ROs, forgery, and fraud in the context of Honduran ship certificates

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Declaration

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has 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): __________________________

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Acknowledgements

“Baruch ata Adonai, Eloheinu melech ha-olam, ha-gomel l’chayavim tovim she-g’malani kol tuv”

Bless are you, Lord our G’D, ruler of the world, who rewards the undeserving with goodness, and who has rewarded me with kindness.

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B’H.
Abstract

Title of dissertation: The Role of ROs in the Case of Forgery and Fraud Affecting Honduran Ship Certificates.

Degree: Master of Science.

This dissertation it is intended to evaluate from a country’s point of view, how the delegation of authorities to ROs might be harmful to some maritime administrations, and how it can become counterproductive for the performance of the administration as well, as a latent danger for the security and safety of navigation.

In like manner, to present a notion of circumstances by which under legal delegation agreement could be a high probability of fraudulent actions, which could take place without the knowledge of the maritime administrations, all of this in the role of the ROs, with a legal delegation agreement.

The study will be focusing on some recent and actual cases that took place in the country of Honduras; this does not mean that is the only member state that has faced this kind of illegal actions by some ROs,

Nevertheless, the cases will help to provide a baseline to understand better the fraud and forgery through cases that have not been reported of detected, and if so, there is not much that can be done at a national level.

The topic of phantom ships was also touched upon, as a part of the issue related to fraud and forgery in the role of ROs; many certificates onboard those ships do form part of this phenomena of fraud and forgery of certificates, it is hoped that this work will unveil the lack of a proper external supervision of the ROs.

Finally, the purpose of this dissertation is that there can be of help to develop new instruments to fight these illegal actions.
Key words:
Honduras, recognized organization, certificates, delegation agreement, maritime administration, forgery, fraud, RO Code.

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List of abbreviations

EU European Union
GISIS Global Integrated Shipping Information System
IACS International Association of Classification Societies
ILO International Labor Organization
IMO International Maritime Organization
MARPOL 73/38 International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended
MoU Memorandum of Understanding
MSC Maritime Safety Committee
PSC Port State Control
PSCO Port State Control Officer
RO Recognized Organizations
RO Code The Code for Recognized Organizations
SOLAS 1974 International Convention for the Safety of Life at Sea, 1974, as amended
VCA Vertical Contract Audit
1. Introduction

This dissertation is a study of forgery and fraud of documents as a persistent and increasingly worrying phenomenon, within the maritime industry in the role of the recognized organizations, in the case of ships flying under the Honduras flag, under the prescription of authority delegation agreement.

This phenomenon has become a latent hazard to the safety and security of the maritime industry; it is not a countries' exclusive occurrence but an international issue that needs immediate attention;

There has to be a complete collaboration of the stakeholders involved in maritime trade, at a national and international level for this matter to be extinguished.

The mechanisms of prevention, timely detection, and proper response to the many unsolved and existing cases have to be activated, and these should become the responsibility of the international community as a whole.

Member states are responsible for the proper application of all the mandatory instruments, emanating from the IMO regarding the control, supervision, and enforcement of the role of the recognized organizations, as well as their performance, but this is not enough, there is the need for external supervision.

In promotion of the safety of navigation, prevention of maritime incidents and accidents, as well prevention marine pollution, this research has the objective to analyze new and existing means for the prevention and detection of fraud and forgery within the scope of action of the Recognize Organizations acting on behalf of the administrations.
Equally important, is to mention that IMO has created tools and guidelines to aid the member states in the supervision, control, and enforcement of the ROs, but is up to the member states to supply the systems with the proper and updated information required; It is here where many states fail, and since there are no dissuasive methods, the gap for fraud and forgery is created, diminishing the safety and security of the seaborne trade.

To give the full effect of the IMO instruments there has to be proper enforcement of the Flag State Control, Port State Control, and Costal State through various national legal guidance as well as the cooperation between states, is this an achievable task? The author will unveil certain aspects that are a milestone in accomplishing them, through with this dissertation.

In many cases, though there has been proper application of international instruments, and some states have applied suitable national procedures and legislation; there still the possibility of some irregularities to happen regarding the role of ROs.

Disturbing enough, is the fact that this might go undetected for some time, and that time might be crucial to avoid a major disaster.

The International Maritime Organization, to have a more effective control of the proper implementation of the international conventions and regulation instituted the IMO Member State Audit Scheme [1](IMSAS), which now is mandatory since 1 of January 2016.

