritime industry without them. Therefore, doubts occasionally being raised on their usefulness coupled with accusations that Classification Societies have been reduced to anachronism are totally devoid of value and significance. Such propositions will not merit support even from the IMO\textsuperscript{239}. In an era of increasing desire to achieve a safety culture, and security and environmental consciousness, the greater likelihood is that Flag States will continue to treat the Classification Societies as an extension and as a formidable partner in serving the maritime industry.

\textsuperscript{239} A Polish proposal submitted to the IMO’s MSC 78 Meeting suggested that Classification Societies should be formally approved by the IMO was supported by Japan although it failed to solicit wider support from the majority of the Committee’s members. It is an indication of the continuing political pressure on the Class to be fully transparent and accountable. See “Goal based standards and common rules of Class “, Aline De Bievre, Bimco Bulletin, Vol.99. No.3, June 2004, p.26.
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## APPENDIX A

### Table A.1 – Summary of Status of Conventions as at 30 June 2004

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<td>BWM CONVENTION 2004</td>
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*Source: Lloyd's Register of Shipping/World Fleet Statistics as at 31 December 2002

APPENDIX B

ANNEX
MODEL AGREEMENT
AGREEMENT GOVERNING THE DELEGATION OF
STATUTORY CERTIFICATION SERVICES FOR VESSELS REGISTERED IN
[STATE]
between
[ADMINISTRATION]
and
[RECOGNIZED ORGANIZATION]

This Agreement pursuant to the [legal authority] and in compliance with the "Guidelines for the authorization of organizations acting on behalf of the Administration", Assembly resolution A.739(18) and the Annexes thereto, is between Recognised Organization hereinafter referred to as "RO " and [State] hereinafter referred to as "the Administration" with respect to the performance of marine statutory surveys and issuance of relevant certificates.

1 Purpose

1.1 The purpose of this Agreement is to delegate authority to perform statutory certification services and to define the scope, terms, conditions and requirements of that delegation.

2 General Conditions

2.1 Statutory certification services comprise the assessment of [State] registered vessels in order to determine the compliance of such vessels with the applicable requirements of the international conventions, codes and national requirements (hereinafter referred to as "applicable instruments") and the issue of relevant certificates as set out in appendix 1 hereto.

2.2 In so far as the certification services covered by this Agreement are concerned, RO agrees to co-operate with port State control officers to facilitate the rectification of reported deficiencies on behalf of the Administration when so requested, and report to the Administration.

2.3 Statutory services rendered and statutory certificates issued by RO will be accepted as services rendered by or certificates issued by the Administration provided that RO maintains compliance with the provisions of Appendix 1 of the Annex to Assembly resolution A.739(18).

2.4 Authorizations for services outside the scope of Appendix 1 to this Agreement will be dealt with as mutually agreed on a case-by-case basis.

2.5 RO shall endeavour to avoid undertaking activities which may result in a conflict of interest.

3 Interpretations, Equivalents and Exemptions
3.1 While interpretations of the applicable instruments, as well as the determination of equivalents or the acceptance of substitutes to the requirements of the applicable instruments are the prerogative of the Administration, RO will co-operate in their establishment as necessary.

3.2 Exemptions from the requirements of the applicable instruments are the prerogative of the Administration and must be approved by the Administration prior to issuance.

3.3 In instances where, temporarily, the requirements of an applicable instrument cannot be met under particular circumstances, the RO surveyor will specify such measures or supplementary equipment as may be available to permit the vessel to proceed to a suitable port where permanent repairs or rectifications can be effected or replacement equipment fitted.

4 Information and Liaison

4.1 RO will report to the Administration such information at such frequency as agreed between RO and the Administration, as delineated in Appendix 2 to this agreement.

4.2 The Administration shall be granted access to all plans and documents including reports on surveys on the basis of which certificates are issued or endorsed by RO.

4.3 The Administration will provide RO with all necessary documentation for the purpose of RO's provision of statutory certification services.

4.4 RO and the Administration, recognizing the importance of technical liaison, agree to co-operate toward this end and maintain an effective dialogue.

4.5 Regulations, rules, instructions and report forms shall be written in [language to be used].

5 Supervision

5.1 The Administration will be given the opportunity to satisfy itself that RO's quality system continues to comply with the requirements of Appendix 1 of the Annex to Assembly resolution A.739(18).

5.2 The Administration may choose to recognize audits performed on RO by an independent audit group effectively representing the interests of the Administration or IMO.

5.3 Should the Administration choose to conduct direct auditing of RO, the frequency and extent of audit will be subject to mutual agreement between the Administration and RO.

6 Other Conditions

6.1 Remuneration
Remuneration for statutory certification services carried out by RO on behalf of the Administration will be charged by RO directly to the party requesting such services.

6.2 Confidentiality
In so far as activities related to this Agreement are concerned, both RO and the Administration shall be bound by confidentiality provisions to be agreed between them.

6.3 Surveyors
Normally, surveys shall be carried out by surveyors working exclusively for RO. RO may use exclusive surveyors of another organization with which RO has a bilateral agreement provided that the other organization is recognized by the Administration. However, RO may use non-exclusive surveyors provided such surveyors and all services and functions performed by such personnel relevant to this agreement, are subject to the quality assurance system of the RO. These provisions apply to subcontractors and to all other suppliers of support services being relevant to statutory survey and certification.

6.4 Amendments
Amendments to this Agreement and appendixes will become effective only after consultation and written agreement between the Administration and RO.

6.5 Governing Law and settlement of Disputes
.1 The Agreement shall be governed by and construed in accordance with [Agreed State] law. Any dispute arising in connection with this Agreement which cannot be settled by private negotiations between the parties shall be settled finally by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in [Agreed Location].

.2 In the performance of statutory certification services hereunder, RO, its officers, employees and other acting on its behalf are entitled to all the protection of law and the same defences and/or counterclaims as would be available to the Administration and its own staff surveyors or employees if the latter had conducted the statutory certification services in question.

6.6 Liability
.1 In the context of this Agreement, if a liability is finally and definitively imposed on the State of the Administration for loss or damage which is proved in a court of law to have been caused by any negligent act or omission by RO, its officers, employees or others who act on behalf of RO under this Agreement, the Administration is entitled to seek from RO compensation up to but not exceeding the amount of financial liability as defined in the standard terms and conditions of RO.

