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AN ANALYSIS OF THE DELEGATION OF AUTHORITY TO THE RECOGNISED ORGANISATIONS ACTING ON BEHALF OF THE FLAG STATE: A CASE STUDY ON THE TOGOLESE FLAG

By

N’HOBOUTOUN SANTA
Togo

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 LAW AND POLICY)
2018
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 previously been conferred on me.

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

(Signature): ..........................................................
(Date): 23rd /09/2018

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Title of Dissertation: An analysis of the delegation of authority to the recognised organisations acting on behalf of the flag State: A case study on the Togolese flag.

Degree: Master of Science

The dissertation is a legal analysis of the delegation of authority to recognised organisations acting on behalf of the flag State, by means of a case study on the Togolese international registry. The study is designed to identify the potential contributing factors to the poor performance of Togo in terms of implementation of flag State obligations and responsibilities in its international registry through a delegation of authority to the recognised organisations (ROs).

The study examined the clauses of the agreement of delegation of authority, the requirements to be met by recognised organisations (ROs) being recognised, and the obligation of oversight of ROs by the flag administration. It was concluded that the agreement of delegation of authority to ROs in the Togolese international registry did not conform to the IMO conventions’ and resolutions’ requirements.

In addition, the relationship between the reasons for detentions and the type of authorised recognised organisations, between the years 2015 and 2017 in the Paris MoU, was analysed, with a focus on the detainable deficiencies attributable to ROs, the performance of ROs, the relationship between the detainable deficiencies, the age of the fleet and the types of recognised organisations that had surveyed and certified the detained ships. It was demonstrated from the statistical results that all the detained vessels were surveyed and certified by non-IACS ROs. It is concluded that their low performance has significantly contributed to the poor performance of the Togolese international registry. Finally, some recommendations are made for the potential future improvement of the Togolese international registry.

Key Words: delegation of authority, recognised organisations, flag State, flag State performance, Paris MoU, port State control
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Abbreviations

ACB: accredited compliance body

CLC: International Convention on Civil Liability for Oil Pollution Damage, 1969

DMLC: Declaration of Maritime Labour Compliance

IACS: International Association of Classification Societies

ICS: International Chamber of Shipping

IMSAS: IMO Member State Audit Scheme

IRB: International Bureau of Registration

MLC 2006: Maritime Labour Convention, 2006

MoU: Memorandum of Understanding

LOSC: Law of the Sea Convention


MARAD: Maritime Administration


MINCONMAR: Ministerial Conference of West and Central African States on Maritime Transport

RO: Recognised Organisation


SOTONAM: Société Togolaïse de la Navigation Maritime (Togolese National Company of Maritime Shipping)

STCW 78: International Convention on Standards of Training, Certification and Watchkeeping for seafarers, 1978

USCGPSC: United States Coast Guards Port State control

VIMSAS: Voluntary IMO Member State Audit Scheme


UN: United Nations

UNCTAD: United Nations Conference on Trade and Development

WMU: World Maritime University
CHAPTER 1: INTRODUCTION

1.1 Background of the topic

As a truly global industry, shipping has played and continues to play a crucial role in the transport of goods and people for the development of the world economy (Mansell).

Until the 1970s, foreign merchant fleets dominated the shipping trade in developing maritime nations. As response to the call of the United Nations Conference on Trade and Development (UNCTAD), the countries of West and Central Africa met in Abidjan, Cote d’Ivoire on May 7, 1975 and established the Ministerial Conference of West and Central African States on Maritime Transport (MINCONMAR). The objective of MINCONMAR was the establishment of national fleets, and the coordination and harmonization of their shipping policies, so that all these measures, taken together, would help these countries to combat the control and domination of their shipping trades by the shipping lines and shipping conferences of the traditional maritime nations (Iheduru, 1993). However, this initiative faced difficulties in the 1990s.

As rightly pointed out by Iheduru (1993):

“Almost 20 years later, however, the objectives of shipping coordination and harmonization are yet to be realized, while individual West African countries have failed to establish and develop viable alternatives to foreign shipping lines that dominate their shipping trade”.

This situation led to the dissolution of national fleets in most of the countries of West and Central Africa.

After the dissolution of SOTONAM (Société Togolaise de la Navigation Maritime), the Togolese national shipping company at that time, Togo has opted for an open international registry since 2008, by contracting the registration and certification of ships on behalf of the Togolese flag with the International Registrations Bureau (IRB)
located in Athens, Greece. By the end of 2017, the International registry had recorded 650 ships engaged in international voyages (annual report of the Directorate of Maritime Affairs).

International shipping involves many stakeholders, who have their roles and responsibilities under international law. For instance, IMO, as specilised UN agency in maritime industry, is a forum for developing international maritime standards concerning safety, security, the prevention of pollution from ships and shipping activities. ILO, also a UN specilised body in international labour matters, is in charge of regulation of maritime labour; the flag States and ROs are in charge of implementing and enforcing these international standards and regulations (Barchue, 2009).

However, not all flag States perform their duties with regard to international law, as Mansell (2009) regrets:

> In an ideal world flag States, whose flags are worn by the world’s shipping, would lay down, and enforce upon their shipowners, standards of design, maintenance and operation which would ensure a very high standard of safety at sea… The present system of Flag State Control falls well short of this Ideal…Regrettably it is beyond argument that not all flag States live up to their responsibilities.

The general duties and responsibilities of the States are embodied in articles 94 and 217 of the LOSC and recalled in the IMO Instrument Implementation Code [III Code] (IMO, 2013a). The primary responsibility lies on the flag states to set in place an adequate and effective system to exercise control over ships entitled to fly their flag, and to ensure that they are compliant with the relevant international rules and regulations (Syafiuddin, 2016). Since some ships under a flag are engaged in international voyages, flag States sometimes face difficulties when exercising and enforcing their duties on their registered ships, due to the lack or insufficieny of qualified resources (inspectors), especially in developing countries, like Togo (Fikri, 2007). It was reported in observations that Togo has limited flag State inspectors with regard to the size of its fleet inspectors (2 inspectors for more than 538 ships) and all inspectors would retire by 2016 (IMO Voluntary report, 2014). In this situation, the flag administrations resort to the classification societies acting as recognised organisations to carry out most or sometimes all the flag state’s responsibilities, as it
is the case in Togo. International maritime law acknowledges this possibilities for flag states.

Under the provisions of regulation I/6 of SOLAS 1974, articles 13 and 16(3) of LL 66, regulation 6 of MARPOL Annex I regulations 4(3), 5(2) and 6(1) and regulations 8(2) and 9(2) of MARPOL Annex II and articles 6, 7 and 8 of Tonnage 69, the IMO III Code and the Code of ROs, a flag State may authorise a recognised organisation to carry out, on its behalf, statutory certification and other services and determination of tonnages only to ships entitled to fly its flag as required by these conventions. Paragraph 4.1 of Part I of Cod of RO e of in this sense provides “A flag State may delegate authority to an organization recognized as complying with the Provisions of this Code to perform, on its behalf, statutory certification and services under mandatory IMO instruments and its national legislation.”

Compliant with the above international instruments and per agreement, Togo has delegated the registration and the certification of the ships of its international registry to IRB, with the possibility to subcontract with other classification societies, as recognised organisations for the statutory certification services and flag State inspections for ships registered on behalf of Togo (article 3 (m) of the agreement). The role of IRB is twofold: the statutory certification and the registration of ships on behalf of the government of Togo. As stated by Goh (2014): “Recently, classification societies have become involved in flag state regulation and ship registration on behalf of governments”.

However, since its inception in 2008, the international registry of Togo has scored a negative performance and ranks among the five top targeted flags by the PSC in some MoUs, especially Paris and Tokyo and USCGPSC (USCGPSC report, 2017).

The aforementioned depiction of the Togolese flag leads to the topic of the performance of the delegated recognised organisations in terms of the implementation and enforcement of flag State general duties of Togo.

1.2 Problem statement.

The obligations of flag States are not only the ratification and implementation of IMO instruments, but also compliance with them. Togo has ratified and implemented the most relevant IMO and ILO conventions but compliance with
them by its international registry remains the toughest challenge (VIMSAS, 2014). The level of performance reflects the level of compliance of flag States. The International Chamber of Shipping (ICS, 2017 annual report) uses the following indicators to assess flag States’ performance:

- The use of RO, complying with resolution A.739(18)
- Mandatory reporting requirements to the IMO and ILO
- Record of port State control inspection of ships [PSC], for instance, Paris MoU
- The average age of the fleet
- Attendance or participation at IMO meetings

In addition, ICS reports every year on the performance of flag States in tabular form with red and green colour squares. The green squares indicate the positive performance, while negative performance is symbolised by the red squares.

The analysis of the reports of the performance of Togo during the last three years (2015-2017), shows a negative performance of the flag (ICS annual reports) due to the high number of port State control detentions in some MoUs (Paris MoU, Tokyo MoU and USCG PSC). For example, during the period from 2013 to 2015, of 382 ships inspected, 55 were detained and 4 were banned by Paris MoU, leading to a detention rate of 14.39%. As result, Togo was shifted from the grey list to the black list. Given the fact that the list published by some MoUs is available to the public, being blacklisted leads to a bad reputation and a shame on the flag in an era where harsh competition requires high performance. Therefore, there is a reason to maintain a good reputation among other flag States. These reasons prompted the researcher to investigate the potential contributing factors to the negative performance in the implementation of the flag state’s general duties in the international registry of Togo. From among factors used by ICS for assessment of flag State performance, the author had to limit the focus, due to the limitation of time and space, to the delegation of authority to ROs.
1.3 Aim of the research
The above problem statement leads to the main aim of this research, which is to investigate the potential contributing factors to the bad performance of Togo in terms of implementation of IMO instruments through a delegation of authority to recognised organisations.

1.4 Objectives of the research
The objectives of the research work are to:

- Analyse, in light of the related legal instruments, the clauses of the agreement of delegation of flag State authority between the government of Togo and IRB, authorising the latter to carry out the flag State duties of the international registry of Togo,
- Evaluate the quality and quantity of the personnel of the Directorate of Maritime Affairs to carry out an oversight programme on the activities of the ROs,
- Analyse the relationship between the type of classification societies authorised as ROs and reasons for the number of detentions of Togolese flagged vessels in some MoUs.

1.5 Research questions
In view of analysing the basics of this study, the following questions were posed:

- Does the agreement between the government of Togo and IRB meet the requirement of delegation of authority as provided in the IMO instruments (IMO III Code and the Code of ROs) and the national legislation of Togo?
- Is the Directorate of Maritime Affairs equipped with a qualified and necessary number of personnel to implement an oversight programme on the activities of ROs?
- What relationship can be established between the type of classification societies acting as ROs and the reasons for high detentions of vessels in the international registry of Togo?
In view of achieving the expected results and outcome, any research work should be conducted based on a research methodology.
CHAPTER 2: RESEARCH METHODS AND STRUCTURE OF THE STUDY

2.1 Research methods

This research is conducted as a legal analysis, which is aimed at examining the delegation of authority to recognised organisations in the Togolese international registry. The purpose of the study is not to attempt a comprehensive discussion on the delegation of flag States’ authority to recognised organisations. Owing to the limitation in access to the source of some needed information and the data availability because of their confidentiality, this study focuses on the analysis of the delegation of flag State obligations to recognised organisations in the international registry of Togo.

The research relies on secondary data, which was gathered from the Directorate of Maritime Affairs, the International Registration Bureau, the Ministry of Infrastructure and Transport of Togo, the port State control reports of Paris and Tokyo MoUs, the USCGPSC reports, the International Chamber of Shipping’s reports, the publications of the International Association of Classification Societies.

The analysis covers some key requirements for the delegation of authority as set out in some IMO conventions (SOLAS, Load Lines, MARPOL, Tonnage) the IMO III Code (part 2 para.18 &20) and the Code for the Recognised Organisations (part 1 para.1.2.2, para.2.1 and part4), the Togolese national legislation relating to the delegation of flag State authority. In addition, the relationship between the reasons for detentions and the type of classification societies (whether or not member of IACS) recognised to carry out statutory functions, based on the annual report of Paris and Tokyo MoUs and USCGPSC during a period of three years (2015-2017), is discussed. In this regard, the related documents are examined and the results are discussed.
With regard to detentions, the relevant data related to reasons for detentions, the average age of detained or banned ships, the responsibility of ROs and the type of RO, and whether or not they are members of IACS are explored, analysed and discussed.

In addition, most of the data utilised in this study is from academic secondary sources, backed up by official primary sources. Some books from international maritime law, international law of the sea, and other related articles were examined to get a thorough insight into the technicalities of delegating public functions to the recognised organisations.

The research relied on both qualitative and quantitative analysis. The data collected is analysed based on their quality and quantity, and relevance in determining the outcome of this research study. The collected data was processed and analysed by using a combined qualitative and quantitative method in order to substantiate the discussion of figures relevant to the analysis.

2.2 Limitations
The potential envisaged limitation in the process of this research is the proximity of the World Maritime University in Malmö, to the areas of study, which are Togo and Athens, the headquarters of the International Registration Bureau. In an ideal research design, the researcher would have liked to travel to Togo and Greece to carry out interviews on the management system of the recognised organisations authorised for the statutory functions. Due to the limited time and resources, such a research trip was not practicable and was, therefore, superseded by exchange of some documents instead.

Another limitation was the refusal of access to some relevant documents of the International Registration Bureau for data collection because of their confidential nature and designation.

2.3 Structure of the research study
In view of achieving the objectives as aforementioned, this dissertation is structured into six (6) chapters. The first chapter focuses on the background as the rationale of
this research study. The objectives, the research questions and the scope and methodology utilised in the study are presented.

The second chapter discusses the methods used and the structure of the research, namely the methods of collection, processing and analysis of data and the limitation of the research. The third chapter is devoted to the literature review on the concept of flag State and its obligations, and the delegation of flag State duties to private entities, known as recognised organisations. The point of view of eminent academics on the concept of flag State obligations and responsibilities, and the role of classification societies acting as recognised organisations on behalf of flag states are overviewed.

The fourth chapter discusses the legal framework for delegation of authority to recognised organisations acting on behalf of flag administrations. An overview of IMO conventions and resolutions and the national legislation of Togo pertaining to the delegation of authority are discussed.

The fifth chapter provides a comprehensive analysis of the delegation of Authority to the recognised organisations in the Togolese international registry. The analysis covers the following factors: the clauses of the agreement of delegation, the conformity of the delegation with the requirements set out in IMO conventions and codes (IMO III Code and the Code of recognised organisations), the obligation of oversight and the related personnel issue of the delegating flag State. Furthermore, the relationships between the reasons for detention and the type of authorised recognised organisations, with a comparison of the detainable deficiencies attributable to the authorised classification society members of IACS and those which are not members of IACS are discussed.

The sixth and last chapter concludes and summarises the analysis. Upon completion of the analysis, some recommendations are made for future improvement.

An overview of the legal literature on the delegation of flag State duties and responsibilities to recognised organisations will be a contribution to this research study.
CHAPTER 3: LITERATURE REVIEW

The concept of flag State in its common meaning in international shipping and international maritime law is used for the purpose of this study. According to Mansell, the necessary elements of a flag State in international law are, for a state to have granted ships its nationality through the registration process (article 91) and to effectively exercise its jurisdiction and control over those ships in administrative, technical and social matters, apart from where treaty provisions deem otherwise (article 94) (Mansell, 2009). He highlighted some definitions of flag States by citing the academic work of other relevant authors in the field:

“The State which has granted to a ship the right to sail under its flag”

“The State whose nationality the ship possesses”

“The State whose flag a ship flies and is entitled to fly”

“The State in whose territory a ship is registered”

The concept of the flag in the maritime field is virtually synonymous with ship registration, which means the right to documentation for the registered ship (Mukherjee, 1993). This documentation is deemed as prima facie evidence of title and ownership of the ship, but also as confirmation of nationality and the right to fly the national flag. In this regard, Togo is a flag State since it has granted its nationality up to 650 ships (2017 annual report of the Directorate of Maritime Affairs) and issues documentation to these registered ships.