Unfortunately, this does not contemplate many security breaches, even though this aspect should have been detected in the Voluntary IMO Member State Audit Scheme (VIMSAS) that took place before, but it was omitted or not detected.
1.1 Objectives of the study

This ambitious topic was decided after many incidents were noticed to be happening incessantly and in some cases these were overlooked;

Interesting enough IMO, specialized entity of the UN in charged for the safety and security of shipping, has not issued enough awareness on this matter, and has centered all efforts to battle against the fraudulent certificates of competency of the seafarers, but not the equally relevant and dangerous issue of fraudulent certificates issued by ROs on behalf of the maritime administrations (IMO, www.imo.org, 2019)

It seems that IMO has turned its backs to the issue, and has not given much importance to the fact that there are so many ROs offering their maritime services to many countries, ship owners and many other stakeholders;

Moreover, in many cases these ROs do not have the installed capacity to do so, or they devote their work to issue forged documents or forge certificates to many vessels that do not comply with the various safety and security requirements of the international conventions.

The author has tried to epitomize this problem, and how it has become evident that it is not a new problem, but a persistent one, an issue that has a direct effect on the safety and security of the maritime industry, our seas, and the marine environment.

Throughout the present dissertation, the author intends to try to:

- Identify the weaknesses when it comes to the delegation to the recognized organizations when it comes to the requirements for the delegation itself.
- To analyze the importance of the Port State Control (PSC) when ensuring the legality of the technical certificates.
- Describe in a whole the traditional fraudulent situation in the roles of the recognized organizations through study cases.
- Identify a range of procedures to avoid the fraud and forgery of documents in the role of the recognized organizations.
- Prescribe possible ways on how member states can help fight this persistent issue.

Moreover, these will take the author to demonstrate, that there is an urgent need to develop a system to control and be able to sanction the ROs that might be involved in these cases of fraud, from an international scope;

Many of these objectives can be seen as ambitious, but there are realistic and reasonable and buoyantly; the present dissertation will provide a helpful contribution to prevent as well as to uncover some of the latent weaknesses of many maritime administrations when delegating and supervising the recognized organizations.

1.2 Scope of the study

This Dissertation, comprises five chapters;

Chapter 1, introduction, the general historical background will be found, as well as the objective and the methodology with its limitations and sources of the present dissertation.

Chapter 2, will contain the responsibilities of the ROs, from a contractual point of view as well as the efficiencies found in the delegation agreement that is given to the ROs by the maritime administrations; including the implementation of the international guidelines.

Chapter 4, will proceed to give a comprehensive discussion of the cases and findings that were disclosed in chapter 2 as well as chapter 3.
Chapter 5, will provide the conclusion and the recommendations based on the overall research work to provide possible solutions that can be implemented at national and international instances to fighting the problem of fraud and forgery of certificates in the role of ROs.

1.3 The methodology, source and limitations.

Limitations

In the first instance, the author proposed and developed a specialized questionnaire specifically aimed to be answered by the maritime administrations of the 35 countries that have open registries status, which was approved by the Research Ethics Committee (REC);

The objective of the questionnaire was to draw information about several ROs delegated by member states, national procedures to verify compliance of the ROs with the international guidelines, as well as to have information of cases of fraud and forgery in the role of ROs. (ITF, 2019)

The information was sent via e-mail to the 35 administrations, only three administrations answered, in the case of the others the information was denied for privacy issues allegations;

Even though this information should be part of the information that has to be of a public status through the Global Integrated Shipping Information System (IMO, A.1029(26), 2010)

Sources

Information readily available from Honduras, as well as the annual reports of the MoUs, and the relevant sources as the reports of the International Association of the
Classification Societies, it was decided to be used as the relevant sources for this research.

**Methodology**

The primary methodology for undertaking this research was done with a qualitative approach since it was performed with the private at a national level data (Honduras) and accessed public data offered by the MoUs as well as the IACS.

The reason why this methodology was chosen is because it is the best resource to undertake a comparative analysis of the performance of the ROs, as well as the data will be more trustworthy since the data is a public element that has pass through all the proper channels;

In the case of Honduras, the information of study cases was readily available, the access to the maritime administration was fast and direct; the cases where recent and there was all the information at hand that was related to the topic of forgery and fraud.

**1.4 General historical perspective.**

As a significant increase of the maritime trade in the 18th century, was the initial cause for the classification societies to entered into the picture.