.2 While acting for the Administration under this Agreement RO shall be free to create contracts direct with its clients and such contracts may contain RO’s normal contractual conditions for limiting its legal liability.

6.7 Termination
.1 If this Agreement is breached by one of the parties, the other party will notify the violating party of its breach in writing to allow the notified party the opportunity to remedy the breach within days, failing which the notifying party has the right to terminate the Agreement immediately.

.2 This Agreement may be terminated by either party by giving the other party 12 months written notice.
7 This Agreement commences on [Date].

IN WITNESS WHEREOF the undersigned, duly authorised by the parties, have on the [Date] signed this Agreement.

........................................................................................................................................
For [Recognised Organization] For [the Government of State]
APPENDIX C

Resolution A.739(18)
Adopted on 4 November 1993
(Agenda item 11)

GUIDELINES FOR THE AUTHORIZATION OF ORGANIZATIONS
ACTING ON BEHALF OF THE ADMINISTRATION
(SOLAS reg I/6, reg XI/1, LL Art 13, MARPOL reg II/4, reg II/10, TM Art 6, MARPOL reg VI/5(3))

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships,

RECOGNIZING the importance of ships being in compliance with the provisions of relevant international conventions, such as SOLAS 74, Load Lines 66, MARPOL 73/78 and STCW 78, to ensure prevention of maritime casualties and marine pollution from ships,

NOTING that the Administrations are responsible for taking necessary measures to ensure that ships flying their States' flags comply with the provisions of such conventions, including surveys and certification,

NOTING FURTHER that, under regulation 1/6 of the 1974 SOLAS Convention and regulation 4 of Annex I and regulation 10 of Annex II of MARPOL 73/78, the Administration may entrust the inspections and surveys to nominated surveyors or recognized organizations and further that the Administration shall notify the Organization of the specific responsibilities and conditions of the authority delegated to nominated surveyors or recognized organizations,

DESIRING to develop uniform procedures and a mechanism for the delegation of authority to, and the minimum standards for, recognized organizations acting on behalf of the Administration, which would assist flag States in the uniform and effective implementation of the relevant IMO conventions,

HAVING CONSIDERED the recommendations made by the Maritime Safety Committee at its sixty-second session and by the Marine Environment Protection Committee at its thirty-fourth session,

1. ADOPTS the Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, set out in the annex to the present resolution;
2. URGES Governments as soon possible to:
   (a) apply the said Guidelines; and
   (b) review the standards of already recognized organizations in the light of the Minimum Standards for Recognized Organizations Acting on Behalf of the Administration set out in appendix 1 to the annex to the present resolution;
3. REQUESTS the Maritime Safety Committee and the Marine Environment Protection Committee:
   (a) to review the Guidelines and Minimum Standards with a view to improving them as necessary;
   (b) to develop, as a matter of urgency, detailed specifications on the precise survey and certification functions of recognized organizations;

4. REQUESTS the Secretary-General to collect from Member Governments information on the implementation of the present resolution.

Annex
GUIDELINES FOR THE AUTHORIZATION OF ORGANIZATIONS ACTING ON BEHALF OF THE ADMINISTRATION GENERAL

1 Under the provisions of regulation 1/6 of SOLAS 74, article 13 of Load Lines 66, regulation 4 of Annex 1 and regulation 10 of Annex II of MARPOL 73/78 and article 6 of Tonnage 60, many flag States authorize organizations to act on their behalf in the surveys and certification and determination of tonnages as required by these conventions.

2 Control in the assignment of such authority is needed in order to promote uniformity of inspections and maintain established standards. Therefore, any assignment of authority to recognized organizations should:

   .1 determine that the organization has adequate resources in terms of technical, managerial and research capabilities to accomplish the tasks being assigned, in accordance with the Minimum Standards for Recognized Organizations Acting on Behalf of the Administration set out in appendix 1;
   .2 have a formal written agreement between the Administration and the organization being authorized which should as a minimum include the elements as set out in appendix 2 or equivalent legal arrangements;
   .3 specify instructions detailing actions to be followed in the event that a ship is found not fit to proceed to sea without danger to the ship or persons on board, or presenting unreasonable threat of harm to the marine environment;
   .4 provide the organization with all appropriate instruments of national law giving effect to the provisions of the conventions or specify whether the Administration's standards go beyond convention requirements in any respect; and
   .5 specify that the organization maintains records which can provide the Administration with data to assist in interpretation of convention regulations.

VERIFICATION AND MONITORING
3 The Administration should establish a system to ensure the adequacy of work performed by the organizations authorized to act on its behalf. Such a system should, inter alia, include the following items:

   .1 Procedures for communication with the organization
.2 Procedures for reporting from the organization and processing of reports by the Administration
.3 Additional ship’s inspections by the Administration
.4 The Administration’s evaluation/acceptance of the certification of the organization’s quality system by an independent body of auditors recognized by the Administration
.5 Monitoring and verification of class-related matters, as applicable.

Appendix 1
MINIMUM STANDARDS FOR RECOGNIZED ORGANIZATIONS
acting on behalf of the Administration

An organization may be recognized by the Administration to perform statutory work on its behalf subject to compliance with the following minimum condition for which the organization should submit complete information and substantiation.

General
1 The relative size, structure, experience and capability of the organization commensurate with the type and degree of authority intended to be delegated thereto should be demonstrated.
2 The organization should be able to document extensive experience in assessing the design, construction and equipment of merchant ships and, as applicable, their safety-management system.

Specific provisions
3 For the purpose of delegating authority to perform certification services of a statutory nature in accordance with regulatory instruments which require the ability to review applicable engineering designs, drawings, calculations and similar technical information to technical regulatory criteria as dictated by the Administration and to conduct field survey and inspection to ascertain the degree of compliance of structural and mechanical systems and components with such technical criteria, the following should apply:

.1 The organization should provide for the publication and systematic maintenance of rules and/or regulations in the English language for the design, construction and certification of ships and their associated essential engineering systems as well as the provision of and adequate research capability to ensure appropriate updating of the published criteria.
.2 The organization should allow participation in the development of its rules and/or regulations by representatives of the Administration and other parties concerned.
.3 The organization should be established with:
   .3.1 a significant technical, managerial and support staff, catering also for capability of developing and maintaining rules and/or regulations; and
   .3.2 a qualified professional staff to provide the required service representing and adequate geographical coverage and local representing as required.
.4 The organization should be governed by the principles of ethical behaviour, which should be contained in a Code of Ethics and as such recognize the inherent responsibility associated with a delegation of authority to include
assurance as to the adequate performance of services as well as the confidentiality or related in formation as appropriate.