With the above rights come flag State responsibilities, such as the responsibility to effectively exercise its jurisdiction and control in administrative, technical, social and
environmental protection matters over ships flying its flag. The effective analysis of the flag State responsibilities requires, first, categorising the Flag States. The discussion with regard to the description and categorisation of the flag States has broadly evolved over the time. Mansell groups the flag States into four categories: national flag State, quasi-national flag State, international flag State and pseudo-national flag State (2009, pp 101-110). According to him, the elements required to qualify pseudo-national flag States are following:

The register is not situated in the territory of the flag State; it is not administered by flag State but private entity; the flag State delegates all statutory functions to the register; the flag State allows delegation and sub-delegation of statutory functions to non-IACS members; the flag State encourages and facilitates incorporation of “brass plate” companies in its territory; and there is no transparency in the ownership and control of ships.

Togo is deemed to be categorised as a pseudo-national flag State, since its international registry is situated in Greece, run by the International Registration Bureau (IRB), which is a private company, to which the government has delegated ships’ registration and statutory functions on its behalf; IRB is authorised to sub-contract with other classification societies, the majority of which are not members of IACS to act as recognised organisations on behalf of the government of Togo (IMO Voluntary audit of Togo, 2014).

The right of States to confer their flag to vessels also entails a body of duties. The basis of these duties lies in the provisions of the LOSC, as Zwinge (2011) observes: “However, their full extent is only perceivable in relation with further international conventions and agreements. Article 94 provides that every State is required to:

effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag… to maintain regular checks upon the seaworthiness of ships, to ensure that crews are properly qualified, to hold inquiries into shipping casualties, to effectively exercise jurisdiction and control over their ships, to maintain a register of ships, to take measures to ensure safety at sea with regard to the construction, equipment and seaworthiness of ships, the manning of ships, labour conditions and the use of signals, the maintenance of communications and the prevention of collisions.
The wording of article 94 (3) indicates that the enumerated flag State responsibilities are non-exhaustive. The LOSC, therefore, leaves room for other flag State duties derived from different international conventions or customary international law (Zwinge, 2011). However, it is vital to mention that this research paper focuses on the flag State duties laid down mainly under Articles 94 and 217 of UNCLOS 1982, as "it is well acknowledged the fact that the list of duties under these particular Articles is not to be taken as exhaustive since they are embodied in many other treaties" (Hosanee, 2010).

It is also acknowledged that the duties of the flag State may be delegated to the private entities known as classification societies, acting as recognised organisations on behalf the flag States. It was argued that it is not possible to consider flag state responsibilities without also considering the role and performance of the recognised organisations (ROs) that, in the majority of cases, implement many of the technical, but increasingly administrative, operational, and social duties of a flag State, like in the case of Togo.

*Flag States have the ability under the SOLAS, MARPOL, Load Line, and Tonnage Conventions to entrust their survey, inspection and certification functions to ROs in accordance with the guidelines provided in IMO resolutions, which have mandatory effect through the SOLAS Convention (regulation I/6). Although the RO then exercises control in these matters over ships registered in that State, the flag State retains responsibility for "taking necessary measures to ensure that ships flying their State’s flags comply with the provisions of such Conventions, including surveys and certification (SOLAS I/6, Preamble), and for the reporting that is required under various instruments to the IMO. The flag State is also required to monitor the activities of the RO to ensure that they are effective (IMO Resolution A.739 (18), para. 3). The effectiveness of the control exercised by the RO on behalf of the flag State depends upon that organisation meeting the standards laid down in the IMO Resolutions A.739 (18) and A.789 (19) (Mansell, 2009)*

The international and national regulatory framework provide for this discharge of the flag State’s general duties to the private entities known as recognised organisations. In this respect, Park (2012) stated that:
Recognized organizations, regardless of whether they are public or private enterprises, exercise authority, which is a fundamental component for ensuring full compliance with and enforcement of the regulatory regime over ships on behalf of States…Resolution A.739 (18) provides minimum requirements that should be complied with by flag States and organizations to be delegated by flag States when delegating the State’s statutory function. Resolution A.789 (19) provides detailed requirements, which describe specifications under specific functions of ROs that ROs should meet to be recognized.

The importance of the classification societies as ROs has evolved in the time with regulation of the maritime industry. At the very beginning, the role of the classification societies was to certify the technical aspect of the ship, such as design, construction and condition of ships and survey marine structures. As Carlsson (2016) notes:

The aim of the work of classification societies was to aid and facilitate the various maritime actors in their businesses by providing information on standards. The standards that classification societies have traditionally always assessed are those relating to design, construction and condition of ships and survey marine structures, but they did not look at manning or operations of vessels. Thus, the assessments were more on the static condition of a ship and not on its operation during voyage.

This classic role of the classification societies encompasses, today, the technical and operational aspects. Goh (2014) observes:" Recently, classification societies have become involved in flag state regulation and ship registration on behalf of governments".

It is argued that the issue of certification of ships rests on the responsibilities of flag States as well as classification societies acting as ROs through the delegation of flag States’ responsibilities.

The two principal actors on the stage of worldwide standards for ships are the International Maritime Organization (IMO) and Classification Societies (Class). Their roles are inextricably entwined and are reflected in the regulatory regime that has evolved over the last two centuries. The role of Class in the safety of ships, both historical and topical, and their relationship with the IMO and flag
States, is identified as a leading and contentious issue, as is the conflict arising from their private and public roles (Mansell, 2009)

The right of a flag State to discharge its general duties to the recognised organisations is also set out in regulation 4.1 of part I of code of ROs, which provides that: “A flag State may delegate authority to an organization recognized as complying with the provisions of this Code to perform, on its behalf, statutory certification and services under mandatory IMO instruments and its national legislation.”

Under article 94(4(a)), it is required that ships must be surveyed periodically at the specific interval by qualified flag State surveyors, a task which is generally delegated to recognised organisations due to lack of personnel and resources (Syafiuddin, 2016).

However, according to Takei, (2013, p. 98), “In relation to the delegation of authority, however, there is a general indication that some States do not always perform satisfactorily”, such as in the case of Togo in delegating its general duties to IRB and other recognised organisations.

Syafiuddin (2016) carried out a case study on the performance of the Indonesian flag by analysing the implementation of flag State duties and responsibilities as laid down in the UNCLOS articles 94 and 217. Silos et al. (2013), in a case study on the role of classification societies in the era of globalization, highlighted the importance of the classification societies acting as ROs in the implementation of flag State duties as follows:

Although in the great majority of States, the inspection and certification of vessels are provided as public services, the classification societies continue being an essential element in maritime traffic, since the official inspections and certifications generally do not take into consideration certain structural aspects or details of vessels.

The two above-mentioned case studies focus on some aspects of the present research study. In the first case relating to the analysis of the performance of the Indonesian flag State, emphasis was placed on the flag State’s duties and responsibilities with regard to the administrative, social and technical duties as highlighted in the UNCLOS Article 94 and 217, by utilising some parameters of ICS such as the ratification of major international maritime treaties; the use of recognised
organisations [RO] complying with resolution A.739(18); mandatory reporting requirements; PSC inspection records; and the average age of the fleets.

The second case study, dealing with the role of the classification societies in the era of globalisation, concluded that there is a direct relationship between the age of the ship and its classification society and whether the latter is a member of the International Association of Classification Societies. The same relationships were established between classification societies and the vessels they classify and the flags States using them, based on featuring in the black List of the MoU, and with the sub-classification of risks.

However, the present research study contrasts with the above two cases in some aspects. The first case analysed the performance of the Indonesian flag as a national flag by using the parameters of assessment of ICS and concluded that Indonesian performance was negative, without searching for the causes of this poor performance. This research study researched the potential causes of the negative or poor performance of Togo as a pseudo-national flag, with a focus on the profile of ROs, the capability of the maritime administration to control and monitor the activities of ROs and the relationship between the type of classification societies authorised as ROs and the reasons for high detentions of Togolese flagged vessels in some MoUs’ port State control.

The second case established the relationship between classification societies and the vessels they classify and the flag States using them in an era of globalisation. This research study analysed, instead, the role played by this relationship in the negative performance of the international registry of Togo in the implementation of IMO instruments.

It is therefore important to present a review of the legal framework of the delegation of authority to classification societies acting as recognised organisations on behalf of flag States.
CHAPTER 4: LEGAL FRAMEWORK OF DELEGATION OF AUTHORITY TO RECOGNISED ORGANISATIONS

The legal basis of delegation of authority to recognised organisations to perform flag states general duties is entwined in international and national legal instruments.

4.1 International legal framework

The international conventions dealing with the delegation of authority to recognised organisations encompass IMO instruments, all under the umbrella of UNCLOS 1982.

4.1.1 UNCLOS 1982

Article 94 para 4(a) requires the flag States to take necessary measures to ensure that ships, before and after their registration at appropriate intervals, are surveyed by qualified surveyors of ships. Due to the lack of sufficient and qualified staff for the flag administrations, this task is generally delegated to recognised organisations (Syafiuddin, 2016).

“UNCLOS is acknowledged to be an “umbrella convention” because most of its provisions, being of general kind, can be implemented only through specific operative regulations in other international agreements” (Rasmussen, 2016). This means, from UNCLOS, referring to the competent organisations in specific matters, it can be inferred that this convention is the fundamental regulatory framework for the delegation of flag state duties to recognised organisations. In this respect, the former IMO Secretary General Mr. Koji Sekimizu stated in his opening address during the Sub-Committee on Implementation of IMO Instruments (III), 1st session, 14-18 July 2014 that: “Flag State implementation remains a central issue. Promulgation of IMO rules is under the responsibility of flag States; survey and certification with recognized
organizations; and casualty investigation is an important function of flag States, under UNCLOS and IMO conventions” (Sekimizu, 2014).

This point of view is supported by some authors who have argued that, under IMO Conventions reflecting the requirements of the LOSC for safety and prevention of marine pollution, ships should be surveyed by the flag administrations at regular intervals and be issued with statutory certificates as prima facie evidence of their full compliance with those instruments. They recognise as well the possibility for the flag State to discharge the inspections, the surveys, and certifications to ROs by giving full effect to the requirements and conditions of relevant IMO conventions and resolutions. This delegation of statutory functions has as corollary the obligation of the administration to have the capability and resources to monitor and verify the work of the RO, to carry out its own flag State inspections of vessels flying its flag, and make sure it maintains an effective administration as set out in articles 94 and 217 of the LOSC (Mansell, 2009).

Since the LOSC is the cornerstone or the constitution of maritime law, all regulations in the maritime safety, security and the marine environmental protection find their legal basis in this convention.

4.1.2 Regulation 6 of SOLAS 1974

Regulation 6 of SOLAS 1974 provides as follows:

(a). The inspection and survey of ships, so far as regards the enforcement of the provisions of the present regulations and the granting of exemptions therefrom, shall be carried out by officers of the Administration. The Administration may, however, entrust the inspections and surveys either to surveyors nominated for the purpose or to organizations recognized by it.

(b). An Administration nominating surveyors or recognizing organizations to conduct inspections and surveys as set forth in paragraph (a) shall as a minimum empower any nominated surveyor or recognized organization to:

(i). require repairs to a ship;

(ii). carry out inspections and surveys if requested by the appropriate authorities of a port State.
The Administration shall notify the Organization of the specific responsibilities and conditions of the authority delegated to nominated surveyors or recognized organizations.

The provisions of regulation 6(a) of SOLAS 1974 lay down the obligation for surveys and inspections on the flag administration, while recognising the possibilities, under certain conditions, to delegate these duties to recognised organisations, which fulfil some minimum requirements.

Paragraph (b) of the regulation requires the administration recognising an organisation to specify the extent of authority delegated to this recognised organisation and to notify IMO of the responsibilities and conditions of authority delegated to these ROs.

Paragraph (c) specifies the actions to be taken by the recognised organisation in case of substantial non-compliance with the international generally accepted minimum standards.

4.1.3 Articles 13 and 16(3) of Load Lines 1969

Article 13 reads:

*The survey, inspection and marking of ships, as regards the enforcement of the provisions of the present Convention and the granting of exemptions therefrom, shall be carried out by Officers of the Administration. The Administration may, however, entrust the survey, inspection and marking either to surveyors nominated for the purpose or to organizations recognized by it. In every case, the Administration concerned fully guarantees the completeness and efficiency of the survey, inspection and marking.*

Article 16(3) provides “Such certificates shall be issued by the Administration or by any person or organization duly authorized by it. In every case, the Administration assumes full responsibility for the certificate”.

Article 13 of the convention provides for the obligation of flag State administrations to carry out the surveys and inspections, to mark ships under their flag or, if they deem
it necessary, to entrust the recognised organisations to carry out these duties on their behalf.

Article 16(3) requires the administration to issue International Load Lines Certificates as prima facie evidence that the ship has been surveyed and marked and complies with the provisions of the convention, or to delegate the certification functions to organisations recognised by it.

4.1.4 MARPOL 73/78, annex I and annex II

- MARPOL Annex I

Annex I. Regulation 4(3):

(a). Officers of the Administration shall carry out surveys of ships as regards the enforcement of the provisions of this Annex. The Administration may, however, entrust the surveys either to surveyors nominated for the purpose or to organisations recognized by it.

(b). An Administration nominating surveyors or recognizing organizations to conduct surveys as set forth in subparagraph (a) of this paragraph shall, as a minimum, empower any nominated surveyor or recognized organization to:

(i). require repairs to a ship; and

(ii). carry out surveys, if requested by the appropriate authorities of a port state.

The Administration shall notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations, for circulation to Parties to the present Protocol for the information of their officers.

Annex I. Regulation 5(2):

2). “Such certificate shall be issued either by the Administration or by any persons or organization duly authorized by it. In every case, the Administration assumes full responsibility for the certificate.”
Annex I. Regulation 6(1)

‘The Government of a Party to the Convention may, at the request of the Administration, cause a ship to be surveyed and, if satisfied that the provisions of this Annex are complied with, shall issue or authorize the issue of an International Oil Pollution Prevention Certificate to the ship, and where appropriate, endorse or authorize the endorsement of that Certificate on the ship, in accordance with this Annex.

The provisions of MARPOL Annex I Regulations 4(3) and 5(2) regarding the authorisation of ROs to carry out the statutory functions on behalf of the flag administration are almost similar to the provision of SOLAS Regulation 6 and Load Lines articles 13 and 16(3).

Regulation 6(1) of annex I, allowing the government of a member State to cause a ship to be surveyed and to issue or authorise the issuance and, where appropriate, to endorse or authorise the endorsement of the International Oil Pollution Prevention Certificate on the request of the flag administration, is an illustration of the obligation of cooperation set out in article 226(2) of UNCLOS concerning the prevention of marine pollution from ships.

- MARPOL Annex II

Regulation 8(2):

*Officers of the Administration shall carry out Surveys of ships. The Administration may, however, entrust the surveys either to surveyors nominated for the purpose or to organizations recognized by it.*

An Administration nominating surveyors or recognizing organizations to conduct surveys as set forth in paragraph 2.1 of this regulation shall, as a minimum, empower any nominated surveyor or recognized organization to:

- Require repairs to a ship; and
- Carry out surveys if requested by the appropriate authorities of a port State.
Regulation 9(2):

“... Such Certificate shall be issued or endorsed either by the Administration or by any person or organization duly authorized by it. In every case, the Administration assumes full responsibility for the Certificate”.

Regulations 8(2) and 9(2) of MARPOL annex II acknowledge the possibility for the flag State to delegate to the recognised organisations the surveys and other inspections, the issuance or the endorsement of the Noxious Liquid Substances Certificate to ships as prima facie evidence of compliance with this annex and lay the ultimate responsibility for the certification on the flag administration.

4.1.5. Articles 6, 7 and 8 of Tonnage

Article 6:

“The determination of gross and net tonnages shall be carried out by the Administration, which may, however, entrust such determination either to persons or organizations recognized by it. In every case, the Administration concerned shall accept full responsibility for the determination of gross and net tonnages”.

Article 7:

(1) An International Tonnage Certificate (1969) shall be issued to every ship, the gross and net tonnages of which have been determined in accordance with the present Convention.

(2) Such certificate shall be issued by the Administration or by any person or organization duly authorized by it. In every case, the Administration shall assume full responsibility for the certificate.

Article 8(1)

“(1) A Contracting Government may, at the request of another contracting government, determine the gross and net tonnages of a ship and issue or authorize the issue of an International Tonnage Certificate (1969) to the ship in accordance with the present Convention”.

The provisions of articles 6 and 7 of the Tonnage convention allow the flag administrations to discharge their obligations by authorising the organisations they
recognise to determine the gross and net tonnages of the ships entitled to fly their flag and to issue the International Tonnage Certificate (1969). The provision of article 8(1) relating to the possibility of a contracting government to issue or to authorise an RO to issue an International Tonnage Certificate on behalf of the flag administration is more striking and displays the obligation of cooperation between member States, as set out in article 226(2) of UNCLOS and in para 4.3 of the code of recognised organisations.