The insurers needed quality standards for ships, to verify the standards were complying with, and where high standard as well; that is where classification societies entered into the picture, the setting of the standards for hull, machinery and the equipment required onboard as well as the maintenance of it were created. (J.Lux, 1993)

Throughout the year, classification societies have made a unique contribution to maritime safety, by giving technical support, compliance verifications and research and developments;
The classification design covers more than 90% of the world's cargo carrying tonnage, construction and through-life, compliance rules and standards set by the classification societies are a key in the maritime trade.

Also, classification societies undertake functions delegated by the maritime administrations, to be in charge on behalf of the member states to ensure that the vessels are complying with the international conventions and guidelines.

Even though classification societies, meaning strictly, the IACS, where at some point more prevalent nowadays are not the only ones that can provide the services of classification and certification.

It is essential to distinguish the Classification Societies and the recognized organization, these last ones, will be the subject of this dissertation; nevertheless, in a like manner both figures serve the same purpose in the maritime industry;

Therefore, both can be defined as a number of organizations that are dedicated among others things to develop and apply technical standards for the design, construction and survey of ships and as well to carry out surveys and inspections onboard ships. (European Maritime Safety Agency, 2019)

Equally important is to have clear that all classification societies are recognized organization but not all recognize organizations are classification societies;

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1 American Bureau of Shipping (ABS): A1; Bureau Veritas (BV): I; China Classification Society (CCS): CSA 5/5; Croatian Register of Shipping (CRS): 100A1; Det Norske Veritas (DNV): 1A1; Germanischer Lloyd (GL): 100 A5; Indian Register of Shipping (IRS): SUL; Korean Register of Shipping (KRS): KRS1; Lloyd’s Register (LR): 100A1; Nippon Kaiji Kyokai (ClassNK): NS; Polish Register of Shipping (PRS): KM; Registro Italiano Navale (RINA): 100-A-1.1 or C; Russian Maritime Register of Shipping (RS): KM
The above statement, is due to that worldwide there are more than 100 classification societies, that provide their services to many IMO member states, but the European Commission presently recognizes only 12 classification societies. (Jessen, 2014)

IACS stands for International Association of Classification Societies. A classification society’s membership in IACS leads to that class society being recognized and authorized by European Union Member States and the European Commission.

The delegation agreement has been given to various ROs that are not IACS members, and in many cases, the performance of these organizations have at some level damaged the performance of the flag states before the international organizations.

Even though ROs has been part of the development of the Honduras maritime trade, there is still no national legislation for the proper supervision and sanction of such private entities;

Their performance is only restricted as the institutional level, lacking any significative legal procedure for sanctions or more severe cases, for criminal instances within the country.
2. ROs in the context of Honduras

2.1 Introduction:

The author will try to give a broad idea of the participation the recognized ROs have when exercising the powers of delegation given by the states;

Moreover, the responsibility of both parties; contractual responsibility of the ROs will also be touching upon from a legal aspect, also the practical aspect of it.

The delegation contract from an evolution point, and the problems of not having a new and all included version of it, to this point in time might be one of the many reasons for breaches of contract; outdated contracts format at some point does not harmonize with the new international regulation issued by IMO regarding the monitoring point of view.

It is known and also mentions throughout this work that the reason maritime administrations might require the services of an RO is because of lack of technical personnel with technical knowledge as well as the international coverage that is required to keep a supervision of its international fleet,

Having to supervise the international actions done on behalf of the flag thought the RO come almost impossible to do, and at some point the author will agree that is contradictory with the international instruments to require this from the administrations alone.
2.2 Functions of the recognized organizations

As the Code states it for Recognized Organizations (RO Code), the function of the RO lies on the fact that virtually all administrations find it necessary to delegate some or all of the survey and certification work associated with the international conventions, the above situation may arise from the lack of international representation or enough qualified personnel, so in synthesis is to undertake the administration’s authority through a legal delegation.

However, what conditions will lead a MARAD (Maritime Administration) to require an RO to act on behalf of it? Even if it is allowed by the conventions mention before there has to certain conditions as the ones listed below;

Delegation of authority can arise from the need for in-depth technical expertise; as it is the case of Honduras, the world-wide service which some of the ROs can provide as well as the technical personnel for it could come in handy when the administrations has a deficit on these aspects.

The most common is the lack of enough technical personnel to undertake all the ship certifications required by the international instruments; this can be seen in small countries that do not have a maritime history, as is the history of Honduras.