.5 The organization should demonstrate the technical, administrative and managerial competence and capacity to ensure the provision of quality services in a timely fashion.

.6 The organization should be prepared to provide relevant information to the Administration.

.7 The organization's management should define and document its policy and objectives for, and commitment to, quality and ensure that this policy is understood, implemented and maintained at all levels in the organization.

.8 The organization should develop, implement and maintain an effective internal quality system based on appropriate parts of internationally recognized quality standards no less effective than ISO 9000 series, and which, inter alia, ensures that:

.8.1 the organization's rules and/or regulations are established and maintained in a systematic manner;
.8.2 the organization's rules and/or regulations are complied with;
.8.3 the requirements of the statutory work for which the organization is authorized, are satisfied;
.8.4 the responsibilities, authorities and interrelation of personnel whose work affects the quality of the organization's services are defined and documented;
.8.5 all work is carried out under controlled conditions;
.8.6 a supervisory system is in place which monitors the actions and work carried out by the organization;
.8.7 a system for qualification of surveyors and continuous updating of their knowledge is implemented;
.8.8 records are maintained, demonstrating achievement of the required standards in the items covered by the services performed as well as the effective operation of the quality system; and
.8.9 a comprehensive system of planned and documented internal audits of the quality-related activities in all locations is implemented.

.9 The organization should be subject to certification of its quality system by an independent body of auditors recognized by the Administration.

For the purpose of delegating authority to perform certification services of a statutory nature in accordance with regulatory instruments which require the ability to assess by audit and similar inspection of the relevant safety-management system attributes of shore-based ship management entities and shipboard personnel and systems, the following should, in addition, apply:

.1 the provision and application of proper procedures to assess the degree of compliance of the applicable shore-side and shipboard safety-management systems;
.2 the provision of a systematic training and qualification regime for its professional personnel engaged in the safety-management system certification process to ensure proficiency in the applicable quality and safety-management criteria as well as adequate knowledge of the technical and operational aspects of maritime safety management; and
the means of assessing through the use of qualified professional staff the application and maintenance of the safety-management system, both shore-based as well as on board ships, intended to be covered in the certification.

Appendix 2
Elements to be included in an agreement

A formal written agreement or equivalent between the Administration and the recognized organization should, as minimum, cover the following items:
1 Application
2 Purpose
3 General conditions
4 The execution of functions under authorization
   .1 Functions in accordance with the general authorization
   .2 Functions in accordance with special (additional) authorization
   .3 Relationship between the organization's statutory and other related activities
   .4 Functions to co-operate with port States to facilitate the rectification of reported port State control deficiencies or the discrepancies within the organization's purview.
5 Legal basis of the functions under authorization
   .1 Acts, regulations and supplementary provisions
   .2 Interpretations
   .3 Deviations and equivalent solutions
6 Reporting to the Administration
   .1 Procedures for reporting in the case of general authorization
   .2 Procedures for reporting in the case of special authorization
   .3 Reporting on classification of ships (assignment of class, alterations and cancellations), as applicable
   .4 Reporting of cases where a ship did not in all respects remain fit to proceed to sea without danger to the ship or persons on board or presenting unreasonable threat or harm to the environment
   .5 Other reporting
7 Development of rules and/or regulations - Information
   .1 Co-operation in connection with development of rules and/or regulations – liaison meetings
   .2 Exchange of rules and/or regulations and information
   .3 Language and form
8 Other conditions
   .1 Remuneration
   .2 Rules for administrative proceedings
   .3 Confidentiality
   .4 Liability
   .5 Financial responsibility
   .6 Entry into force
   .7 Termination
   .8 Breach of agreement
   .9 Settlement of disputes
   .10 Use of sub-contractors
   .11 Issue of the agreement
12 Amendments

9 Specification of the authorization from the Administration to the organization
   .1 Ship types and sizes
   .2 Conventions and other instruments, including relevant national legislation
   .3 Approval of drawings
   .4 Approval of material and equipment
   .5 Surveys
   .6 Issuance of certificates
   .7 Corrective actions
   .8 Withdrawal of certificates
   .9 Reporting

10 The Administration's supervision of duties delegated to the organization
   .1 Documentation of quality assurance system
   .2 Access to internal instructions, circulars and guidelines
   .3 Access by the Administration to the organization's documentation relevant to the Administration's fleet
   .4 Co-operation with the Administration's inspection and verification work
   .5 Provision of information and statistics on, e.g. damage and casualties relevant to the Administration's fleet
APPENDIX D