The core prescription of the above-mentioned IMO conventions is that they set out, first, the obligation on flag State administrations to carry out surveys, inspections and certifications of ships under their flag prior to and after their registration. The resort to recognised organisations is an alternative in the event they lack qualified staff to do so; however, they retain the final responsibility for the activities of the ROs. These regulations provided for in different IMO conventions are compiled in the Code of ROs and the IMO III Code.

4.1.6 The IMO Instruments Implementation Code (IMO III Code)

The code for the implementation of mandatory IMO instruments was first adopted as resolution A.973 (24) in 2005 (Rasmussen, 2016). It was amended in 2007 by resolution A.996 (25), and in 2009 by resolution A.1019 (26). The resolution A.1054 (27), adopted in November 2011 revoked resolutions A.996 and A.1019 (26). By resolution A.1070 (28), the IMO Assembly adopted the IMO III Code in November 2013. The purpose of this code is to enhance global maritime safety and protection of the marine environment and to assist States in the implementation of IMO instruments. The IMO III Code recognises the rights to flag states when implementing IMO instruments to delegate authority to recognised organisations to carry out statutory surveys, inspections and certification functions on their behalf.

Part 2 paragraph 18 of the code reads as follows:

*With regard only to ships entitled to fly its flag a flag State authorizing a recognized organization to act on its behalf, in conducting the surveys, inspections and audits, issuing of certificates and documents, marking of ships and other statutory work required under the conventions of the Organization or under its national legislation, should regulate such authorization(s) in*
accordance with the applicable requirements of the international mandatory instruments to:

.1 determine that the recognized organization has adequate resources in terms of technical, managerial and research capabilities to accomplish the tasks being assigned, in accordance with the required standards for recognized organizations acting on behalf of the Administration set out in the relevant instruments of the Organization;

.2 have as its basis a formal written agreement between the Administration and the recognized organization which, as a minimum, includes the elements set out in the relevant instruments of the Organization, or equivalent legal arrangements, and which may be based on the model agreement for the authorization of recognized organizations acting on behalf of the Administration;

.3 issue specific instructions detailing actions to be followed in the event that a ship is found unfit to proceed to sea without danger to the ship or persons on board, or is found to present an unreasonable threat of harm to the marine environment;

.4 provide the recognized organization with all appropriate instruments of national law and interpretations thereof giving effect to the provisions of the conventions and specify, only for application to ships entitled to fly its flag, whether any additional standards of the Administration go beyond convention requirements in any respect; and

.5 require that the recognized organization maintain records, which will provide the Administration with data to assist in interpretation of requirements contained in the applicable international instruments.

Paragraph 18 of the code sets out the precautions to be taken by the flag State with regard to the delegation of authority, given that the full responsibility is ultimately endorsed by the flag administration.

Paragraph 20 goes further to require from the delegating flag States a follow-up on the ROs performing their delegated duties:

The flag State should establish or participate in an oversight programme with adequate resources for monitoring of, and communication with, its recognized
organization(s) in order to ensure that its international obligations are fully met, by:

.1 exercising its authority to conduct supplementary surveys to ensure that ships entitled to fly its flag effectively comply with the requirements of the applicable international instruments

.2 conducting supplementary surveys as it deems necessary to ensure that ships entitled to fly its flag comply with national requirements, which supplement the international mandatory requirements; and

.3 providing staff who have a good knowledge of the rules and regulations of the flag State and those of the recognized organizations and who are available to carry out effective oversight of the recognized organizations.

Once the flag State has delegated its obligations to recognised organisations, it should establish a counter-survey scheme on the activities of these ROs in order to ensure they are performing well the delegated duties, bearing in mind that the flag State administration remains the only responsible entity under international law.

4.1.7 Code of recognised organisations

SOLAS and the other International Conventions permit the flag Administration to delegate the inspection and survey of ships to a Recognised Organization (RO). This is in recognition of the fact that many flag Administrations do not have adequate technical experience, manpower or global coverage to undertake all the necessary statutory inspections and surveys using its own staff (IACS, 2015).

Under this recognition, the IMO Assembly has adopted two resolutions pertaining to the delegation of flag State obligations to recognised organisations: Resolution A.739 (18) on the guidelines for the authorisation of organisations acting on behalf of the administration, and resolution A.789 (19) on specifications on the surveys and certification functions of recognised organisations acting on behalf of the administration. The Maritime Safety Committee (MSC) and the Marine Environment Protection Committee (MEPC) have worked on the guidelines and specifications contained in the two resolutions. By resolutions MSC.349 (92) and MEPC (65), IMO has adopted the Code for Recognised Organisations (RO Code), which entered into
force on 1 January 2015 and replaces the previous resolutions (Resolution A.739 (18) and Resolution A.789 (19)). The code has three parts. Parts 1 and 2 are mandatory under SOLAS 74/88, Load Lines 66 and MARPOL 73/78. As recommendatory, part 3 contains guidelines for the oversight of ROs by flag States.

The purpose of the Code is to serve as an international standards consolidated instrument, containing minimum criteria against which organisations are assessed towards recognition and authorisation and the guidelines for oversight by flag States (Rasmussen, 2016).

Part 1.2.1 and 1.2.2 of the Code provides as follows:

*The Code applies to:*

1. All organizations being considered for recognition or that are recognized by a flag State to perform, on its behalf, statutory certification and services under mandatory IMO instruments and national legislation; and
2. All flag States that intend to recognize an organization to perform, on their behalf, statutory certification and services under mandatory IMO instruments.

2.2 The Code establishes:

1. The mandatory requirements that an organization shall fulfil to be recognized by a flag State (part 1);
2. The mandatory requirements that an RO shall fulfil when performing statutory certification and services on behalf of its authorizing flag States (part 2)
3. the mandatory requirements that flag States shall adhere to when authorizing an RO (part 2); and
4. Guidelines for flag State oversight of ROs (part 3). MSC 92/26/Add.1 Annex 1, page 10 I:\MSC\*

Para 1.2.1 defines the scope of application of the code, which is the recognised organisations and the flag states. It means that port States, coastal States and other organisations which do not intend to be recognised or authorised to carry out flag States obligations do not fall within the scope of the code.

Para 1.2.2 provides for the mandatory requirements to be met by the ROs when being recognised or authorised and the requirement to abide by flag States in the process ofauthorising an RO to carry out statutory functions on its behalf.

In addition, part 2.1 of the code sets out the general requirements of recognised organisations as follows:
“Delegation of authority by a flag State to an organization shall be subject to the confirmation of the capability of that organization to demonstrate that it has the capacity to deliver high standards of service and its compliance with the requirements of this Code and applicable national legislation”.

Part 4 of the code confirms this obligation to be met by ROs and flag States in the following terms:

4.1 A flag State may delegate authority to an organization recognized as complying with the provisions of this Code to perform, on its behalf, statutory certification and services under mandatory IMO instruments and its national legislation.

4.2 The flag State shall not authorize functions beyond RO’s capabilities. In this respect, the flag State shall take into consideration appendix 2 of this Code for authorization.

4.3 Flag States should cooperate with each other with the objective of ensuring that ROs to whom they delegate authority adhere to the provisions of this Code.

With the above requirements, it should be emphasised that not all organisations can be regarded as recognised organisations. Part 2.1.1 defines a recognised organisation (RO) as “an Organization that has been assessed by a flag State, and found to comply with this part of the RO Code”. The flag State in the process of recognition and authorising should make an effort to comply with the requirements of the code.

The international regulatory regimes, with regard to the safety of life at sea, marine environmental protection and quality seafaring, have provided for specific regulations, which allow flag States to delegate their authority to recognised organisations and other relevant regulations to be met by recognised organisations. These international instruments are summarised in Table 1.
Table 1: Specific requirements for delegation of authority in various instruments

<table>
<thead>
<tr>
<th>International Instruments</th>
<th>Regulation regarding delegation of authority to Class.Soc/ROs</th>
<th>Resolutions to be complied With for Class.Soc/ROs</th>
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<tr>
<td>SOLAS 1974</td>
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<td>Res.A.739(18) and Res.A.789(19)</td>
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<td></td>
<td>Ch.XI-2 Reg.1.16</td>
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<tr>
<td>MARPOL 73/78</td>
<td>Annex I Ch.2 Reg.6 para. 3.1</td>
<td>Res.A.739(18) and Res.A.789(19)</td>
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<tr>
<td></td>
<td>Annex II Ch.3 Reg.8 para. 2.1 and 2.2</td>
<td>Res.A.739(18) and Res.A.789(19)</td>
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<td></td>
<td>Annex IV Ch.2 Reg.4 para. 3</td>
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<td></td>
<td>Annex VI Ch.2 Reg.5 para. (3) (a)</td>
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<td>Load Lines 66</td>
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<td>Res.A.739(18) and Res.A.789(19)</td>
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<td>MLC 2006</td>
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<td>Tonnage 1969</td>
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<td>IGC Code</td>
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</tr>
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<td>IBC Code</td>
<td>Ch.1 para. 1.2.2</td>
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</tr>
<tr>
<td>NOx Code 2008</td>
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<td>INF Code</td>
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<tr>
<td>Code</td>
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<tr>
<td>ISM Code</td>
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<td>ISPS Code</td>
<td>Part A para. 4.3</td>
<td>Part A para. 19.1.2 and 19.2.2</td>
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</table>

**Source:** *(Park, 2012)*

### 4.1.8 Regulation XI-2/1.16 of SOLAS 1974 and the ISPS Code

The regulation 1.6 of chapter XI-2 of SOLAS 1974 reads as below:

> Recognized Security Organization (RSOs) may be delegated specific functions on behalf of the administration and/or the Designated Authority of the Contracting Government. The following functions may be delegated in whole or in part to RSOs:

1. Approval of ships security plans
2. Verification for ships
3. Issuance and endorsement of International Ship Security Certificates; and

Chapter XI-2 entitled "measures to enhance maritime security" resulted from an amendment of SOLAS 1974 to take into consideration maritime security issues after the events of September 11, 2001. Through this amendment, the ISPS Code was adopted and entered into force on July 1, 2004. The ISPS Code consists of part A which is mandatory and part B as recommendations.

The Maritime Safety Committee at its seventy-seventh session (28 May to 6 June 2003), based on the provisions of section 4.3 of Part A and sections 4.3 to 4.7 of part B of the ISPS Code, has developed Interim guidelines for the authorisation of recognised security organisations acting on behalf of the administration and/or designated authority of a contracting government *(MSC/Circ.1074, 10 June 2003)*.
4.1.9 The regulation 5.1.2 of MLC, 2006 and the Maritime Labour Code

The ILO/IMO Maritime Labour Convention adopted in Geneva in 2006 and entered into force on 20th August 2013, consists of a preamble, articles, regulations and a code. The part A of the code is mandatory and B contains guidelines for its implementation. The regulation 5.1.2 and the standard A5.1.2 regulate the delegation of flag State authority to recognised organisations.

Regulation 5.1.2 provides:

“Each Member shall provide the International Labour Office with a current list of any recognized organizations authorized to act on its behalf and it shall keep this list up to date. The list shall specify the functions that the recognized organizations have been authorized to carry out. The Office shall make the list publicly available”

Standard A5.1.2 reads:

“Any authorizations granted with respect to inspections shall, as a minimum, empower the recognized organization to require the rectification of deficiencies that it identifies in seafarers’ working and living conditions and to carry out inspections in this regard at the request of a port State”.

The IMO member States have to domesticate these international instruments on authorisation of authority to recognised organisations in their domestic laws and regulations.

Togo, as a member State, has implemented the IMO instruments pertaining to the delegation of authority to recognised organisations in its national law

4.2 National legal framework

The delegation of authority to recognised organisations to carry out the statutory functions on behalf of the flag administration of Togo is embodied in the new Merchant Marine Code and the presidential decree relating to the authorisation of recognised security organisations.

4.2.1 Law N°2016-028 relating to the Merchant Marine Code

Article 168 of the of Title I and Title II of Book III of the Merchant Marine Code of October 11, 2016 are devoted to classification societies approved as recognised
organisations for surveys and the issuance of statutory certificates on behalf of the Togolese maritime administration.

Article 181 provides “Any legal person whose activities consist in particular of the following, is regarded as a classification society:

- surveying the construction of new ships, from their design to their commissioning
- surveying the repair works of existing ships
- verifying the conformity of ships and their equipments with international safety standards and to assign a class to ships according to their age and condition
- issuing national or international certificates and other documentation for the safety of ships and the protection of marine environment
- carrying out studies and research on the construction and equipment of ships”

The above definition of the classification society means, once it is approved, it has two functions. The classification function and the certification function.

Articles 182 to 184 read as follows:

**Article 182**: “Classification Societies are approved by the competent maritime Authority...The competent maritime Authority communicates to IMO the list of approved classification societies in Togo”.

**Article 183** provides “The competent maritime Authority may authorise an approved classification society to issue international safety and pollution prevention certificates to domestic ships which are subject them”.

**Article 184**:

The Authority delegated to the approved classification society does not discharge the competent maritime Authority from its responsibilities, when exercising the control of ships by the flag State. However, the competent maritime Authority reserves the right to suspend or withdraw the Authorisation in case of non-compliance.
Articles 182, 183 and 184 specify the competent national entity to delegate authority to recognised organisations, its obligation of communicating the list of those ROS to IMO and clarify that the competent delegating entity bears the ultimate responsibilities in the delegation of authority.

4.2.2 Presidential decree relating to authorisation to recognised security organisations

The presidential decree is the enforcement regulation of the security recognised organisations mentioned in article 168 of the Marine Merchant Code.

Article 1: “An Authorisation commission is set up for security organisations mentioned in article 168 of the Merchant Marine Code”.

Article 3: “The Authorisation commission for security organisations mentioned in article 1 of this decree, processes the applications for Authorisation as security organisations and ensures the monitoring of these organisations”.

Article 8 read as follow:

*The missions that the authorised security organisations may carry out on behalf of the Government include particularly the assessment of the security of Ports and Port facilities, the audits of ports and Port facilities.*

*The security organisations can carry out the missions related to the assessment of port security or port security plans, only if they are authorised to do so, for all categories of port facilities of this port.*

The three above-numbered articles of this decree are the legal basis of delegation of flag State’s duties to the recognised organisations in relation to security matters. The recognised organisations for the security issues are slightly taken into consideration in the Merchant Marine Code, given that only article 168 is devoted to them. This decree contains details on their recognition and authorisation and the missions assigned to them.
CHAPTER 5: ANALYSIS OF THE DELEGATION OF AUTHORITY TO RECOGNISED ORGANISATIONS IN THE TOGOLESE INTERNATIONAL REGISTRY

The research methods and structure of the study were announced in Chapter 2. In addition, a thorough literature review concerning the flag State’s general duties and the right of the flag State to delegate them to recognised organisations was introduced in Chapter 3. Furthermore, the international as well as the national legal framework of delegation of flag State authority was comprehensively discussed in Chapter 4.

This Chapter 5 specifically focuses on the analysis of the potential contributing factors to the negative or low performance of Togo, through the analysis of the delegation of authority to recognised organisations in its international registry, taking into consideration two aspects: First, the three requirements of IMO resolution A.739 (18). IMO resolution A.739 (18) introduced three main elements in instituting an RO. It required each flag State administration to have a formal agreement with the classification society to which it was delegating statutory functions; it also set out minimum requirements for classification societies that would need to be fulfilled in order for them to become an RO and carry out statutory functions on behalf of a State, and it finally required the establishment of a verification system in order to monitor the activities of recognised organisations acting on behalf of the flag State.

Second, this chapter examines the potential relationship between the type of recognised organisations authorised to conduct the statutory functions and the reasons for the high number of detentions of Togolese flagged vessels in its international registry.
5.1 Analysis of the clauses of agreement of delegation of authority

It is worth remembering that the Official Agreement (Contract of delegation) between the Government of Togo represented by the Ministry of Infrastructure and Transport and International Registrations Bureau (IRB) had twofold objectives: the registration and the statutory functions of ships in the international registry of Togo. However, this analysis focuses only on statutory functions.

The aspect to take into consideration in this analysis is to examine whether the agreement complies with the requirements of the IMO instruments on the delegation of flag State authority to recognised organisations. The analysis is performed by scrutinizing the general conditions of the contract and its conformity with the requirements of IMO Resolutions A.739 (18) and A.789 (19).