The delegation will vary from administration to administration, in some cases, this can be a full delegation, in which the recognized organization, reviews plans, carry out surveys and issues certificates;

In other cases, there will be a partial delegation, in which the RO reviews plans and carries out surveys, but where the administration issues the certificates; or limited to a case by case or geographical basis. (Jessen, 2014)
As an example, there can be a delegation where only vessels that navigate in national waters or vessels which port of call is the national port only, as is the case of Honduras and some of its delegations, and in which the administrations makes use of these three types of delegation in one.

The above takes place in order to comply as member states of IMO, as stated in Res.A789 (19) is a responsibility of all administration to take measures necessary to ensure all vessels flying their flag are always complying with the provision of the conventions.

Honduras has delegated to date 7 ROs and is in process to delegating four more, to fill in the gap caused by the lack of international coverage and technical personnel with the knowledge to comply with requirements of the conventions of survey and certification that has to be done on behalf of the flag state.

2.3 Responsibilities of the recognized organizations in the Honduras ‘law.

The author would like to start by stating the criteria for the responsibility assessment of recognized organizations (ROs) and how it has been given in the instruments developed by IMO, throughout the time it has been shown the evolution of the following guidelines and conventions:

Resolution A.739(18) provides a series of minimum requirements that should be complied with by the recognized Organization to be delegated by flag states when delegating.

Statutory function it can also be found in the Resolution A.789(19) provides detailed requirements that also describe specifications under the functions of ROs, later on, the Resolution MSC. 349 (92) gave life to the Code for recognized organization also
known as the (RO Code) which is a compilation of the international standards and also a consolidation of the instruments, containing the minimum criteria against which organizations are assessed in order to be recognized and later on delegated with the authority of the flag states. (IMO, 2013)

In the 5.7.3 of part 2 of the RO code, there is a strict requirement and responsibility for the recognized organization to undertake the statutory certification as well as services on the ships acting under the delegation of the administration, in order to comply with international relevant international instruments;

In the case, the ship is accepted, and the flag stated did not know the building of the vessel then the RO shall also verify that the ship has complied with all the national regulations before it proceeds to certify the vessel. (IMO, 2013)

Within the RO Code, numeral 8.1 under general, it expressed authorization for the recognized organizations on behalf of the administrations to issue statutory certification as well as services;

this provisions can be found on regulation I/6 of SOLAS 1974, article 13 of LL 66, regulation 6 of MARPOL Annex I and regulation 8 of MARPOL Annex II and Article 6 of TONNAGE 69, always has to be taken in consideration that this shall not intrude in other flag’s right. (IMO, 2013)

In the case of Honduras, it was through its national law the "Ley Organica De La Marina Mercante Nacional" (Organic Law of the National Merchant Marine) in its 2regulation of inspection, recognition and issuance of certificates of maritime safety of Honduran registry, states in its 3article 9 that the delegation can take place to specialize

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3 Artículo 9. - La Dirección General de la Marina Mercante, podrá autorizar a través de un contrato, que entidades especializadas de reconocido prestigio internacional y honorabilidad, efectúen en su nombre las inspecciones a buques de bandera Hondureña y también podrá facultarlas para que emitan los certificados a que aluden el Artículo 4 de este reglamento
entities if renown international prestige and honorability, who will assume the inspection and registration of ships under the Honduras flag, as well as the issuance of other certificates.

The above requirement are part of security measure that will ensure that the RO has been given a good performance rank among the rest; It is within the Organic Law of the Merchant Marine in the regulation of inspection, recognition, and issuance of certificates of maritime safety of Honduran registry, that is has been dedicated 4articles 9 to 20 only to express the legal requirements that the ROs have to fulfill in order to be delegated, these to try and delegate only to organizations that will have a high-quality performance, as it will be shown ahead, not always an effective legal measure.

2.4 Contractual responsibilities of the ROs.

As stated previously, the IMO conventions may allow external actors to act though delegation of the legal rights within host states for specific terms in the delegation agreement, before the previous requirement is filled, as well as it is stated in the 5Honduran Organic Law.

Some of these agreements are not well instituted, and in some more severe cases, some might lack legitimacy, because at some point the ratification of some international instruments, does require sufficient national legal support from abiding body.

Honduras has only one source of maritime law as specialized in the topic of recognized organizations, and that is the 6Organic Law of the National Merchant Marine, such instrument lacks enough guidelines, and it can be very vague in some issues as is in the case sanctions of such organizations that will be delegated.