COUNCIL DIRECTIVE 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations

THE COUNCIL OF THE EUROPEAN UNION, Having regard to the Treaty establishing the European Community and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission (1),
Having regard to the opinion of the Economic and Social Committee (2),
Acting in accordance with the procedure referred to in Article 189c of the Treaty (3),
Whereas in its resolution of 8 June 1993 on a common policy on safe seas, the Council has set the objective of removing all substandard vessels from Community waters and has given priority to Community action to secure the effective and uniform implementation of international rules by elaborating common standards for classification societies (4);
Whereas safety and pollution prevention at sea may be effectively enhanced by strictly applying international conventions, codes and resolutions while furthering the objective of freedom to provide services;
Whereas the control of compliance of ships with the uniform international standards for safety and prevention of pollution of the seas is the responsibility of flag and port States;
Whereas Member States are responsible for the issuing of international certificates for safety and pollution provided for under conventions such as Solas 74, Load Lines 66 and Marpol 73/78, and for the implementation of the provisions thereof;
Whereas in compliance with such conventions all Member States may authorize to a various extent technical organizations for the certification of such compliance and may delegate the issue of the relevant safety certificates;
Whereas worldwide a large number of the existing classification societies do not ensure either adequate implementation of the rules or reliability when acting on behalf of national administrations as they do not have adequate structures and experience to be relied upon and to enable them to carry out their duties in a highly professional manner;
Whereas the objective of submitting classification societies to adequate standards cannot be sufficiently achieved by the Member States acting individually and can be better achieved by the Community;
Whereas the appropriate way to act is by means of a Council Directive laying down minimum criteria for recognition of organizations, while leaving recognition itself, the means of enforcement, and the implementation of the Directive to the Member States;
Whereas EN 45004 and EN 29001 standards combined with International Association of Classification Societies (IACS) standards constitute an adequate guarantee of performance quality of organizations;
Whereas the issue of the Cargo Ship Safety Radio Certificate may be entrusted to private bodies having sufficient expertise and qualified personnel;
Whereas organizations wishing to be recognized for the purpose of this Directive must submit to the Member States complete information and evidence of their
compliance with the minimum criteria, and the Member States must notify to the Commission and to the other Member States the organizations they have recognized;
Whereas a three-year recognition may be granted by the Commission for organizations which do not meet the criteria fixing the minimum number and tonnage of classed vessels and minimum number of exclusive surveyors laid down in the Annex but meet all the other criteria; whereas such organizations should be granted an extension of recognition after the period of three years provided they continue to meet the same criteria; whereas the effects of the three-year recognition should be limited to the requesting Member States, for that period only;
Whereas the establishment of the internal market involves free circulation of services so that organizations meeting a set of common criteria which guarantee their professionalism and reliability cannot be prevented from supplying their services within the Community provided a Member State has decided to delegate such statutory duties; whereas such a Member State may nevertheless restrict the number of organizations it authorizes in accordance with its needs based on objective and transparent grounds, subject to control exercised by the Commission through the comitology procedures;
Whereas the implementation of the principle of freedom to provide ship inspection and survey services could be gradual, but not beyond prescribed time limits;
Whereas a tighter involvement of the national administrations in ship surveys and in the issue of the related certificates is necessary to ensure full compliance with the international safety rules even if the Member States rely upon organizations outside their administration for carrying out statutory duties; whereas it is appropriate, therefore, to establish a close working relationship between the administrations and the organizations, which may require that the organization has a local representation on the territory of the Member State on behalf of which it performs its duties;
Whereas a committee of a regulatory nature should be established in order to assist the Commission in its effort to ensure effective application of the existing maritime safety and environmental standards while taking account of the national ratification procedures;
Whereas the Commission must act according to the procedure laid down in Article 13 in order to take due account of progress in international fora and to update the minimum criteria;
Whereas on the basis of the information provided in accordance with Article 11 by the Member States about the performance of the organizations working on their behalf, the Commission will decide whether it will request Member States to withdraw the recognition of recognized organizations which no longer fulfil the set of common minimum criteria, acting in accordance with the procedure of Article 13;
Whereas Member States must nevertheless be left the possibility of suspending their authorization to an organization for reasons of serious danger to safety or environment; whereas the Commission must rapidly decide in accordance with the procedure referred to above whether it is necessary to overrule such national measure;
Whereas each Member State should periodically assess the performance of the organizations working on its behalf and provide the Commission and all the other Member States with precise information related to such performance;
Whereas Member States, as port authorities, are required to enhance safety and prevention of pollution in Community waters through priority inspection of vessels carrying certificates of organizations which do not fulfil the common criteria, thereby ensuring no more favourable treatment to vessels flying the flag of a third State;
Whereas the procedure by which the committee will decide should be Procedure III A of Article 2 of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (5);

Whereas classification societies must update and enforce their technical standards in order to harmonize safety rules and ensure uniform implementation of international rules within the Community;

Whereas at present there are not uniform international standards to which all ships must conform at the building stage and during their entire life, as regards hull, machinery and electrical and control installations; whereas such standards may be fixed according to the rules of recognized classification societies or to equivalent standards to be decided by the national administrations in accordance with the procedure laid down in Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (6),

HAS ADOPTED THIS DIRECTIVE:

Article 1
This Directive establishes measures to be followed by the Member States and organizations concerned with the inspection, survey and certification of ships for compliance with the international conventions on safety at sea and prevention of marine pollution, while furthering the objective of freedom to provide services. This process includes the development and implementation of safety requirements for hull, machinery and electrical and control installations of ships falling under the scope of the international conventions.

Article 2
For the purpose of this Directive:
(a) ‘ship’ means a ship falling within the scope of the international conventions;
(b) ‘ship flying the flag of a Member State’ means a ship registered in and flying the flag of a Member State in accordance with its legislation, including ships registered in Euros once that register is approved by the Council. Ships not corresponding to this definition are assimilated to ships flying the flag of a third country;
(c) ‘inspections and surveys’ means inspections and surveys made mandatory by the international conventions;
(d) ‘international conventions’ means the 1974 International Convention for the Safety of Life at Sea, the 1966 International Convention on Load Lines and the 1973/78 International Convention for the Prevention of Pollution from Ships, together with the protocols and amendments thereto, and related codes of mandatory status in all Member States, in force at the date of adoption of this Directive;
(e) ‘organization’ means a classification society or other private body carrying out safety assessment work for an administration;
(f) ‘recognized organization’ means an organization recognized in conformity with Article 4;
(g) ‘authorization’ means an act whereby a Member State grants an authorization or delegates powers to a recognized organization;
(h) ‘certificate’ means a certificate issued by or on behalf of a Member State in accordance with the international conventions;
(i) ‘class certificate’ means a document issued by a classification society certifying the structural and mechanical fitness of a ship for a particular use or service in
accordance with its rules and regulations;
(j) 'cargo ship safety radio certificate` means the certificate introduced by the amended Solas 74/78 Radio Regulations, adopted by the IMO and includes, during a transitional period ending on 1 February 1999, the Cargo Ship Safety Radiotelegraphy Certificate and the Cargo Ship Safety Radiotelephony Certificate;
(k) 'location` refers to the place of the registered office, central administration or principal place of business of an organization.