5.1.1 Requirement of a formal agreement between the flag State and the recognised organisation

It is a legal principle that the general conditions and terms of an agreement should be clearly provided for in the written document, if required, in view of allowing the parties to understand and perform their obligations and responsibilities. This principle is recalled in Appendix 02 of Resolution A.739 (18) on the guidelines for the authorization of organizations acting on behalf of the administration, referred to in part 4(2) of the code of recognised organisations, which reads: “The flag State shall not authorize functions beyond RO’s capabilities. In this respect, the flag State shall take into consideration appendix 2 of this Code for authorization”.

However, the analysis of the official agreement between the government of Togo and IRB lacks some substantial requirements that should be provided for in an agreement of authorisation of authority to a recognised organisation to act on behalf of the flag State.

Article 1 of the agreement, related to authorisation of authority is worded as follows:

*By means of the present, the Government of Togo – Ministry of Infrastructure and Transport, hereby officially nominate and authorize Messrs. International Registration Bureau as their exclusive “Ships International Registry” for the*
scope of registration of vessels, under the international Ship Registry of Togo, which are engaged in international voyages, inclusive of below authorizations and activities:

...d. to process applications and related documentation and to issue Permissions and Endorsements under the IMO STCW’95 Convention, as amended, on behalf of the Government, for Officers serving or intended to serve onboard vessels registered under the International Ship Registry of Togo

...g. to issue the Declaration of Maritime Labour Compliance (DMLC) under the Maritime Labor Convention 2006 on behalf of the Government

h. to issue the International Tonnage Certificate 1969 and the Bunker Civil Liability Certificate on behalf of the Government

...k. to undertake the functions and expedite the duties to perform the administrative and/or technical consideration of submitted inquiries, leading to the issue of approvals, attestations, waivers or exemptions, and of any other related documentation, in accordance with the applicable IMO Conventions to which Togo is signatory and within the context of the International Ship Registry.

l. to develop and implement the flag State Inspection Scheme under the International Ship Registry of Togo with authority to produce the required requirements, checklists, report forms as well as the selection, approval and appointment of the flag State surveyors to be used for that purpose and keep the “Ministry” informed.

m. to handle matters relevant to the selection, authorization, assessment and monitoring of the authorized Recognized Organizations, including authority to validate or amend required IMO model agreements on behalf of the Government and within the context of the International Ship Registry of Togo and to keep the “Ministry” informed.

The provisions of the agreement devoted to the delegation of authority did not cover the most substantial minimum requirements of Appendix 02 of Resolution A.739 (18), especially the requirements pertaining to the detailed procedure of execution of functions under authorisation, the reporting to the administration and the administration's supervision of duties delegated to the organisation, which is set out in Appendix 02 as follows:
A formal written agreement or equivalent between the Administration and the recognized organization should, as minimum, cover the following items:

…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….

- 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…

- 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.

From the view of the author, if the authorisation had met the formal requirement, that is to say, the existence of a written agreement between the Directorate of Maritime Affairs and International Registration Bureau, this agreement suffers many
shortcomings. The major weakness of the agreement, its “Achilles heel”, is its hybrid nature. It has a twofold objective: the registration of ships in the Togolese international registry and the certification of registered ships on the behalf of the government of Togo. As result, the clauses of the agreement are not precise on the most important duties of IRB, which are more focused on the registration of ships than the statutory functions.

Furthermore, the agreement does not contain a certain minimum requirement of appendix 2 of the IMO resolution A.739 (18), namely the procedure of reporting to the Directorate of Maritime Affairs, the development of rules and/or regulations for information, the specification of the authorisation from the Directorate of Maritime Affairs to IRB, and the Directorate of Maritime Affairs’ supervision of duties delegated to IRB.

With regard to the execution of functions under authorisation, paragraph 8.3 of the code of RO requires the flag State to specify the scope of authorisation granted to an RO. As it can be noted, article 1(paragraph k of the agreement does not give specification to whether it is general or special authorisation and the relationship between the organisations’ statutory functions and other related activities of IRB as required in para 4.3 of the appendix 02.

Para.8.3.9 of the code of RO requires the delegating flag State to specify the procedures in which the RO shall report to the administration. Article 1(l) of the agreement requires IRB to produce the report forms and keep the ministry informed, without any details on the procedure of reporting. It can be noted from the view of the author that the clauses of the agreement on the statutory functions of IRB are not clear enough to allow the parties to perform effectively their contractual obligations. For instance, the contractor during a meeting with the governmental authorities argued that the provisions of the agreement charged it with the registration and certification of ships and there were no clauses requiring it to carry out the flag inspections and keep the government informed, whereas the view of the Directorate of Maritime Affairs was that the ships inspection obligation was included in the duties of IRB (report of the meeting government-IRB, September 2016). This issue of blurred provisions of the agreement was previously raised during the IMO Voluntary Audit.
Scheme of Togo in 2014, but is not taken into account, although the agreement was renewed in 2016. This discrepancy in the construction of the clauses of the agreement is one of the weaknesses of its effective performance by the parties.

In respect of the administration's supervision of duties delegated to the organisation, part 2 para.20 of IMO III code requires flag administration to establish or participate in an oversight programme with adequate resources for monitoring of, and communication with its recognised organisation(s) in order to ensure that its international obligations are fully met. It can be observed that article 1 of the agreement does not explicitly refer to the supervision of the flag administration; instead, it refers to the supervision and assessment of IRB on the activities of other recognised organisations to which it has sub-delegated the flag State statutory functions as mentioned in article 1(m) of the agreement, meaning that the administration's supervision is not taken into account. The following paragraphs n, o, p, q, r of article 1 of the agreement authorise IRB to carry out any other related activities that may be deemed necessary for the optimum operation and development of the international ship registry of Togo. The author views that these provisions of the agreement might be in violation of the aforementioned IMO relevant instruments (RO Code & IMO III Code). It has been argued that, if the flag administration has delegated the statutory functions to ROs, it is required to retain the capability and resources to establish an oversight programme in view of monitoring and verifying the work of the RO, and carry out its own flag State inspections of vessels flying its flag to ensure that it maintains an effective administration as provided for in articles 94 and 217 of the LOSC (Mansell, 2009).

Moreover, according to IMO relevant conventions and other resolutions (SOLAS 74, Load Lines 66, MARPOL 73/78, STCW 78/95, Tonnage 69, Resolutions A.739 (18) and A.789 (19) pertaining to the delegation of authority to ROs, some flag State functions should not be delegated to ROs (Takei, 2013). Of course, the agreement of delegation between the flag State and the RO is a private contract and, under the principle of freedom of contract, the parties may insert provisions in addition to those which are recommended under the IMO’s Model Class agreement. Therefore, the flag State and RO are free to negotiate on issues pertaining to levels of authority, degree of delegation, reporting procedures, and access to information (Villanueva Jr., 2004).
However, it is worth being reminded that it is required from the flag State delegating functions, which should not be delegated to ROs, to justify this delegation and inform IMO (Res A. 789(19) – specifications on the survey and certification functions of recognized organizations acting on behalf of the administration). In absence of the national legislation of Togo, expressly authorising the derogation of this limitation in the delegation of authority, it is the IMO relevant conventions and resolutions which apply to this matter. SOLAS Chapter I Regulation 6 (a) provides: “The inspection and survey of ships, so far as regards the enforcement of the provisions of the present regulations and the granting of exemptions therefrom, shall be carried out by the officers of the Administration” …

Paragraph (b) goes further to limit duties of delegated inspectors and surveyors to require repairs to a ship and carry out inspections and surveys if requested by the appropriate authorities of a port State. “It is very clear that the intent of the principal IMO instruments, and the supporting resolutions, is that it is only the inspection, surveying, and certification functions of a flag State that are allowed to be delegated and that granting and enforcement of exemptions cannot be delegated” (Mansell, 2009). Despite these limitations, the Directorate of Maritime Affairs had delegated the flag State inspection scheme and the granting of the exemptions to IRB and only requires the latter to keep it informed. It is also the view of Harts (2016) who stated that: “The possibility and responsibility of enforcement and the power to issue exemptions remain with the flag state only and cannot be delegated to a RO”.

In addition, the Directorate of Maritime Affairs has delegated the Declaration of Maritime Labour Compliance (DMLC) under the Maritime Labour Convention 2006 to IRB, possibly in violation of this convention. Indeed, standard A 5.1.3, although it provides that the competent authority or recognised organisation duly authorised for this purpose shall certify Part II of the declaration of maritime labour compliance and issue the declaration, it does not explicitly mention that Part I may be drawn up by such an organisation (Takei, 2013). It is understood that the clause of the agreement authorises IRB to certify both Part I (Administration) and part II (RO).

The author views that from the provisions of article 1 of the agreement on the nomination and authorisation, it should be understood that, notwithstanding the many limitations imposed by IMO relevant conventions and related resolutions, the Directorate of Maritime Affairs has delegated all the flag State obligations and
responsibilities to IRB, which in return has only the obligation of keeping the ministry abreast of its delegated activities. It was even affirmed that, despite the clear limitations in delegation of authority, many flag States, namely the pseudo-national flag States, delegate their whole maritime administration functions to ROs, often located far from their home countries, as so called registries, which are focused only upon attracting ships for revenue purposes, and have neither the capacity and skills nor resources to effectively carry out maritime administration over the ships which fly the flag of the distant government (Harts, 2016; Mansell, 2009). The author thinks that the above argument rightly illustrates the case of delegation of authority to recognised organisations in the international registry of Togo. As previously mentioned in Chapter 3, Togo can be classified as a pseudo-national flag State according to the elements of definition of flag State advanced by Mansell. The clauses of the agreements confirm that the whole Togolese maritime administration with regard to the international registry is entrusted to the International Registrations Bureau located in Athens, Greece.

In the point of view of the author, given the workload resulting from the delegation of flag State duties and responsibilities and the registration of ships (art.94 & art.91 LOSC) to IRB and the imprecise clauses of the agreement, it should be noted that these shortcomings in the terms and conditions may result in a negative or a poor performance of the agreement by the parities.

The IMO Resolutions A.739 (18) and A.789 (19) contain other requirements to be met by the recognised organisations being authorised to act on behalf of the flag administration.

5.1.2 Minimum requirements to be met by the recognised organisation

One of the most important requirements in the resolution A.739 (18) is that the delegating flag state should determine that the recognised organisation has adequate resources in terms of technical, managerial, and research skills to carry out the tasks being delegated in compliance with the minimum standards for recognised organisations acting on behalf of the administration. Appendix 1 of the resolution A.739(18) contains some guidelines on the minimum requirements for which an organisation should submit full information and justification to the administration regarding to its capability to perform statutory work on its behalf. The basic
information with regard to the relative size, structure, experience and capability of the organisation commensurate with the type and degree of authority intended to be delegated thereto should be demonstrated. The organisation is required to document comprehensive experience in the domain of assessment of the design, the construction, the equipment and the safety management system (Mansell, 2009). In the point of view of the author, the delegation of authority to IRB and its subdelegated ROs does not meet the minimum requirements set out in the resolution A.739(18). The poor performance of the majority of the ROs authorised by Togo in the flag State performance tabulation of ICS (ICS, 2017), as will be discussed further, and the context of conclusion of this agreement illustrate that the majority of the recognised organisations failed to demonstrate the necessary resources, managerial skills and experience prior to being authorised. The foreword of the agreement reads as follows:

The two parties had initially concluded an Understanding of mutual cooperation and representation validated on 11th March 2008, under which, International Registration Bureau-IRB was duly and wholly nominated and authorised to carry out the functions and perform the obligations of Official “International Exclusive Registry” of ships of the Togolese Republic for Ships involved in international voyages.

First, it should be noted that, the document is properly referred to as an “Agreement of Understanding of Cooperation between the Parties Pertaining to Registration of Ships of the International Registry of Togo” and not as an agreement of delegation of flag State authority. It can be inferred that the government of Togo might not have been required to abide by the conditions set out in appendix 1 of IMO resolution A.739 (18) when contracting with IRB.

Second, article 1(p) of the contract expressly allows IRB to appoint other recognised organisations as provided in paragraph 2.1 of the appendix 1 of the IMO resolution 739(18):

The organization should perform survey and certification functions of a statutory nature by the use of only exclusive surveyors and auditors, being persons solely employed by the organization, duly qualified, trained and authorized to execute all duties and activities incumbent upon their employer, within their level of work responsibility. While remaining responsible for the
certification on behalf of the flag State, the organization may subcontract radio surveys to non-exclusive surveyors in accordance with the relevant provisions of resolution A.789 (19).

It can be understood that, initially, IRB did not meet the condition of adequate resources in terms of technical, managerial, and research skills to carry out the tasks being delegated in compliance with the minimum standards for recognised organisations acting on behalf of the administration, since the Directorate of Maritime Affairs explicitly requires the former to appoint ROs to carry statutory functions. It should be inferred that the contractual duties of IRB are the registration of ships and the appointment of ROs for statutory certification, instead of acting as ROs on behalf of the administration.

Moreover, 94% of the classification societies that are the subcontractors of IRB to perform the delegated flag State statutory functions are not members of IACS (VIMSAS, 2014). Since they are regarded as lacking resources and expertise (Harts, 2016), this leads to question whether the obligation to submit complete information and substantiation to the administration regarding their capability to perform statutory work on its behalf is met. In this regard, Mansell (2009) notes:

*The organisations that are most likely to satisfy these minimum conditions are the long-established Classification Societies. IACS members would clearly meet this standard but it is questionable whether the dozens of other ROs would also meet this standard as, with all matters to do with international shipping, there are widely varying standards of these organisations… If it is borne in mind that the 10 IACS members claim to represent 92–95% of total world tonnage, it can be seen that the remaining small percentage is disproportionately over-represented by ROs. These many Classification Societies and survey organisations are clearly given delegated authority by flag States and are therefore deemed ROs, but many do not come anywhere near meeting the minimum conditions of IMO Resolutions.*

The view of Mansell has its whole importance in the delegation of authority in the international registry of Togo. If, as he mentioned, many non-IACS member ROs do not come anywhere near to meeting the minimum requirements of IMO Resolutions, it can be concluded that this condition of delegation of authority was not met in the case of Togo, since an overwhelming majority (68%) of those classification societies
and survey organisations authorised by the Togolese maritime administration are not members of International Association of Classification Societies (17 over 25 authorised ROs are not IACS members: see the table 2 below).

Fundamentally, the organisation is required to demonstrate its technical competence and to be governed by the principles of ethical behaviour. The RO is to be subject to the certification of its quality system by an independent body of auditors accepted by the administration (IACS, 2011). If it is at the discretion of the State to decide on the extent of authority to be delegated to ROs, the type and degree of authority to be delegated should be determined following the demonstration of the size, structure, experience and capacity of ROs and assessment by the flag State (Park, 2012).