Article 3
1. In assuming their responsibilities and obligations under the international conventions, Member States shall ensure that their competent administrations can assure an appropriate enforcement of the provisions of the international conventions, in particular with regard to the inspection and survey of ships and the issue of certificates and exemption certificates.
2. Where for the purpose of paragraph 1 a Member State decides with respect to ships flying its flag:
   (i) to authorize organizations to undertake fully or in part inspections and surveys related to certificates including those for the assessment of compliance with Article 14 and, where appropriate, to issue or renew the related certificates; or
   (ii) to rely upon organizations to undertake fully or in part the inspections and surveys referred to in subparagraph (i);
it shall entrust these duties only to recognized organizations. The competent administration shall in all cases approve the first issue of the exemption certificates.
However for the cargo ship safety radio certificate these duties may be entrusted to a private body recognized by a competent administration and having sufficient expertise and qualified personnel to carry out specified safety assessment work on radio-communication on its behalf.
3. This Article does not concern the certification of specific items of marine equipment.

Article 4
1. Member States may only recognize such organizations which fulfil the criteria set out in the Annex. The organizations shall submit to the Member States from which recognition has been requested complete information concerning, and evidence of, compliance with these criteria. The Member States will notify the organizations in an appropriate manner of their recognition.
2. Each Member State shall notify to the Commission and the other Member States those organizations it has recognized.
3. Member States may submit to the Commission a request for a recognition of three years for organizations which meet all the criteria of the Annex other than those set out under paragraph 2 and 3 of the section ‘General’ of the Annex. Such recognition shall be granted in accordance with the procedure laid down in Article 13. The effects of this recognition shall be limited to the Member States which have submitted a request for such recognition.
4. All the organizations which are granted recognition shall be closely monitored by the committee set up under Article 7, also in view of deciding about extension of the recognition of organizations referred to in paragraph 3. A decision on the extension of such recognition shall not take into account the criteria set out under paragraphs 2 and 3 of the section ‘General’ of the Annex. The limitation of the effects of the recognition provided for in paragraph 3 shall no longer apply.
5. The Commission shall draw up and update a list of the organizations notified by the Member States in compliance with paragraphs 1, 3 and 4. The list shall be published in the Official Journal of the European Communities.

Article 5
1. In applying Article 3 (2) (i), Member States shall in principle not refuse to authorize any of the recognized organizations located in the Community to undertake such functions, subject to the provisions of Articles 6 and 11. However, they may restrict the number of organizations they authorize in accordance with their needs provided there are transparent and objective grounds for so doing. At the request of a Member State, the Commission shall, in accordance with the procedure laid down in Article 13, adopt appropriate measures.
2. By way of derogation, Member States may be temporarily exempted by the Commission from the implementation of the provisions of paragraph 1 until 31 December 1997.
3. In order for a Member State to accept that an organization located in a third State is to carry out the duties mentioned in Article 3 or part of them it may request that the said third State grant a reciprocal recognition for those recognized organizations which are located in the Community.

Article 6
1. Member States which decide to act as described in Article 3 (2), shall set out a working relationship between their competent administration and the organizations acting on their behalf.
2. The working relationship shall be regulated by a formalized written and non-discriminatory agreement or equivalent legal arrangements setting out the specific duties and functions assumed by the organizations and including at least:
   - the provisions set out in Appendix II of IMO Resolution A.739 (18) on guidelines for the authorization of organizations acting on behalf of the administration as it stands at the date of adoption of this Directive,
   - provisions for a periodical audit by the administration or by an impartial external body appointed by the administration into the duties the organizations are undertaking on its behalf,
   - the possibility for random and detailed inspections of ships,
   - provisions for reporting essential information about their classed fleet, changes of class or declassing of vessels.
3. The agreement or equivalent legal arrangement may set the requirement that the recognized organization has a local representation on the territory of the Member State on behalf of which it performs the duties referred to in Article 3. A local representation of a legal nature ensuring legal personality under the law of the Member State and the competence of its national courts may satisfy such requirement.
4. Each Member State shall provide the Commission with precise information on the working relationship established in accordance with this Article. The Commission shall subsequently inform the other Member States.

Article 7
A committee composed of the representatives of the Member States and chaired by the representative of the Commission is hereby instituted to assist the Commission. This committee shall be called by the Commission at least once a year and
whenever required in the case of suspension of authorization of an organization by a Member State under the provisions of Article 10.

The Committee shall draw up its rules of procedure.

Article 8
1. This Directive may be amended in accordance with the procedure laid down in Article 13, in order to:
   - apply, for the purposes of this Directive, subsequent amendments to the international codes and resolution mentioned in Articles 2 (d) and 6 (2), which have entered into force,
   - update the criteria in the Annex taking into account, in particular, the relevant decisions of the IMO.
2. Following the adoption of new instruments or protocols to the conventions referred to in Article 2 (d), the Council, acting on a proposal from the Commission, shall decide, taking into account the Member States parliamentary procedures as well as the relevant procedures within IMO, on the detailed arrangements for ratifying those new instruments or protocols, while ensuring that they are applied uniformly and simultaneously in the Member States.

Article 9
1. Each Member State may be requested, in accordance with the procedure laid down in Article 13, to withdraw the recognition of recognized organizations referred to in Article 4 which no longer fulfil the criteria set out in the Annex, where applicable.
2. In preparing drafts for a decision relating to the matters referred to in paragraph 1, the Commission shall take into account the reports and information mentioned in Articles 11 and 12. In preparing such draft measures, the Commission shall pay particular attention to the safety and pollution prevention performance records of the organizations. Draft decisions relating to the matters referred to in paragraph 1 shall also be submitted to the committee by the Commission upon its own initiative or at the request of a Member State.

Article 10
Notwithstanding the criteria specified in the Annex, where a Member State considers that a recognized organization can no longer be authorized to carry out on its behalf the tasks specified in Article 3 it may suspend such authorization. In the above circumstances the following procedure shall apply:
(a) the Member State shall inform the Commission and the other Member States of its decision without delay, giving substantiated reasons therefore;
(b) the Commission shall examine whether the suspension is justified for reasons of serious danger to safety or environment;
(c) acting in accordance with the procedure laid down in Article 13, the Commission shall inform the Member State whether or not its decision to suspend the authorization is justified for reasons of serious danger to safety or environment and, if it is not justified, request the Member State to withdraw the suspension.