In the case of delegation of authority to ROs in the international registry of Togo since 2008, the Directorate of Maritime Affairs has never caused an audit neither by itself, nor by an independent body of auditors on IRB and its subcontractors and approved the findings of the audit. IRB appoints other recognised organisations on behalf of the government and communicates the list to the Directorate of Maritime Affairs and the functions assigned to them, without their prior assessment and/or approbation by the maritime administration of Togo (VIMSAS, 2014). To date, the following organisations are recognised and authorised to carry out statutory functions on behalf of the Togolese maritime administration:

**List of Classification Societies Authorized for the Issuance of Statutory Certificates on behalf of the Togolese Maritime Administration:**

1. American Bureau of Shipping (ABS)
2. Bureau Veritas (BV)
3. Class NK
4. DnV GL/ AS
5. International Naval Surveys Bureau (INSB)
6. Korean Register of Shipping (KR)
7. Lloyd's Register Group Limited (LR)
8. Registro Italiano Navale (RINA)
9. Russian Maritime Register of Shipping (RMSR)
List of Recognised Organisations for the Issuance of Statutory Certificates on behalf of the Togolese Maritime Administration:

1. Columbus American Register (CAR)  
2. Conarina Group, N.A.  
4. Dromon Bureau of Shipping (DBS)  
5. International Register of Shipping (IRS)  
6. Intertek Maritime Bureau (ITMB)  
7. Isthmus Bureau of Shipping (IBS)  
8. Macosnar Corporation  
9. Maritime Bureau of Africa (MBA)  
10. Overseas Marine Certification Services Inc.(OMCS)  
11. Pacific Marine Services (PMS)  
12. Shipping Register of Ukraine (SRU)  
13. Union Bureau of Shipping (UBS)  
14. Universal Maritime Bureau Company Limited (UMB)  
15. Vega Register Danismanlik Ve Teknik Hizmetler Ticaret Limited Sirkett.  
16. Veritas Register of Shipping Ltd (VRS), Ex Name: Venezuelan Register of Shipping (VRS)

Source: (International Registration Bureau, 2018)

In view of assessing whether the ROs of the international registry had met the requirements before delegation of authority, it is important to know, among the classification societies authorised to act on behalf of the Togolese maritime administration, those which are members of IACS, since they are most likely said to effectively comply with the IMO Resolution A.739 (18) (Mansell, 2009; Silos et.al, 2013; Harts, 2016).
Table 2: Types of Recognised Organisations authorised by the Togolese Maritime

<table>
<thead>
<tr>
<th>Authorised recognised organisations</th>
<th>IACS member</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 American Bureau Of Shipping (ABS)</td>
<td>Yes</td>
</tr>
<tr>
<td>2 Bureau Veritas (BV)</td>
<td>Yes</td>
</tr>
<tr>
<td>3 Class Nkk</td>
<td>Yes</td>
</tr>
<tr>
<td>4 Dnv Gl As</td>
<td>Yes</td>
</tr>
<tr>
<td>5 International Naval Surveys Bureau (INSB)</td>
<td>No</td>
</tr>
<tr>
<td>6 Lloyd's Register Group Limited (LR)</td>
<td>Yes</td>
</tr>
<tr>
<td>7 Korean Register of Shipping (KR)</td>
<td>Yes</td>
</tr>
<tr>
<td>8 Registro Italiano Navale (RINA)</td>
<td>Yes</td>
</tr>
<tr>
<td>9 Russian Maritime Register of Shipping (RMSR)</td>
<td>Yes</td>
</tr>
<tr>
<td>10 Columbus American Register (CAR)</td>
<td>No</td>
</tr>
<tr>
<td>11 Conarina Group, N.A.</td>
<td>No</td>
</tr>
<tr>
<td>12 Cosmos Marine Bureau Inc.(CMB).</td>
<td>No</td>
</tr>
<tr>
<td>13 Dromon Bureau of Shipping (DBS)</td>
<td>No</td>
</tr>
<tr>
<td>14 International Register of Shipping (IRS)</td>
<td>No</td>
</tr>
<tr>
<td>15 Macosnar Corporation</td>
<td>No</td>
</tr>
<tr>
<td>16 Maritime Bureau of Africa (MBA)</td>
<td>No</td>
</tr>
<tr>
<td>17 Overseas Marine Certification Services Inc.(OMCS)</td>
<td>No</td>
</tr>
<tr>
<td>18 Pacific Marine Services (PMS)</td>
<td>No</td>
</tr>
<tr>
<td>19 Shipping Register of Ukraine (SRU)</td>
<td>No</td>
</tr>
<tr>
<td>20 Union Bureau of Shipping (UBS)</td>
<td>No</td>
</tr>
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</tr>
<tr>
<td>24 Intertek Maritime Bureau (ITMB)</td>
<td>No</td>
</tr>
<tr>
<td>25 Isthmus Bureau of Shipping (IBS)</td>
<td>No</td>
</tr>
</tbody>
</table>

**Source:** Author's own elaboration
The type of recognised organisation means the distinction between the recognised organisations which are members of International Association of Classification Societies (IACS) and those which are not members of this Association.

An analysis of Table 2 on the recognised organisations authorised to carry out statutory functions on behalf of the Togolese maritime administration shows that an overwhelming majority of them are non-IACS Members. According to the GISIS database, 86 recognised organisations have currently been reported and categorised into two groups (IMO). IACS has thirteen (13) member classification societies which are regarded as equipped with well-developed standards and their consultative status with IMO has been granted since 1969. IACS members also put their work together to accomplish uniform implementation of their rules or IMO instruments through unified interpretations or unified requirements. Moreover, more than 90% of world tonnage is accounted for by IACS member classification societies (UNCTAD, 2011). Therefore, recognised organisations that are members of IACS can be categorised as high performance ROs (Mansell, 2009, p. 113), that is to say, they have adequate resources and enjoy experience and technical and managerial skills to effectively perform the delegated tasks. On the other hand, there are many other classification societies and organisations non-members of IACS that lack consistency of standards and have shown relatively low performance in terms of implementation of international instruments.

It should be noticed that among the twenty-five (25) authorised ROs, only eight (8) are IACS Members, meaning that 68% are IACS non-members; this to some extent reflects the negative performance recorded by the international registry of Togo, which has recognised and authorised them to carry out statutory functions. It is most likely obvious that the majority of them, especially the non-IACS members, did not meet the minimum conditions required by the appendix 02 of IMO resolution 739(18), since they are generally regarded as lacking adequate resources and experience to perform the tasks they are assigned on behalf of flag administration. This situation often results in substandard surveys of substandard ships, and the issuance of meaningless statutory certificates on behalf of the flag State, with associated risks to the lives of crews, and to the marine environment. It is to remedy this poor performance of flag State inspection that the port State control regime was instituted.
The number of detentions of the Togolese international registry flagged vessels is an
evidence that the majority of the recognised organisations do not meet the minimum
conditions of IMO resolution A.739 (18) and therefore perform poor surveys and issue
certificates that do not reflect the safety condition of the ships (VIMSAS, 2014); hence,
the necessity for the Directorate of Maritime Affairs to control and monitor the
performance of those recognised organisations.

5.2. Requirement of oversight of flag State administration on the ROs activities.
The philosophy-underpinning article 94(1) of the LOSC is that the flag State shall
effectively exercise jurisdiction and control in administrative, technical and social
matters over ships flying its flag. If IMO instruments allow the delegation of these
obligations of flag State to private organisations, this delegation does not mean
derogation. Flag States shall put in place a system to ensure that the recognised
organisations acting on their behalf are performing the delegated tasks with adequacy
as required by IMO instruments (IMO Resolution A.739 (18)). It is argued that the flag
State shall have the capability and adequate resources to monitor and enforce the
requirements of international and national legislations, and the ROs carrying out the
statutory functions on behalf of the delegating flag State must accordingly have a
worldwide system of qualified offices and surveyors, and the technical, managerial
and research facilities necessary to accommodate those offices and personnel (Code
of ROs para.7.3.2).

This requirement is for the Directorate of Maritime Affairs to carry out a monitoring
programme on the ROs conducting statutory functions. This process of monitoring
may, however, face the issue of the necessary resources such as in the case of the
Directorate of Maritime Affairs.

5.2.1 Necessity for the Directorate of Maritime Affairs to monitor the activities
of the ROs

When a flag administration like the Directorate of Maritime Affairs authorises an RO
to act on its behalf, it is required to regulate such authorisation. The flag administration
should, for instance, ensure compliance with international instruments and
regulations, which may include detention and take corrective steps in the case a ship
flying its flag is detained by a port State (Harts, 2016). After the delegation of the
statutory functions is made, the flag administration should have the capability and resources to implement and enforce a monitoring programme in view of verifying that the ROs are performing effectively the delegated duties, by carrying out its own flag State inspections of vessels under its flag, and ensure that it is exercising an effective jurisdiction in administrative, technical, and social matters required of a properly functioning flag State administration (Villanueva Jr, 2004; Takei, 2013).

To fulfil its international obligations, it is essential for a flag State like Togo to establish and maintain effective control over ships flying its flag. This necessity is set out in article 94(1) of the LOSC and inferred in IMO instruments. Part 3.5 of the code of ROs requires the flag State to have an oversight of recognised organisations. The flag State is required to establish or participate in an oversight programme with adequate resources for monitoring of, and communication with, its recognised organisation(s) in order to ensure that its international obligations are fully met (3.5.1), to supervise the duties delegated to ROs (3.5.2), and to establish a system to ensure the adequacy of statutory certification and services provided (3.5.3). In addition, the flag State should establish the principles of auditing to ensure that it is satisfied with the quality management system put in place by the ROs (part 3.6). Eventually, the flag State is expected to develop, implement and manage an effective oversight programme of the ROs that act on its behalf. Part 2 paragraph 20 of IMO III Code and part 5.1 of Code of ROs read:

The flag State should establish or participate in an oversight programme with adequate resources for monitoring of, and communication with, its recognized organization(s) in order to ensure that its international obligations are fully met, by:

.1 exercising its authority to conduct supplementary surveys to ensure that ships entitled to fly its flag effectively comply with the requirements of the applicable international instruments

.2 conducting supplementary surveys as it deems necessary to ensure that ships entitled to fly its flag comply with national requirements, which supplement the international mandatory requirements; and

.3 providing staff who have a good knowledge of the rules and regulations of the flag State and those of the recognized organizations and who are available to carry out effective oversight of the recognized organizations.
The monitoring activities of the flag State may include inter alia the counter-surveys or supplementary surveys on its ships, the conduct of or participation in audits of ROs conducted by accredited independent bodies, the observation of surveys and audits conducted by ROs, periodical meeting and dialogue sessions with the ROs, the monitoring of the PSC report, follow-up on related class-related detentions and casualties, and the review of ROs survey and audits reports (IMO).

In the light of the above, it may be affirmed that these requirements are far from being met by the Togolese maritime administration in respect of the international registry, given its size (650 ships) and the capabilities of the Directorate of Maritime Affairs, as will be discussed further.

First, the Directorate of Maritime Affairs has not so far established an official oversight programme to conduct supplementary surveys to ensure that ships in its international registry are in compliance with international and national legislation. As discussed earlier, almost all the flag State activities have been delegated to IRB and the other ROs it has appointed, including the oversight of these ROs (article 1(m) of the agreement). Detentions of Togolese flagged vessels for non-compliance are reported and IRB is call upon for clarification to the Directorate of Maritime Affairs.

It was agreed during the renewal of the agreement that the Directorate of Maritime Affairs would send a delegation of flag State appointed inspectors and/or surveys twice a year to conduct counter-surveys on ships of international registry and IRB local office would be opened in Lomé to facilitate the monitoring of the ROs (Report of the meeting of September, 2016 between IRB and the Directorate of Maritime Affairs). But this decision remained a mere project that has never been implemented. With regard to the flag State’s supervision of the duties delegated to the ROs, it should be noted that the supervision of the Directorate of Maritime Affairs is limited only to access to the IRB documentation relevant to the Togolese fleet, the internal instructions, the circulars and guidelines, and the documentation of the quality management system. The Directorate of Maritime Affairs does not have any cooperation of inspection and verification work with its ROs and the information and statistics of damage and casualties relevant to the flag State's fleet are not available in the administration records (VIMSAS 2014 & IMSAS 2016).
The system to ensure the adequacy of statutory certification and services provided by ROs, including procedures for communication with the RO, for reporting to the flag State by the RO, for processing such reports by the flag State, and for additional ship's inspections by the flag State do not exist. The monitoring and verification of statutory certification and services provided for in part 3.5.3.6 of the code of ROs is limited to the supply of copies of statutory certification and related services by IRB, without any further verification of the Directorate of Maritime Affairs (VIMSAS report 2014, para.4.4.2).

Moreover, since the Directorate of Maritime Affairs has not established a scheme of auditing the quality management system, there has never been an audit of ROs either by an accredited certification body or by equivalent organisations. This omission was one of the observations made by the 2014 VIMSAS auditors and reiterated in 2016 by IMSAS auditors. It was recommended to take corrective action in this regard. The requirement of an oversight programme seems to be the toughest challenge for the Directorate of Maritime Affairs, in the sense that the VIMSAS in 2014 and IMSAS in 2016 reports have raised this issue, but to date no corrective action in this regard has been taken.

The delegation of authority by the Directorate of Maritime Affairs confirms the analysis of the Sub-Committee on Implementation of IMO Instruments’ analysis of consolidated audit summary reports (CASRs). It was concluded that, with regard to the discharge of authority, most of the findings were connected with the oversight programme of the flag State for ROs and the agreement between the administration and the RO (IMO).

Other studies carried out in the past proved the reasons underlying the requirement of a monitoring scheme on recognised organisations. Some authors argued that once the classification society acting as RO has been authorised by the administration, it might still perform dualistic ambiguous functions (Lagoni, as cited in Takei, 2013, p. 122). Accordingly, the classification society would be performing public functions, with the possibility of performing its class tasks for shipowners. The supporters of this concept of dualism claim that it is advantageous for the reason of simplicity and efficiency. The administrations, limited in resources, could still perform their duties, whilst shipowners would easily access the required surveyors with a worldwide
network and, subsequently, the classification society receives substantial revenue for its performances (Fikri, 2007, p. 10). However, the opponents of this view, like Mansell (2009, p.128) state that there would be an unhealthy relationship between the parties since the classification society might still perform public and private functions. Barchue (2009) claims that:

Some ROs also have other business interests with ships registered in the flag State that has authorized such RO. This condition leads to the intensification of commercial pressures on the RO concerned, which sometimes create conflicts between the role of the flag State’s inspector and his commercial interest as the class surveyor of the ship.

The author views that this second position might be at stake in the case of the Togolese international registry. Not only are the majority of the ROs from low performance, but also the substandard surveys imply that the ROs might prioritize commercial interest over the flag State delegated functions. Therefore, regardless of the pros and cons, developing an appropriate monitoring scheme over ROs is a necessity for the Directorate of Maritime Affairs. The conduct of an oversight programme on recognised organisations requires that necessary human resources should be at the disposal of the Directorate of Maritime Affairs.

5.2.2 The issue of the required personnel
In any organisation, the quality and quantity of human resources is one of the vital factors of good performance. The maritime administration, essentially a technical governmental body, needs to be equipped with qualified staff to carry out flag State duties. However, as Rasmussen (2016) notes,

Most, if not all flag State Administrations may find it difficult to facilitate and control the implementation of the mandatory IMO instruments and their associated national legislation all by themselves, due to the lack of necessary availability of personnel with the required training, experience and expertise, even outside the States, as well as the funding needed to conduct all the statutory work....
Delegation of flag State duties does not mean derogation of flag State obligations. Despite the delegation, the flag administration remains responsible under international law and, therefore, has the obligation to follow up the work of recognised organisations acting on its behalf, as Mansell (2009) notes:

*If delegation of these statutory functions is made, the Administration must retain the capability and resources to monitor and verify the work of the RO, to carry out its own flag State inspections of vessels flying its flag, and maintain an effective Administration for the many other administrative, technical, and social matters required of a properly functioning flag State administration.*

As it may be noted, to establish and implement a flag State oversight programme of ROs in an international registry like that of Togo, a good staff with good knowledge of the rules and regulations of the flag State and those of the recognised organisations and in terms technical and managerial skills is required.

The Directorate of Maritime Affairs, as mentioned in observations in the VIMSAS and IMSAS reports, is tremendously short of sufficient and qualified human resources. According to the decree N°2008-90/PR of 29 July 2008 relating to the organisation of ministerial departments, the minimum number of personnel with the kinds of expertise and specialisation needed for the Directorate of Maritime Affairs to effectively and efficiently carry out its functions as a modern maritime administration, is 54 people. The current number is estimated to be less than a quarter of the minimum needed as shown in Table 3.

**Table 3: The profile of the personnel of the Directorate of Maritime Affairs**

<table>
<thead>
<tr>
<th>Qualification</th>
<th>Nbr.Pers</th>
<th>Speciality</th>
<th>Years of work Experience</th>
<th>Level of Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diploma</td>
<td>P1</td>
<td>Secretariat</td>
<td>09</td>
<td>Special Secretary</td>
</tr>
<tr>
<td></td>
<td>P2</td>
<td>Secretariat</td>
<td>09</td>
<td>Head of Secretariat</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>General</td>
</tr>
<tr>
<td></td>
<td>P3</td>
<td>Accountancy</td>
<td>24</td>
<td>Senior Accountant</td>
</tr>
<tr>
<td>Level</td>
<td>Name</td>
<td>Course</td>
<td>Ref.</td>
<td>Position</td>
</tr>
<tr>
<td>-------</td>
<td>-------</td>
<td>-------------------------</td>
<td>------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Bachelor</td>
<td>P4</td>
<td>Accountancy</td>
<td>09</td>
<td>Assistant Accountant</td>
</tr>
<tr>
<td></td>
<td>P1</td>
<td>Maritime Safety</td>
<td>12</td>
<td>Head safety of navigation div.</td>
</tr>
<tr>
<td></td>
<td>P2</td>
<td>Maritime Safety</td>
<td>15</td>
<td>Head Seafarers Division</td>
</tr>
<tr>
<td></td>
<td>P3</td>
<td>Maritime Affairs</td>
<td>09</td>
<td>Head Human Resources Division.</td>
</tr>
<tr>
<td></td>
<td>P4</td>
<td>Watch Keeping Officer</td>
<td>09</td>
<td>PSCO</td>
</tr>
<tr>
<td></td>
<td>P5</td>
<td>Maritime Transport</td>
<td>25</td>
<td>Head Maritime Transp.Division</td>
</tr>
<tr>
<td></td>
<td>P6</td>
<td>Maritime Transports</td>
<td>24</td>
<td>Head SAR Division</td>
</tr>
<tr>
<td></td>
<td>P7</td>
<td>Maritime Transports</td>
<td>09</td>
<td>Head Maritime Traffic Section</td>
</tr>
<tr>
<td>Master</td>
<td>P1</td>
<td>Lawyer</td>
<td>20</td>
<td>Director of Maritime Affairs</td>
</tr>
<tr>
<td></td>
<td>P2</td>
<td>Maritime Lawyer</td>
<td>09</td>
<td>Head Legal Division</td>
</tr>
<tr>
<td>Doctorate</td>
<td>00</td>
<td>None</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

**Source: Author's own elaboration**

Table 3 contains a summary of information about the human resources of the Directorate of Maritime Affairs. For privacy reasons, the names of the persons are not revealed.

An analysis of Table 3 reveals that the Directorate of Maritime Affairs faces a serious lack of human resources, which might allow it to implement an oversight programme of the recognised organisations in the international registry of Togo. As previously mentioned, the reference number of personnel required for the Directorate of Maritime Affairs is 54 people. The available personnel as indicated in Table 3 is 13 people, representing only 24.07% of the requirement, a shortage of 75.92% in terms of number.
In addition, there are few persons with the technical and managerial related knowledge and experience to carry out supplementary surveys on the activities of ROs. It is worth noting that Table 3 does not mention the flag State inspectors, whose duties is to conduct the supplementary surveys, in the column of level of responsibility. It is also worth being reminded that the international registry of Togo has a fleet of 650 vessels, which rarely call the ports of Togo (annual report of Directorate of Maritime Affairs, 2017). This number of ships of the international registry requires a subsequent number of flag State inspectors to conduct supplementary surveys and inspections of the registered ships. Therefore, the shortage of personnel in terms of number and technical skills and, especially, inspectors and surveyors might be a hindrance for the Directorate of Maritime Affairs to establish and efficiently implement an oversight programme of recognised organisations in its international registry. It is admitted that in the matter of delegation of authority, many flag States, particularly pseudo-national flag States, discharge the entirety of maritime administration functions to ROs, often far away from their countries, in the guise of a register whose main objective is to attract tonnage for revenue purposes, and which have neither the knowledge nor resources to effectively exercise jurisdiction over the ships that fly the flag (Mansell, 2009). It is worth pointing out that Togo is a pseudo-national registry, whose registry is entrusted to IRB in Greece and its flagged vessels seldom call to its ports. With the lack of resources and technical staff, the Directorate of Maritime Affairs is limited in its capacity of conducting an oversight programme to ensure that the authorised ROs comply with the IMO instruments. This absence of control over ROs might have contributed to some extent to the negative performance of Togo, since the good performance of ROs is one of the indicators of a flag State’s good performance (ICS, 2015).

Considering the above, the author views that the absence of an oversight programme of the Directorate of Maritime Affairs on its recognised organisations could be due to the following reasons. First, part 2(20) of IMO III Code and part 5.1 of the code of ROs require flag States to establish an oversight programme of ROs by virtue of national law, which supplements international mandatory instruments. However, Togo lacks clear national legislation (decree or ministerial order) relating to the follow up of ROs. Indeed, the Merchant Marine Code of 2016 and its decree of implementation provide for the recognition and authorisation of the ROs, but do not mention the monitoring
system of recognised organisations or other survey organisations. It should also be noted that Togo is in the monist system and the law is in general terms, leaving room for the subsidiary law (ministerial order or decree) to regulate matters case by case. So far, there is no regulation relating to the monitoring of the ROs’ activities by the Directorate of Maritime Affairs.

Moreover, the author views that the Directorate of Maritime Affairs lacks tremendously a skilled staff with good knowledge of the rules and regulations of the flag State and those of the recognised organisations to carry out effective oversight of the recognised organisations’ activities. In fact, the Directorate of Maritime Affairs is expected, in the process of monitoring its ROs, to conduct audits in RO’s Headquarters, in RO’s local branch office, to participate in accredited compliance body (ACB) audits as an observer, to recognise results of ACB audits and possibly, at any time, request the audit report and, after consideration, recognise it (Maria, 2014). The ideal is that the Directorate of Maritime Affairs should biannually conducts audits of its ROs. With the 25 ROs authorised, it has to conduct 50 audits per year with its limited staff in terms of number and quality. This might be the major reason for delegating the control and monitoring of recognised organisations to IRB.

In addition, it should be observed that the Directorate of Maritime Affairs has not established a schedule of recruiting and training of the personnel on a basis of the task load and the needed profile in view of supplying and /or superseding the retiring staff.

Last, but not least, the author views that by delegating the oversight of ROs to IRB, the Directorate of Maritime Affairs does not regard it as a recognised organisation or a survey organisation obliging the former to control and monitor the latter. Instead, IRB is considered as an agent acting on behalf of the Directorate of Maritime Affairs and whose ultimate obligation remains to keep it abreast of all the activities with regard to the Togolese international registry.

The analysis of Table 2 reveals that 68% of the recognised organisations authorised by the Togolese maritime administration are non-members of IACS. Since this type of RO is regarded as low performance, their authorisation by the Directorate of Maritime Affairs raises the issue of the relationship between the ROs and the high number of detentions of Togolese flagged vessels in its international registry, as a cause of its poor performance (ICS annual report).
5.3 Relationship between the reasons for detention and the type of authorised ROs

The majority of flag States entrust the recognised organisations to carry out inspections, surveys, and certification functions on their behalf. They are in this regard reminded by the IMO of the potential consequences of ineffective delegation to ROs when ships flying their flag are in foreign ports as follows:

Whereas Parties may entrust surveys and inspections of ships entitled to fly their own flag either to inspectors nominated for that purpose or to recognized organizations, they should be made aware that under the applicable conventions, foreign ships are subject to port State control, including boarding, inspection, remedial action, and possible detention, only by officers duly authorized by the port State… (IMO Resolution 787(19)).

To measure the performance of the recognised organisations, the Paris and Tokyo MOUs apply guidelines to assess the responsibility of ROs for deficiencies and associated detentions. Some detainable deficiencies discovered during port State control inspections can be directly attributed to a failure of the inspection, survey, and certification functions of the RO. Statistics of the Paris MoU demonstrate that the so-called “convenient ROs” (Non IACS Members) are associated with more detentions than RO members of IACS (Mansell, 2009). This section analyses the deficiencies causing the high number of detentions of Togolese flagged vessels attributed to the recognised organisations carrying out surveys of certification functions, from 2015 to 2017 in international registry, on the basis of the Paris MoU PSC annual Report.

5.3.1 Analysis of the detainable deficiencies attributable to ROs in the Togolese registry

The detainable deficiencies are those deficiencies that cause the detention of a ship during a port state control. An RO attributable or related deficiency means that the RO that carried out the relevant survey or that issued certification has a responsibility in connection with the deficiencies that caused the ship detention (Paris MoU annual report). This analysis covers a period of 3 years from 2015 to 2017 in the Paris MoU.
<table>
<thead>
<tr>
<th>Ship Details</th>
<th>Keel Date</th>
<th>Port of Detention</th>
<th>Date Of Release</th>
<th>Deficiencies Reason for Detention</th>
<th>RO Related</th>
<th>RO/Class.Soc</th>
<th>IACS Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>IMO:8113293 Nam:Blue Moon</td>
<td>1982</td>
<td>Venice</td>
<td>2015-1-4</td>
<td>Oil filtering Equipment Emergency Generator Fixe fire Extinguishing installation</td>
<td>Yes</td>
<td>Venezuelan Register of Shipping</td>
<td>No</td>
</tr>
<tr>
<td>IMO:8002664 Name: Blue Dream</td>
<td>1980</td>
<td>Midia</td>
<td>2015-2-3</td>
<td>SMC/ISM Windows, sidescuttes And deadlights Ventilators, air pipes, casings</td>
<td>Yes</td>
<td>Macosnar Corporation</td>
<td>No</td>
</tr>
<tr>
<td>IMO:7922934 Name: Byblos</td>
<td>1981</td>
<td>Mesolongion</td>
<td>2015-10-3</td>
<td>MF/Radiom installation, fire detection and alarm system, Voyage or passage plan, Fire drills</td>
<td>Yes</td>
<td>Venezuelan Register of Shipping</td>
<td>No</td>
</tr>
<tr>
<td>IMO:7406772 Name:SUHA QUEEN II</td>
<td>1974</td>
<td>Cartagena</td>
<td>2016-2-3</td>
<td>Lights,shapes,sound-signals,Bulkheads,operational damage, Freeboard marks, Cargo &amp; other hatchways, Doors, Ventilators, air pipes, casings, Fire pumps and its pipes</td>
<td>Yes</td>
<td>Cosmos Marine Bureau Inc.</td>
<td>No</td>
</tr>
<tr>
<td>IMO :7203895 Name : FARĀH</td>
<td>1971</td>
<td>Constanta</td>
<td>2016-5-19</td>
<td>Fire doors/openings in fire-resisting divisions, Fixed fire extinguishing installation, Fire-dampers</td>
<td>Yes</td>
<td>Dromon Bureau of Shipping</td>
<td>No</td>
</tr>
<tr>
<td>IMO :8230314 Name : ALNILAM</td>
<td>1977</td>
<td>Azov</td>
<td>2016-6-10</td>
<td>Hull damage impairing seaworthiness, Bulkheads – cracking</td>
<td>Yes</td>
<td>Shipping Register of Ukraine</td>
<td>No</td>
</tr>
<tr>
<td>IMO</td>
<td>Name</td>
<td>Year</td>
<td>Port</td>
<td>Date</td>
<td>Violation Description</td>
<td>Government</td>
<td>Surveyor</td>
</tr>
<tr>
<td>-------------</td>
<td>------------------</td>
<td>------</td>
<td>--------</td>
<td>----------</td>
<td>--------------------------------------------------------------------------------------</td>
<td>------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td>7041053</td>
<td>PACIFIC M</td>
<td>1970</td>
<td>Koper</td>
<td>2016-7-20</td>
<td>Suspected of discharge violation, Beams, frames, floors-corrosion</td>
<td>Yes</td>
<td>Cosmos Marine Bureau Inc.</td>
</tr>
<tr>
<td>6609729</td>
<td>EVAL NOLOM</td>
<td>1961</td>
<td>Trogir</td>
<td>2016-9-30</td>
<td>Charts, Nautical publications International, code of signals-SOLAS,</td>
<td>Yes</td>
<td>Columbus American Register</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>inflatable life rafts, Scuppers, inlets and, discharges Fire pumps and its pipes</td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>7830923</td>
<td>GEOSUN</td>
<td>1979</td>
<td>Azov</td>
<td>2016-10-7</td>
<td>Railing, gangway, walkway and means for safe passage</td>
<td>Yes</td>
<td>Columbus American Register</td>
</tr>
<tr>
<td>8030283</td>
<td>AVIVA</td>
<td>1982</td>
<td>Naples</td>
<td>2016-10-23</td>
<td>Emergency, lighting ,batteries, and switches, Ventilation Jacketed high pressure lines and oil leakage alarm, Engineers' alarm</td>
<td>Yes</td>
<td>Dromon Bureau of Shipping</td>
</tr>
<tr>
<td>8101410</td>
<td>VANCOUVER</td>
<td>1982</td>
<td>Thessaloniki</td>
<td>2016-11-19</td>
<td>Voyage data recorder (VDR) / Simplified, Voyage, data recorder (S-VDR, Lifeboats Remote, Means, of, control (opening, pumps, ventilation, etc.) Machinery spaces</td>
<td>Yes</td>
<td>Shipping Register of Ukraine</td>
</tr>
<tr>
<td>9143623</td>
<td>VALDA</td>
<td>1995</td>
<td>Torre annunziata</td>
<td>2016-11-24</td>
<td>Propulsion main engine</td>
<td>Yes</td>
<td>Cosmos Marine Bureau Inc.</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>IMO</th>
<th>Name</th>
<th>Year</th>
<th>Date</th>
<th>Description</th>
<th>Yes/No</th>
<th>Bureau</th>
<th>Yes/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>8703270</td>
<td>FARAH PRINCESS</td>
<td>1986</td>
<td>2016-11-2</td>
<td>Ventilators, air pipes, casings, Fixed fire extinguishing installation</td>
<td>Yes</td>
<td>Dromon Bureau of Shipping</td>
<td>No</td>
</tr>
<tr>
<td>8807349</td>
<td>NAWAL</td>
<td>1989</td>
<td>2017-1-14</td>
<td>Cargo Ship Safety Construction</td>
<td>Yes</td>
<td>Dromon Bureau of Shipping</td>
<td>No</td>
</tr>
<tr>
<td>8511811</td>
<td>RINA</td>
<td>1985</td>
<td>2017-2-18</td>
<td>Charts, Signs, indications</td>
<td>Yes</td>
<td>International Naval Surveys Bureau</td>
<td>No</td>
</tr>
<tr>
<td>7721952</td>
<td>CHARLY</td>
<td>1978</td>
<td>2017-2-26</td>
<td>Lifejackets, incl. provision and disposition, Emergency fire pump and its pipes, MF/HF Radio installation</td>
<td>Yes</td>
<td>International Naval Surveys Bureau</td>
<td>No</td>
</tr>
<tr>
<td>7303231</td>
<td>FALCONIA</td>
<td>1973</td>
<td>2017-3-9</td>
<td>Voyage data recorder (VDR)/Simplified Voyage, data, recorder, Fire, doors/openings in fire-resisting divisions</td>
<td>Yes</td>
<td>CONARINA LLC</td>
<td>No</td>
</tr>
<tr>
<td>7726952</td>
<td>DANA TRADER</td>
<td>1978</td>
<td>2017-8-19</td>
<td>Emergency equipment for 2-way comm, Ballast, fuel and other tanks, Ventilators, air pipes, casings, Emergency fire pump and its pipes, Emergency, lighting, batteries and switches, Personal equipment for fire safety</td>
<td>Yes</td>
<td>International Naval Surveys Bureau</td>
<td>No</td>
</tr>
<tr>
<td>8725644</td>
<td>CARNABY</td>
<td>1985</td>
<td>2017-11-22</td>
<td>Ballast, fuel and other tanks</td>
<td>Yes</td>
<td>Shipping Register of Ukraine</td>
<td>No</td>
</tr>
</tbody>
</table>
The analysis of the Togolese flagged vessels’ detentions in the Paris MoU from 2015 to 2017 reveals a common denominator. All the detained Togolese flagged vessels had been surveyed and/or inspected and certified only by the non-IACS member recognised organisations authorised by the Directorate of Maritime Affairs (Paris MoU PSC reports 2015-2017). Among the detainable deficiencies, some were directly attributable to the ROs and the others were RO non-related. The Paris MoU has established criteria for responsibility assessment of recognised organisations (R/O). According to those criteria, a detainable deficiency is associated with the RO if it is:

- a serious structural deficiency including corrosion, wastage, cracking and buckling unless it is clear that the deficiency has occurred since the last survey conducted by the RO, or
- a serious deficiency in equipment or non-structural fittings (such as fire main, air pipes, cargo hatches, rails, masts, ventilation trunks/ducts, accommodation and recreational facilities etc.) and it is less than 90 days since the last survey conducted by the RO, or
- a serious deficiency in equipment or non-structural fittings which clearly would have existed at the time of the last survey, or
- a serious deficiency associated with out-of-date equipment which was out-of-date at the time of the last survey, or

<table>
<thead>
<tr>
<th>IMO : 6417748</th>
<th>Name: JAGUAR</th>
<th>1964</th>
<th>Piraeus</th>
<th>2017-9-24</th>
<th>Emergency fire pump and its pipes</th>
<th>Yes</th>
<th>Columbus American Register</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>IMO : 8911413</td>
<td>Name: GEORGIANA H</td>
<td>1990</td>
<td>Tsiggelion</td>
<td>2017-11-24</td>
<td>Lights, shapes, sound-signal, ISM, Cargo &amp; other hatchways, Ventilators, air pipes, casings</td>
<td>Fire pumps and its pipes</td>
<td>Yes</td>
<td>Isthmus Bureau of Shipping, S.A.</td>
</tr>
</tbody>
</table>

Source: Author’s own construction from the Paris MoU PSC annual reports (2015-2017)
• missing approval or endorsement of Plans and Manuals if required to comply with the provisions for issuance of statutory certificates which clearly would have existed at the time of the last survey, or

• a detainable ISM-deficiency where there is clear evidence of a lack of effective and systematic implementation of a requirement of the ISM Code and where is clear evidence that it existed at the last audit conducted by the RO provided that the audit took place within the last 90 days. Operational drills and operational controls may be used to establish supporting evidence of failure and to assign RO responsibility.