Article 11
1. Each Member State must satisfy itself that the recognized organizations acting on its behalf for the purpose of Article 3 (2), effectively carry out the functions referred to in that Article to the satisfaction of its competent administration and that such organizations fulfil the criteria specified in the Annex. It may do so by having the
recognized organizations directly monitored by its competent administration or, in the
case of organizations located in another Member State, by relying upon the
 corresponding monitoring of such organizations by the administration of another
Member State.

2. Each Member State shall carry out this task on a biennial basis and shall provide
the other Member States and the Commission with a report of the results of this
monitoring at the latest by 31 March of each year following the years for which
compliance has been assessed.

3. Where a Member State chooses, for the purpose of carrying out this task, to rely
upon monitoring by another Member State, its report shall be provided at the latest
by 30 June of each year following the year for which compliance has been assessed.

4. Member States shall forward to the Commission and the other Member States any
information relevant to the assessment of the performance of organizations.

Article 12

1. In exercising their inspection rights and obligations as port states:
(a) Member States shall ensure that ships flying a third State flag are not treated
more favourably than ships entitled to fly the flag of a Member State. To this end the
fact that the ship certificates and the class certificate are known to have been
delivered by an organization which does not fulfil the criteria of the Annex, with the
exception of organizations recognized in accordance with Article 4 (3) and (4), shall
be taken as one of the primary criteria for selecting ships for inspection.
(b) Member States shall take appropriate measures when ships do not meet the
internationally agreed standards and shall report to the Commission and the
Secretariat of the Memorandum of Understanding on Port State Control the
discovery of any issue of valid certificates by organizations acting on behalf of a flag
State to a ship which does not fulfil the relevant requirements of the international
conventions, or any failure of a ship carrying a valid class certificate and relating to
items covered by that certificate.

2. Each Member State shall establish a performance record of the organizations
acting on behalf of flag States. This performance record shall be updated yearly and
distributed to the other Member States and the Commission.

Article 13

The following procedure shall apply for matters covered by Article 4 (3) and (4),
Article 5 (1) and Articles 8, 9, 10 and Article 14 (2):
(a) The representative of the Commission shall submit to the committee referred to in
Article 7 a draft of the measures to be taken.
(b) The committee shall deliver its opinion on the draft within a time limit which the
chairman may lay down according to the urgency of the matter. The opinion shall be
delivered by the majority laid down in Article 148 (2) of the Treaty in the case of
decisions which the Council is required to adopt on a proposal from the Commission.
The votes of the representatives of the Member States within the committee shall be
weighted in the manner set out in that Article. The chairman shall not vote.
(c) The Commission shall adopt the measures envisaged if they are in accordance
with the opinion of the committee.
(d) If the measures envisaged are not in accordance with the opinion of the
committee, or if no opinion is delivered, the Commission shall, without delay, submit
to the Council a proposal relating to the measure to be taken. The Council shall act
by a qualified majority. If, within three months from the date of referral to it, the
Council has not acted, the proposed measure shall be adopted by the Commission.

Article 14
1. Each Member State shall ensure that ships flying its flag shall be constructed and maintained in accordance with the hull, machinery and electrical and control installation requirements of a recognized organization.
2. A Member State may decide to use rules it considers equivalent to those of a recognized organization only on the proviso that it immediately notified them to the Commission in conformity with the procedure of Directive 83/189/EEC and to the other Member States and they are not objected to by another Member State or the Commission and found through the procedure of Article 13 not to be equivalent.

Article 15
1. The recognized organizations shall consult with each other periodically with a view to maintaining equivalence of their technical standards and the implementation thereof. They shall provide the Commission with periodic reports on fundamental progress in standards.
2. The recognized organizations shall demonstrate willingness to cooperate with port State control administrations when a ship of their class is concerned, in particular, in order to facilitate the rectification of reported deficiencies or other discrepancies.
3. The recognized organizations shall provide all relevant information to the administration about changes of class or declassing of vessels.
4. The recognized organizations shall not issue certificates to a ship declassed or changing class for safety reasons before consulting the competent administration of the flag State to determine whether a full inspection is necessary.

Article 16
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Directive no later than 31 December 1995.
2. When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.
3. The Member States shall immediately communicate to the Commission the text of all the provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 17
This Directive is addressed to the Member States.

Done at Brussels, 22 November 1994.
For the Council
The President
M. WISSMANN

(2) OJ No C 34, 2. 2. 1994, p. 14.


ANNEX

MINIMUM CRITERIA FOR ORGANIZATIONS REFERRED TO IN ARTICLE 3

A. GENERAL
1. The recognized organization must be able to document extensive experience in assessing the design and construction of merchant ships.
2. The organization should have in its class a fleet of at least 1 000 ocean-going vessels (over 100 GRT) totalling no less than 5 million GRT.
3. The organization must employ a technical staff commensurate with the number of vessels classed. As a minimum, 100 exclusive surveyors would be needed to meet the requirements in paragraph 2.
4. The organization should have comprehensive rules and regulations for the design, construction and periodic survey of merchant ships, published and continually upgraded and improved through research and development programmes.
5. The organization should have its register of vessels published on an annual basis.
6. The organization should not be controlled by shipowners or shipbuilders, or by others engaged commercially in the manufacture, equipping, repair or operation of ships. The organization should not be substantially dependent on a single commercial enterprise for its revenue.