• a detainable MLC-deficiency where there is clear evidence of a lack of implementation of a requirement of the MLC Code and that it existed at the last inspection conducted by the RO.

According to Paris MoU, certain conditions should be considered when deciding whether the RO was responsible for such deficiencies, as indicated in Table 5.

<table>
<thead>
<tr>
<th>Issued by</th>
<th>Annual / intermediate survey or verification audit carried out by</th>
<th>Can RO responsibility be Assigned (if other criteria are met)?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flag</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Flag</td>
<td>Flag</td>
<td>No</td>
</tr>
<tr>
<td>Flag</td>
<td>RO</td>
<td>Yes</td>
</tr>
<tr>
<td>RO</td>
<td>None</td>
<td>Yes</td>
</tr>
<tr>
<td>RO</td>
<td>Flag</td>
<td>No</td>
</tr>
<tr>
<td>RO</td>
<td>RO</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Source: Paris MoU (2017)

The analysis of Tables 4 and 5 reveals that the most frequent reasons for detentions during this period relate to the safety of construction, hull damage, ISM deficiencies, SMC/ISM, MLC certificates, equipment and operation of ships. Therefore, the ROs, which had conducted surveys and / or inspections and issued certificates to ships
detained, were responsible for the deficiencies that caused their detentions. This seems to cast a doubt on the sincerity and effectiveness of the tasks of the authorised ROs, namely the non-IACS members, which are regarded as “convenient ROs” (Mansell, 2009). It may be argued that these ROs conducting the surveys and statutory functions were not well equipped and experienced as required by IMO Resolution A.739 (18), since the deficiencies relate to technical matters. It may be affirmed that this low performance is one of the contributing factors to the negative or poor performance of the Togolese international registry, since the assessment of the flag State performance involves the performance of the ROs.

For instance, when considering a flag State as a good performance flag, ICS (2015) used the following indicators:

- **flag States that authorised an RO which is an IACS member or, flag States that authorised not more than six ROs that are not IACS members**
- **flag States that submitted the report concerning the authorization to the IMO** (Syafiuddin, 2016)

Although ICS recognises that the fact of not being a member of IACS does not per say mean that the RO does not comply with IMO instruments, it acknowledges, nevertheless, (2015) that if a flag State recognises and authorises a large number of non-IACS members, this might be a cause for doubting whether all of these ROs are compliant with the IMO requirements. This analysis of ICS may be confirmed in the case of delegation of authority to recognised organisations of the international registry of Togo.

Togo, as flag State has delegated its duties and responsibilities through the maritime administration, namely the Directorate of Maritime Affairs (DMA). Moreover, the Directorate of Maritime Affairs has recognised and authorised twenty-five (25) ROs, among which eight (8) are IACS members and 17 are non-IACS, far beyond the maximum (6) used to assess a flag State as a good performance flag. The analysis of the detentions from 2015 to 2017 revealed that among the twenty-five authorised ROs, only those which are not IACS members were concerned with deficiencies as the cause of high detentions of Togolese flagged vessels in the Paris MoU. As such, the facts confirmed the view of ICS since the overwhelming majority of the authorised ROs are not IACS members.
Harts (2016) notes that:

... IACS has thirteen-member classification societies which are equipped with well-developed standards and its consultative status with IMO has been granted since 1969. They also put their work together to accomplish uniform implementation of their rules or IMO instruments through the unified interpretations or unified requirements. Furthermore, more than 90% of world tonnage is accounted for by IACS member classification societies (UNCTAD, 2011). Therefore, recognized organizations which are members of IACS can be categorized as high performance ROs.

This view confirms the profile of the IACS member ROs in the Togolese registry. Indeed, the analysis of all the detentions of the Togolese vessels in this period in Paris MoU reveals that all the ships with RO-related and non-related deficiencies were inspected and certified by the ROs which are not members of IACS. It might be understood that the IACS member ROs in the same period had scored good performance in carrying out the surveys and certifications delegated to them, meaning that they are equipped with well-developed standards and have developed and implemented a quality management system and continually improved its effectiveness as required by the code of RO. By contrast, the RO non-members of IACS had scored all the detainable deficiencies attributable to ROs in this period.

This proves that these ROs do not possess the minimum resources and experience required by the IMO resolutions A. 739(18) and A.789 (19). As Mansell (2009) observes,

On the other hand, many non-IACS classification societies and organizations as recognized organizations, which lack consistency of standards, have shown relatively low performance in terms of implementation of international instruments. Even though recognized organizations should have appropriate resources with regard to technical, managerial and research capabilities for ensuring their successful performance in compliance with relevant regulations, it is quite difficult to find evidence showing that some non-IACS classification societies have enough capabilities while it has been recognized that IACS classification societies have large enough capabilities according to RO related requirements developed by IMO.
In light of this analysis, the following can be concluded: the statutory functions in the international registry of Togo are delegated to ROs, the majority of which (68%) are not well equipped. This situation results in substandard surveys of substandard ships, and the issuance of meaningless statutory certificates on behalf of the maritime administration of Togo, with the associated risks to the lives of crews, and to the marine environment. These convenient surveys and certificates have caused a high number of detentions of Togolese vessels in the Paris MoU PSC region. It is obvious that there is a relationship between the deficiencies causing the detention of the ship and the type of recognised organisation that had surveyed and certified it. Therefore, the negative performance of the Togolese international registry might be partly attributable to the poor performance of these substandard recognised organisations acting on its behalf.

Furthermore, among the detention deficiencies of this period, some were not attributable to the recognised organisations. These detentions accounted for the risk factor assessment of the Togolese international registry, albeit they were not attributable to the flag State’s responsibilities.

From the view of the author, these detainable deficiencies might be attributable to the shipping companies, since the Paris MoU has also established a system of inspection of their performance. As Kulchytskyy (2012) notes: “The same gradation is used to measure company performance through the analysis of the detention and deficiency history of all ships in a company’s fleet whereas the company is the ISM company for the ship”. It is to be noted that the detentions related to the safety management of the Togolese flagged vessels increased the number of detentions recorded for risk profile assessment, accordingly contributing to the poor performance of the Togolese flag in the period.

5.3.2 Analysis of the performance of ROs in the Togolese international registry

As mentioned above, the performance of recognised organisations is one of the indicators used by the International Chamber of Shipping to assess the performance of a flag State. In this regard, the Paris MoU has established a scheme of inspections of ROs authorised by the flag States whose vessels call the ports of the member States of this PSC region. The reports of inspections are published every year. Table 6, elaborated based on Paris MoU’s annual reports of the period 2015-2017, shows
the performance of the recognised organisations authorised by the Togolese maritime administration to act on its behalf in its international registry.

Table 6: performance of the ROs authorised by the Togolese Maritime Administration (2015-2017)

<table>
<thead>
<tr>
<th>Recognised Organisation</th>
<th>Inspections</th>
<th>Detentions</th>
<th>Low/Medium Limit</th>
<th>Medium/High Limit</th>
<th>Excess Factor</th>
<th>Performance Level</th>
<th>IACS Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Bureau of Shipping</td>
<td>5.866</td>
<td>2</td>
<td>135</td>
<td>99</td>
<td>-1.95</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Lloyd Register</td>
<td>12500</td>
<td>4</td>
<td>276</td>
<td>224</td>
<td>-1.96</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>DNV GL AS</td>
<td>11600</td>
<td>10</td>
<td>257</td>
<td>207</td>
<td>-1.89</td>
<td>HIGH</td>
<td>Yes</td>
</tr>
<tr>
<td>Bureau Veritas</td>
<td>11453</td>
<td>23</td>
<td>254</td>
<td>204</td>
<td>-1.76</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Korean Register of Shipping</td>
<td>1091</td>
<td>1</td>
<td>30</td>
<td>14</td>
<td>-1.73</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Registro Italiano Navale</td>
<td>3743</td>
<td>9</td>
<td>89</td>
<td>60</td>
<td>-1.65</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Nippon Kaiji Kyokai</td>
<td>7965</td>
<td>28</td>
<td>180</td>
<td>138</td>
<td>-1.56</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Russian Maritime Register of Shipping</td>
<td>3368</td>
<td>24</td>
<td>81</td>
<td>53</td>
<td>-0.99</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>International Naval Surveys Bureau</td>
<td>589</td>
<td>7</td>
<td>18</td>
<td>6</td>
<td>0.11</td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Macosnar Corporation</td>
<td>80</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>0.38</td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Organisation</td>
<td>Inspections</td>
<td>Ranks</td>
<td>Total</td>
<td>Inspections</td>
<td>Results</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>-------------</td>
<td>--------</td>
<td>-------</td>
<td>-------------</td>
<td>---------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dromon Bureau of Shipping</td>
<td>479</td>
<td>9</td>
<td>15</td>
<td>4</td>
<td>0.45</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Isthmus Bureau of Shipping, S.A.</td>
<td>149</td>
<td>3</td>
<td>6</td>
<td>0</td>
<td>0.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Overseas Marine Certification Services</td>
<td>79</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>0.58</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Columbus American Register</td>
<td>77</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0.99</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Venezuelan Register of Shipping</td>
<td>187</td>
<td>8</td>
<td>7</td>
<td>0</td>
<td>1.24</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shipping Register of Ukraine</td>
<td>559</td>
<td>22</td>
<td>17</td>
<td>5</td>
<td>1.72</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Author ‘s construction on the basis of Paris MoU report for the period 2015-2017

In Table 6, only recognised organisations that had 60 or more inspections in a 3-year period were taken into consideration (Paris MoU).

The statistical information contained in Table 6 shows that among twenty-five (25) recognised organisations authorised by the Directorate of Maritime Affairs, sixteen (16), comprising IACS and non-IACS members, were inspected in this period. The analysis of table 6 reveals that the performance of the ROs ranks from high level to very low level of performance. It should be noticed that all eight (8) IACS member ROs authorised by the Directorate of Maritime Affairs presented a very high level of performance, while the eight (8) out of seventeen (17) non-IACS members inspected during this same period ranked from medium to very low performance. It should be
also noted that seven (7) out of the eight (8) non-IACS members, ranking from medium to very low performance in this performance Table (6), were concerned with the detainable deficiencies attributable to the ROs, as per analysis of the previous Tables (4& 5), while none of the IACS members were connected with any RO-related deficiency as a reason for the high number of detentions of Togolese flagged vessels during the same period (2015-2017).

From these statistical results, it should be concluded that there seemed to be a direct relationship between the performance of the recognised organisations that had conducted surveys and/or inspections and issued certificates to vessels and the detainable deficiencies attributable to ROs in the Togolese international registry and, importantly, to whether the RO is a member of the International Association of Classification Societies. The higher the performance of the ROs, the fewer detainable deficiencies were attributable to it. Indeed, during the three-year period of inspections (2015-2017) of the Togolese flagged vessels in the Paris MoU, twenty-one (21) RO-related deficiencies were recorded and all were attributable to the non-IACS member ROs, ranking from medium to very low performance level.

The data in Table 6 shows that there is a variant level of performance of recognised organisations in the Togolese international registry, as argued by the European Commission and other European countries when submitting a proposal on the development of the code of ROs. They claimed that the evidence from different port State control activities had indicated that a large number of ships were detained or found with some deficiencies soon after they were surveyed by the RO (IMO, 2008b) and argued that a monitoring scheme over ROs was needed to continuously maintain and improve the RO’s performance, which in turn could also improve the flag State performance (Syafiuddin, 2016). The same point of view was shared by Silos et al (2013): “Another phenomenon derived from the foregoing has been the proliferation of Classification Societies, many of them with very low levels of requirement. As a result, they themselves have become the object of inspections of the various Memoranda of control by the PSC”.

The results of Table 6 also confirm the conclusion of an analysis conducted by Mansell (2009) on the performance of ROs based on their detention in Paris MoU PSC inspections. “An analysis of the categories of ROs – Conventional and Convenient – that have been entrusted with survey, inspection, and certification by
the 14 worst performing flag States supports the hypothesis that poorly performing flag States are often associated with Convenient and/or multiple ROs”. They concluded that all Conventional ROs (IACS members) had high performance except the Korean Classification Society (Korea DPR) and International Register of Shipping (USA), which had very low performance. This views Silos et.al and Mansell can be illustrative in this analysis, since Togo is classified at eleventh position on the thirteen blacklisted flag States with high-risk factors (Paris MoU report 2017, P.39)

In addition, as previously discussed (4.2.3), the Directorate of Maritime Affairs has authorised multiple recognised organisations with an overwhelming majority of convenient ROs. It may concluded that the low performance of those convenient ROs as evidenced in Table 6, had significantly contributed to the poor performance of the Togolese international registry, since the performance of ROs is one of the indicators of good flag performance (ICS, 2017).

The triple relationship between the type of ROs, the detainable deficiencies and the age of the ship may also be of interest in this analysis.

5.3.3 Relationship between type of ROs, detainable deficiencies and age of ships.

One of the parameters to take into account with regard to the selection and risk factors to assess the performance of a flag is the ships’ age (Harts, 2016). A case study carried out by Silo et al. (2012) concluded that there was a direct relationship between the age of the vessel and its classification by a particular type of society, that is to say whether the society was a member of the International Association of Classification Societies. The same relationship exists between the number of days a vessel is detained as a consequence of the port State control (PSC) inspections, the classification societies and vessels with respect to the flag States, based on featuring in the black list of the MoU. Table 7 analyses this relationship in the Togolese international registry.
Table 7: Relationship between detainable deficiencies, type of RO and age of the vessel (2015-2017)

<table>
<thead>
<tr>
<th>IMO</th>
<th>Ship Name</th>
<th>Keel date</th>
<th>Total of deficiencies</th>
<th>Duration of Detention</th>
<th>Recognised Organisation</th>
<th>IACS Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>8113293</td>
<td>Blue Moon</td>
<td>1982</td>
<td>18</td>
<td>6 days</td>
<td>Venezuelan Register Of Shipping</td>
<td>No</td>
</tr>
<tr>
<td>8002664</td>
<td>Blue Dream</td>
<td>1980</td>
<td>38</td>
<td>15 days</td>
<td>Macosnar Corporation</td>
<td>No</td>
</tr>
<tr>
<td>7922934</td>
<td>BYBLOS</td>
<td>1981</td>
<td>13</td>
<td>20 days</td>
<td>Venezuelan Register of Shipping</td>
<td>No</td>
</tr>
<tr>
<td>7406772</td>
<td>SUHA QUEEN II</td>
<td>1974</td>
<td>36</td>
<td>1 day</td>
<td>Cosmos Marine Bureau Inc.</td>
<td>No</td>
</tr>
<tr>
<td>7203895</td>
<td>FARAH</td>
<td>1971</td>
<td>22</td>
<td>9</td>
<td>Dromon Bureau of Shipping</td>
<td>No</td>
</tr>
<tr>
<td>8230314</td>
<td>ALNILAM</td>
<td>1977</td>
<td>15</td>
<td>2 days</td>
<td>Shipping Register of Ukraine</td>
<td>No</td>
</tr>
<tr>
<td>7041053</td>
<td>PACIFIC M</td>
<td>1970</td>
<td>22</td>
<td>7 days</td>
<td>Cosmos Marine Bureau Inc.</td>
<td>No</td>
</tr>
<tr>
<td>6609729</td>
<td>EVAL NOLOM</td>
<td>1961</td>
<td>22</td>
<td>11 days</td>
<td>Columbus American Register</td>
<td>No</td>
</tr>
<tr>
<td>7830923</td>
<td>GEO SUN</td>
<td>1979</td>
<td>19</td>
<td>3 days</td>
<td>Columbus American Register</td>
<td>No</td>
</tr>
<tr>
<td>8030283</td>
<td>AVIVA</td>
<td>1982</td>
<td>17</td>
<td>6 days</td>
<td>Dromon Bureau of Shipping</td>
<td>No</td>
</tr>
<tr>
<td>IMO</td>
<td>Name</td>
<td>Year</td>
<td>Age</td>
<td>Days</td>
<td>Surveying Authority</td>
<td>RO Members</td>
</tr>
<tr>
<td>-----------</td>
<td>-----------------------</td>
<td>------</td>
<td>-----</td>
<td>------</td>
<td>-----------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>8101410</td>
<td>VANCOUVER</td>
<td>1982</td>
<td>22</td>
<td>5</td>
<td>Shipping Register of Ukraine</td>
<td>No</td>
</tr>
<tr>
<td>9143623</td>
<td>VALDA</td>
<td>1995</td>
<td>4</td>
<td>5</td>
<td>Cosmos Marine Bureau Inc.</td>
<td>No</td>
</tr>
<tr>
<td>8703270</td>
<td>FARAH PRINCESS</td>
<td>1986</td>
<td>10</td>
<td>5</td>
<td>Dromon Bureau of Shipping</td>
<td>No</td>
</tr>
<tr>
<td>8807349</td>
<td>NAWAL-F</td>
<td>1989</td>
<td>23</td>
<td>2</td>
<td>Dromon Bureau of Shipping</td>
<td>No</td>
</tr>
<tr>
<td>8511811</td>
<td>RINA</td>
<td>1985</td>
<td>39</td>
<td>18</td>
<td>International Naval Surveys Bureau</td>
<td>No</td>
</tr>
<tr>
<td>7721952</td>
<td>CHARLY</td>
<td>1978</td>
<td>14</td>
<td>53</td>
<td>International Naval Surveys Bureau</td>
<td>No</td>
</tr>
<tr>
<td>7303231</td>
<td>FALCONIA</td>
<td>1973</td>
<td>9</td>
<td>2</td>
<td>CONARINA LLC</td>
<td>No</td>
</tr>
<tr>
<td>7726952</td>
<td>DANA TRADER</td>
<td>1978</td>
<td>20</td>
<td>10</td>
<td>International Naval Surveys Bureau</td>
<td>No</td>
</tr>
<tr>
<td>6417748</td>
<td>JAGUAR</td>
<td>1964</td>
<td>13</td>
<td>16</td>
<td>Columbus American Register</td>
<td>No</td>
</tr>
<tr>
<td>8911413</td>
<td>GEORGIANA H</td>
<td>1990</td>
<td>11</td>
<td>15</td>
<td>Isthmus Bureau of Shipping, S.A.</td>
<td>No</td>
</tr>
<tr>
<td>8725644</td>
<td>CARNABY</td>
<td>1985</td>
<td>8</td>
<td>4</td>
<td>Shipping Register of Ukraine</td>
<td>No</td>
</tr>
</tbody>
</table>

**Source:** Author's own construction from the Paris MoU PSC annual reports (2015-2017)

Table 7 is an analysis of the relationships between the RO-related detainable deficiencies, the age of the ship, the number of deficiencies by a detained ship, the duration of detention and the type of ROs (IACS versus non-IACS) that had surveyed and/or inspected and issued a certificate to a detained Togolese flagged ship in the Paris MoU PSC region, during the period 2015-2017.

The analysis of the detained ships during this period reveals a common denominator. All the detained ships whether for RO-related deficiencies or not, were surveyed and/or inspected and certified by RO non-members of IACS. All the ships detained were aged more than twenty (20) years old. The youngest was built in 1995 (23 years old) and the oldest in 1961 (57 years old), with the average age of forty (40) years old.
Except for two ships built in the 1990s (1990 & 1995), all the detained ships were built from the 1960s to the 1980s, meaning the overwhelming majority of them were more than thirty (30) years of age.

In respect of deficiencies, as reason for detentions, it should be noted that the number of detainable deficiencies was proportionate to the age of the detained ship. The youngest ship (23 years) scored less deficiencies (4) against the highest number (39) scored by a thirty–three (33) old vessel, with an average number of 21.5 deficiencies.

With regard to the duration of the detention, it should be noticed that the number of detention days was more or less proportionate to the age of the detained vessels. Except one old ship that had scored the shortest duration of detention (4 days), longer durations of detention were recorded by old vessels, with a peak detention duration of 53 days.

In addition, a relationship can be established between the age of the vessel and the detainable deficiencies. Table 7 reveals that the youngest vessel scored the lowest number of detainable deficiencies. The vessel built in 1995 had four (4) deficiencies, while the highest number of deficiencies was scored by a 33-year-old vessel.

From the analysis of Table 7, it can be concluded that the age of the ships in the fleet of the international registry of Togo affected the performance of the Togolese flag, since the age of ships is also an indicator of good performance, as the International Chamber of Shipping (2018) observes:

A high concentration of older tonnage under a particular flag does not necessarily mean that this tonnage is in any way substandard. However, a flag, which has a concentration of younger ships, may be more likely to attract quality tonnage than a flag state with a high concentration of older vessels. As a positive indicator, the Table therefore shows the 90% of flags (among those listed) that have the lowest average fleet age (the bottom 10% of those listed having the highest average age) ....

The analysis of all the detained ships reveals that the Togolese international registry has a high concentration of old vessels by reference to the average ship age of fifteen (15) mentioned in several rules and regulations, taking into consideration the type of
ship. For instance, annex I of MARPOL requires that the Condition Assessment Scheme (CAS) is applicable to single-hull oil tankers of 15 years and older.

In addition, the IACS, for safety reasons, requires stricter considerations on any ship aged more than 15 years. Furthermore, the Enhanced Survey Programme (ESP) requires surveys on oil tankers, which are ever stricter per renewal/special survey (every 5 years), stricter for vessels over 15 years old and strictest for tankers of 20 years and over (Harts, 2016). It worth pointing out that the average age of EU flag ships is 15 years; this contrasts significantly with the Togolese average age (40 years) of ships detained during 2015 to 2017 in Paris MoU.

Based on the analysis of Table 7 on the detained Togolese flagged vessels in Paris MoU during the period of study, it can be concluded that the older the ship was, the higher the number of detainable deficiencies it had and the most likely it was to have been surveyed and certified by the ROs (classification societies) non-members of IACS, with high risk profile and, therefore, poor performance of the Togolese flag.

It should be recalled that former studies had proved there was an intrinsic relationship between the age of the ship, the detention duration and the classification society (RO), which had carried out statutory functions. Silos et.al (2013) concluded that:

The vessels classified by societies outside the IACS have a mean age of somewhat more than seven and a half years; the difference between the two groups of societies is more appreciable in the number of days detained: while the vessels with IACS members present a mean detention of 5.3 days, those with non-IACS societies present a mean of 12.1 days… the ships classified by IACS are more modern and give the average of the detainees for violations of PSC Conventions is lower.

They concluded that the classification societies that comply less with the standards are those represented by the older vessels.

The view of the author is that the age-deficiencies-detention relationship with the classification societies in the Togolese international registry has an intrinsic explanation. The International Registration Bureau is commissioned for the registration of ships and the appointment of recognised organisations in order to promote the Togolese international registry as per agreement. It should be understood that IRB is in position of running public functions and private business, since it is rewarded on ships registration fees by the Directorate of Maritime Affairs.
(annex of the agreement). Therefore, IRB might be keen to register a high number of vessels in view of increasing the fleet, regardless of the age and condition of ships registered. This might be the reason why the Togolese international registry has a high concentration of old vessels in this period, with an average age of 40 years. In respect of the dominance of the recognised organisations that are not members of IACS for the statutory functions, it should be understood that the IACS members, known as compliant organisations, would not accept the certification of ships older than the conventional age, which is 15 years (MARPOL Annex I). It is argued that there is a direct correlation between the age of the ship and ship safety standards, which many conventional classification societies recognise by denying new entrants older than 14 or 15 years. Hence, IRB resorts to the non-IACS classification societies for the survey and certification functions. These non-IACS-ROs, known as of low performance, conduct substandard surveys and issue meaningless certificates (Mansell, 2009) to the ships with all inherent risks to lives and threats to the marine environment; hence, the high number of detentions of Togolese flagged vessels of the international registry.

This set of factors might have significantly contributed to the poor performance of the Togolese international registry since its inception in 2008.
CHAPTER 6: CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

In the 1970s, the countries of West and Central Africa experienced a soaring shipping industry due to the creation of national fleets. After almost two decades of existence, the national shipping companies went bankruptcy paving the way for international registries. Togo, like other developing countries, because of lack of personnel or resources to carry out statutory functions of the vessels that are registered to its fleet, has delegated this activity to the recognised organisations acting on its behalf. The negative performance of this delegation of authority prompted the interest of this research study.

Based on the aim and the research questions raised in Chapter 1, this research study has identified that not only is Togo, as a pseudo-national flag, blacklisted in Paris and Tokyo MoUs, but, importantly, has determined the potential contributing factors to the poor or negative performance in terms of compliance with IMO instruments, by delegating the flag State authority to recognised organisations in its international registry. The study has demonstrated that the clauses of the agreement of delegation of authority, the lack of meeting the requirements of IMO instruments on delegation of authority as well by ROs as the Directorate of Maritime Affairs and the age of the fleet of the registry have been contributing factors to the blacklisting of Togo at the position of 71 out of 73 in the classification during 2015-2017. To achieve the objective of the research, the study used a mixed methodology, comprising both qualitative and quantitative data. The results of the research are presented as follows.

The study has demonstrated that the agreement of delegation of authority to IRB and its subcontractors by the Directorate of Maritime Affairs does not comply with the
minimum requirements of appendix 02 of IMO resolution A.739 (518) in some aspects, such as the requirements pertaining to the detailed procedure of execution of functions under authorisation, the reporting to the administration and the administration's supervision of duties delegated to the organisation. In addition, it has been identified that the Directorate of Maritime Affairs has delegated the granting of exemptions and flag inspection, which are the fundamental functions of the flag administration to IRB, in possible violation of the IMO conventions and related regulations and resolutions (SOLAS 74; Load Lines 66; MARPOL 73/78; STCW 78/95; Tonnage 69, Resolutions A.739 (18) and A.789 (19). This derogation of flag State authority in favour of IRB in a distant country deprived the Directorate of Maritime Affairs of control of the activities of recognised organisations appointed by IRB on behalf of the former.

Secondly, concerning the requirements to be met by the recognised organisation being authorised, the author recalled that the agreement was originally an Understanding of cooperation between the parties pertaining to registration of ships in the international registry of Togo; the clauses of delegation of flag State authority were later inserted as subsidiary. Therefore, the government of Togo might not have been required to abide by the conditions set out in appendix 1 of IMO resolutions A.739 (18) and A.789 (19) when contracting with IRB. As a result, IRB has subdelegated the statutory functions to many other recognised organisations, the majority of which are not members of IACS (17 out of 25), known as not complying with the IMO resolutions in terms of delegation of authority.

Third, it was also demonstrated that to establish an oversight programme in view of effectively monitoring the ROs, the Directorate of Maritime Affairs was tremendously short of qualified and sufficient staff. The available personnel of 13 people out the minimum 54 required for the DMA was one the hindrances for the control and the monitoring of the activities of the ROs by counter-surveys and audits of their quality management systems.

In addition, with regard to the detainable deficiencies in connection with recognised organisations, it was identified that all the detained Togolese flagged vessels had been surveyed and/or inspected and certified by only the recognised organisations that are not members of IACS. This led to the confirmation that the non-IACS member
ROs conducting surveys and issuing certificates were not well equipped and experienced as required by IMO resolution A.739 (18), since the deficiencies were related to technical matters. This low performance contributed to the negative or poor performance of the Togolese international registry, since the assessment of the flag State performance involves the performance of the ROs. The author explained that the detainable deficiencies, non–related to ROs might be attributable to the shipping companies, given the fact that the Paris MoU has also established a system of inspection of their performance.

Furthermore, the study has identified that among the 16 ROs authorised by the Directorate of Maritime Affairs and inspected from 2015 to 2017, all eight (8) IACS members had scored very highly in performance, while the eight (8) out of 17 non-IACS members ranked from medium to very low performance. The analysis revealed that the ROs with medium to very low performance were all involved in the RO-related detainable deficiencies during this period. The author came to conclude that there was a direct relationship between the performance of the recognised organisations, that had conducted surveys and/or inspections and issued certificates to vessels and the detainable deficiencies attributable to ROs in the Togolese international registry and, importantly, to whether the RO was a member of the International Association of Classification societies. The low performance of those convenient ROs had significantly contributed to the poor performance of the Togolese international registry, since the performance of ROs is one of the indicators of good flag performance.

Lastly, in respect of the relationship between age-deficiencies-detention and classification societies, the study has identified that the detained ships, whether for RO-related deficiencies or not, were surveyed and/or inspected and certified by RO non-members of IACS and aged more than twenty (20) years, with the average age of forty (40) years. Moreover, the study revealed that the number of detainable deficiencies and the duration of detention in ports were proportionate to the age of the detained vessels. This led to the conclusion that the older the ship was, the higher the number of detainable deficiencies and the most likely it was to have been surveyed and certified by the RO (classification societies) non-members of IACS, with high risk profile and, therefore, the poor performance of the Togolese registry.
The author concluded that the relationship between age-deficiencies-detention and classification societies in the Togolese international registry has an intrinsic explanation. The International Registration Bureau is commissioned for the registration of ships and the appointment of recognised organisations in order to promote the Togolese international registry as per agreement. It should be understood that IRB is in the position of running public functions and private business, since it is rewarded for the ships’ registration fees by the Directorate of Maritime Affairs (annex of the agreement). Therefore, IRB might be keen to register a high number of vessels in view of increasing the fleet, regardless of the age and condition of ships registered. This might be the reason why the Togolese international registry has a high concentration of old vessels in this period, with the average age of 40 years.

In respect of the dominance of the recognised organisations which are not members of IACS and authorised for the statutory functions, it should also be noted that the IACS members, known as compliant organisations, would not accept the certification of ships older than the conventional age, which is 15 years; hence, the resort to the non-IACS classification societies for the survey and certification functions of these old ships in the fleet.

6.2 Recommendations

Upon completion of this analysis in the previous chapter, some recommendations have been proposed to address the identified problems. By reference to the objectives as stated earlier, this research work had the aim to search for the potential contributing factors to the negative performance of the Togolese international registry and suggest measures for its improvement. Accordingly, some measures that could be implemented by the Directorate of Maritime Affairs for the future improvement are suggested as follow:

- Reviewing the agreement of delegation of authority

As discussed in the conclusion, reviewing the clauses of the agreement will first cause the separation between the registration functions and the statutory functions, which will be delegated to separate entities to render them more effective and efficient. This will lead to inserting the minimum requirements of the resolution A.739 (18) and
specifically removing the exemptions and flag State inspection delegated to IRB to comply with IMO instruments.

- Recruiting and training the personnel of the Directorate of Maritime Affairs
  The recruitment and training will address the issue of the shortage of sufficient and qualified staff. This will allow the Directorate of Maritime Affairs to establish and implement an oversight programme to control and monitor the ROs and carry out its own supplementary inspections of the ships registered in the international registry.

- Opening a local office of the International Registration Bureau in Lomé, Togo
  The proximity of IRB to the Directorate of Maritime Affairs will facilitate the contact and exchange of views on the operation of the Togolese international registry. This will allow the Directorate of Maritime Affairs to have timely access to the records and other relevant IRB documents.

- Giving priority to the recognised organisations members of IACS and reducing the number of non-IACS ROs
  With their high performance, the increase of IACS members and the reduction of non-IACS members to a maximum of 6 will increase the quality of surveys, inspections and certification and decrease the detention rate of the Togolese vessels in the international registry.

- Restricting the age of the fleet in the international registry
  This measure could be implemented by setting a national policy in promoting the registration of ships of conventional age (15 to 25 years). This will, in the medium run, contribute to the renewal of the fleet and improve the performance of the Togolese flag.

This study is a unique attempt to analyse the performance of Togo as a pseudo-national flag in terms of delegation of flag State authority to recognised organisations, since no other author has yet written on the specific topic in Togo. In attempting such challenging research, the author hopes that the work will serve as a foundation for further studies on the topic and contribute to a more rational and professional delegation of statutory functions to ROs.
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