B. SPECIFIC
1. The organization is established with:
   (a) a significant technical, managerial, support and research staff commensurate to the tasks and to the vessels classed, catering also for capability - developing and upholding rules and regulations;
   (b) world-wide coverage by its exclusive technical staff or through exclusive technical staff 2. The organization is governed by a code of ethics.
3. The organization is managed and administered in such a way as to ensure the confidentiality of information required by the administration.
4. The organization is prepared to provide relevant information to the administration of other recognized organizations.
5. The organization’s management has defined and documented its policy and objectives for, and commitment to, quality and has ensured that this policy is understood, implemented and maintained at all levels in the organization.
6. The organization has developed, implemented and maintains an effective internal quality system based on appropriate parts of internationally recognized quality standards and in compliance with EN 45004 (inspection bodies) and with EN 29001, as interpreted by the IACS Quality System Certification Scheme Requirements, and which, inter alia, ensures that:
   (a) the organization’s rules and regulations are established and maintained in a
systematic manner;
(b) the organization's rules and regulations are complied with;
(c) the requirements of the statutory work for which the organization is authorized are satisfied;
(d) the responsibilities, authorities and interrelation of personnel whose work affects the quality of the organization's services are defined and documented;
(e) all work is carried out under controlled conditions;
(f) a supervisory system is in place which monitors the actions and work carried out by surveyors and technical and administrative staff employed directly by the organization;
(g) the requirements of major statutory work for which the organization is authorized are only carried out or directly supervised by its exclusive surveyors or through exclusive surveyors of other recognized organizations;
(h) a system for qualification of surveyors and continuous updating of their knowledge is implemented;
(i) records are maintained, demonstrating achievement of the required standards in the items covered by the services performed, as well as the effective operation of the quality system; and
(j) a comprehensive system of planned and documented internal audits of the quality related activities in all locations.
7. The organization must demonstrate ability:
(a) to develop and keep updated a full and adequate set of own rules and regulations on hull, machinery and electrical and control equipment having the quality of internationally recognized technical standards on the basis of which Solas Convention and Passenger Ship Safety Certificates (as regards adequacy of ship structure and essential shipboard machinery systems) and Load Line Certificates (as regards adequacy of ship strength) can be issued;
(b) to carry out all inspections and surveys required by the international conventions for the issue of certificates, including the means of assessing, through the use of qualified professional staff, the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification.
8. The organization is subject to certification of its quality system by an independent body of auditors recognized by the administration of the State in which it is located.
9. The organization should allow participation in the development of its rules and/or regulations by representatives of the administration and other parties concerned.
APPENDIX E

COMMISSION

COMMISSION DECISION

of 14 March 2002

amending Decision 96/587/EC on the publication of the list of recognised organisations which have been notified by Member States in accordance with Council Directive 94/57/EC

(notified under document number C(2002) 995)

(2002/221/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,


Whereas:

(1) A list of recognised organisations was published by Commission Decision 96/587/EC of 30 September 1996 (3), as amended by Decision 98/403/EC (4).


(3) Decision 96/587/EC should therefore be amended accordingly,
HAS ADOPTED THIS DECISION:

Article 1
The Annex to Decision 96/587/EC is replaced by the Annex to this Decision.

Article 2
This Decision is addressed to the Member States.
Done at Brussels, 14 March 2002.

For the Commission
Loyola DE PALACIO
Vice-President


EN Official Journal of the European Communities 15.3.2002 L 73/31

ANNEX

The Annex is replaced by the following:

1. Organisations recognised on the basis of Article 4(1) of Directive 94/57/EC:

American Bureau of Shipping (ABS)
Bureau Veritas (BV)
China Classification Society (CCS)
Det Norske Veritas (DNV)
Germanischer Lloyd (GL)
Korean Register of Shipping (KR)
Lloyd's Register of Shipping (LR)
Nippon Kaiji Kyokai (NK)
Registro Italiano Navale (RINA)
Russian Maritime Register of Shipping (RS)

2. Organisations recognised on the basis of Article 4(3) of Directive 94/57/EC:

Hellenic Register of Shipping (HR)
(The effects of this recognition are limited to Greece)
Registro Internacional Naval, SA (RINAVE)
(The effects of this recognition are limited to Portugal).
APPENDIX F

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.3.2000
COM(2000) 142 final
2000/0065 (COD)
2000/0066 (COD)
2000/0067 (COD)

COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT AND THE COUNCIL
ON THE SAFETY OF THE SEABORNE OIL TRADE

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Council Directive 95/21/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers

(presented by the Commission)
COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL
ON THE SAFETY OF THE SEABORNE OIL TRADE

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LEGISLATIVE PROPOSALS
III. Proposal for a Regulation of the European Parliament and of the Council on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers
2. Classification societies

Classification societies are key players in the maritime safety field. It would be difficult to imagine a shipping world without the technical expertise provided by these organisations. However, largely due to the commercial pressure exercised on the classification societies, and to the growing number of organisations operating in the field without having sufficient expertise and professionalism, the confidence of the shipping community in these organisations has declined in the recent decades.

A first response to these problems was provided at Community level by the adoption, in 1994, of Council Directive 94/57/EC, which introduced a system for Community-wide recognition of classification societies. This Directive addressed the overall issue of the quality of the classification societies to be authorised to work on behalf of the maritime administrations of the Member States. The qualitative criteria of the Annex to the Directive aimed to ensure that only highly reliable and professionally competent bodies be authorised to work on behalf of the EU Member States. The overall provisions of this legal instrument were designed to ensure that the relevant safety requirements were applied in a harmonised and scrupulous manner on board ships. Furthermore, the Directive introduced obligations to control classification societies working on behalf of the Member States, both to ensure that the recognised organisations continued to meet the provisions of the Directive and to assess their quality performance.

This Directive represented one of the first steps on the road to the establishment of a Community policy on maritime safety. Its transposition into the national laws of the Member States constituted a long and complicated process, with twelve infringement procedures launched by the Commission for failure to comply with the transposition time-limit laid down in the Directive and with the last Member State transposing the Directive only in 1998. The Commission also launched a number of infringement procedures – some of which are still pending – for non-compliance, mainly related to the establishment of the working relationships between the maritime administrations and the organisations authorised to work on their behalf.

The Directive suffered, on a number of issues, from some shortcomings that appeared following its implementation. The procedure for the recognition of the classification societies, for example, was completely left to individual Member States without ex ante harmonised and centralised control of the fulfilment of the criteria of the Directive by the organisation wishing to be recognised. The same lack of harmonised and centralised approach applied to the periodic ex post controls of the recognised organisations. The safety and pollution prevention performance record of the organisations – measured in respect of all their classed ships, irrespective of the flag they fly – was not regarded as a conditio sine qua non to recognise the classification societies or to maintain their recognition.

The lessons learned from the practical implementation of the Directive have led to the identification of a number of areas where the provisions of the Directive can be further strengthened. Hence the proposed amendments, which are described in detail in the second legislative proposal attached to this Communication. The main content of the proposed amendments is the following:
• The granting and the withdrawal of the recognition of the classification societies are decided by the Commission on the basis of the Comitology procedure. The periodic inspections of the recognised organisations are carried out by the Commission together with the Member State proposing the recognition.

• A new sanction for the recognised organisation is introduced: the suspension of recognition for one year, which leads to the withdrawal of the recognition if the shortcomings causing the suspension are not removed.

• A good record of safety and pollution prevention performance of the recognised organisations – measured in respect of all the ships they have in class, irrespective of the flag they fly – becomes a conditio sine qua non to grant and maintain the recognition.

• The conditions of the financial liability of the recognised organisation carrying out statutory tasks on behalf of the Member States are harmonised at Community level. The financial liability is unlimited or can be limited to different levels in accordance with the seriousness of the negligent act of the classification society.

• More stringent qualitative criteria have to be met by the recognised organisations, including the need to respect certain procedures when ships change class and the need to communicate more information about the ships they have in class to the port State control authorities. In order to ensure in particular that the gaining organisation has a full picture of the condition of a ship when it changes class, the complete file on the history of the vessel must be transferred by the losing society to the gaining society.

• The obligations of the Member States as flag States are reinforced in the field of maritime safety.
APPENDIX G

EXAMPLES OF CLASS AGREEMENTS:

A. Danish Class Agreement

The Danish Class Agreement of 2003 is the agreement governing the authorization of seven recognized organizations to undertake statutory certification services for vessels registered in Denmark. The Agreement defines the scope, terms, conditions, requirements and cooperation between the RO and the Danish Maritime Authority (DMA). Annex I to the Agreement refers to the Scope of Authorization while Annex II includes Frequently Answered Questions (FAQ).

As per the Agreement, ROs authorized by the DMA should comply with the requirements of IMO Res. A.739(18), Res A. 789(19) and the Council Directive 94/57/EU. Surveys conducted and certificates issued by the RO are deemed issued by the DMA as long as they comply with the above provisions. In case of deficiencies requiring actions beyond the scope of the delegated statutory functions, these are covered by special authorizations.

In compliance with IMO and EU guidelines, DMA exerts its supervisory powers over the RO through a system of audits, random inspections, planned inspections or expanded special surveys. The Agreement also provides for a proper reporting and communications procedure. DMA is granted access to information on services performed by the RO including the status of inspections, the use of forms and checklists either through electronic access or in hardcopy format. DMA is also enjoined to participate in the RO’s relevant technical committees. The RO is required to establish a local representation on the territory of Denmark. The recognition of the RO can be suspended, withdrawn and suspended if the RO fails to meet certain criteria. The DMA reserves the right to perform any statutory survey or certification.

In the performance of statutory certification services, ROs are entitled to all the protection of law and the same defences and/or counterclaims including but not limited to any immunity from or limitation of liability as would be available to the DMA. Financial compensation from the RO is limited to 5 million Euro for personal injury or death and 2.5 million Euro for loss or damage.

B. Cayman Islands Class Agreement

The Cayman Islands Class Agreement follows most of the provisions of the IMO Model Class Agreement. Delegation of authority to the Class can either be general authorization or specific authorization. Under the general authorization, delegation is categorized into full, modifies full and partial delegation. The Administration has authorized seven Societies to act on its behalf.
One of the important features of the Agreement is that it lays down the right of the Administration to suspend, cancel or revoke any certificate, document or approval issued by the Classification Society. The Class is also required to maintain an effective internal quality system. The Administration is granted access to the Societies’ data banks, register of ships, plans and documents, reports on surveys, computer systems and other documentation. The Administration also exerts supervisory powers over the Class to ensure that its quality system continues to meet the criteria set forth under Res. A.739(18) by conducting direct auditing or requesting the MCA to conduct such audit on its behalf. Monitoring of all delegated functions will be on a sampling basis, both random and scheduled. The Societies are required to observe reporting procedures established by the Agreement.

The Agreement permits the Class the use of non-exclusive surveyors depending on the circumstances and subject to some conditions. The amount of financial liability for the Class should not exceed the amount defined in the standard terms and conditions of the Classification Society or CI$ 1 million whichever is greater for any loss or damage. The Society is then required to secure appropriate insurance policies to provide cover against potential liabilities.

C. Hong Kong Class Agreement

The Hong Kong Class Agreement follows the IMO Model Agreement to a large extent with some specific provisions added subject to the negotiations concluded between the Maritime Administration and each Classification Society. Delegation of authority is either full authorization or partial authorization. Authorizations for services beyond the scope of the Agreement are made on a case-by-case basis.

Under the Agreement, the Classification Society is required to set up a representative office in Hong Kong. It is interesting to note that the maritime administration is referred to in the Agreement as the Director. The Director shall be given full access to all plans and documents including survey reports. The Director retains supervision of the performance of the Class through the conduct of direct audits or reliance on the work of an independent audit group. The Director has the right to conduct inspection of ships and other activities to monitor the statutory surveys and SMS verification work performed by the Classification Society.

The use of non-exclusive surveyors may be permitted provided they are from another Society also recognized by the Director. Any dispute arising from the terms of the Agreement shall be dealt with under the Laws of the Hong Kong Special Administrative Region (HKSAR). Parties may also bring the dispute to the International Chamber of Commerce if they mutually agree.

Finally, the Class enjoys all the protections of law and same defences and or counterclaims as the Director would have been entitled. Compensation from the CS may be limited to the amount of financial liability as set out in the terms and conditions in the contract. Insurance policies may be required for this purpose. Other clauses may be included in the furtherance of the interests of the Administration and the Classification Societies.
D. Philippine Class Agreement
The Agreement follows closely the IMO Model Agreement with very minimal variations. Delegation of authority can be classified as full authorization, partial authorization, limited authorization and issuance of certificate. Annex I to the Agreement outlines the applicable instruments and the degree of authorization while Annex II provides for the reporting procedures to be followed by the Class. An Addendum to the original Agreement included the authorization of the Class as an RSO under Sec. 4.3 of Part A and Sec.4.3 to 4.7 Part B of the ISPS Code.