4 Ibid., Pg. 28  
5 Ibid., Pg. 28  
6 Ley Orgánica de la Marina Mercante Nacional, Decreto No. 167-94
It is essential to mention that it has been observed how stronger member states, tend to delegate less legal authority to the external actor; it can be since stronger member stated have the install capacity to deal with inspections and certifications of their fleets. (Matanock, 2014)

Before the author tries to give a solid start to the chapter, it will be appropriate to state that there are two types of delegations, depending on the needs of the member state these can be partial or total, and this will be delegated as well as stated in the delegation agreement.

Depending on the level of delegation is accurate to say, that at some point a certain amount of sovereignty is being transferred to a private entity, therefore the need to report to the International Maritime Organization to whom and what the member state will be delegating.

Furthermore, as stated in Article III of the 1978 and 1988 SOLAS Protocols and article III of the 1978 MARPOL Protocol instructs that the parties to SOLAS Protocols and MARPOL 73/78 shall communicate to the Secretary-General of the IMO specific responsibilities and conditions of authorities delegated to the ROs. (IMO, COMMUNICATION OF INFORMATION ON THE AUTHORIZATION OF RECOGNIZED ORGANIZATIONS (ROs), 2010)

IMO through MSC/Circ.1010-MEPC/Circ.382, all the members shall report the information of ROs that been delegated, what level of authority has been delegated to them, but the member states have not followed the guideline, information is missing or incomplete.
The lacking of reporting to IMO through GISIS might eventually have some repercussions, since there is no database where other member states or stakeholder can verify the documents that have been issued in the name of a member state through particular ROs.

The lacking of reporting has led to the phenomenon called by IMO "Phantom Ship," this are ships sailing under the flag of state without their knowledge and under dangerous security and safety conditions.

There are three parties involved when it comes to the application and performance of the ROs, the MARADS, the OMI and the RO itself, and there are two parties that intercede with each other to create contractual responsibilities, these two are the MARADS and the ROs based on the guidelines of the International Maritime Organization, the responsibility therefore exist and there are enough reasons for it to be enforced.

Initially, it required each maritime administration to have a formal legal agreement with the each recognized to whom it will delegate the statutory functions, and this delegation agreement will be containing the rights and obligations of each party;

Likewise, it required verification system by the administration, to monitor the activity of the ROs; furthermore, to set out minimum requirements and responsibilities for the ROs, that this will have to fulfill in order to be delegated and carry our statutory functions on behalf of a State through the maritime administration.

In the case of 7Honduras the requirements to request a delegation agreement are the following:

1. A written request to the General Director of the Merchant Marine of Honduras;

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7 This requirements where made by the author of this dissertation and are the actual requirements used in the maritime administration of Honduras up to date, it applies to all ROs requesting to be delegated.
II. The Objectives and the experience of the organization;

III. An authenticated copy of the legal, commercial registration of the Organization to operate with in the country;

IV. Valid ISO 9001:2015 certificate and quality norms and procedures;

V. Samples of the previous contracts with other countries;

VI. A list of ships to which the organization provider their maritime services;

VII. A list of the technical personnel they have in the main office;

VIII. A sample of the certificates to be issued in Spanish and English;

IX. A list of the surveyors professionally qualified (signatures, identification numbers, telephone numbers, email address and where are they geographically)

X. The curriculum vitae have to show that they are technically competent to offer their services in compliance with Section 4.5 part B of the PISP code.

XI. To have documents of design and implementation of the management system for the elaboration and evaluation of the protection plans.

XII. Handbook of rules and resolutions of the company.

XIII. The legal representative in Honduras that holds a power of attorney.

XIV. Comply with the RO code.

XV. Comply with the Organic Law of the Merchant Marine and its regulation of inspection, recognition and issuance of certificates of maritime safety to ships under the Honduran registry.

XVI. Logo of the company has to be presented.

XVII. Dry seal of the company has to be presented.

XVIII. To ensure the compliance and the responsibilities that emanate from the delegation agreements, the sum of USD 20,000 has to be rendered as a bank guarantee.

XIX. The people responsible for the evaluation and protection plans shall have a course of maritime protection approved.

the maritime administrations recently reported a great need to upgrade the requirements since some cases of fraud and forgery where reported; new security
procedures have to be put in place, to keep up with new illegal trends to avoid them at any cost.

It is clear that the RO Code has its advantages, but is it enough? No, the RO code states some responsibilities for the ROs, but it is within the delegation agreement that the real responsibilities of both parties are clearly stated, once again, this is not a panacea, the content may vary from one country to another.

It was on 9th October 1995 through the MSC/Circ.710, MEPC/ Circ. 307, IMO released the Model Agreement for The Authorization of Recognized Organizations Acting on Behalf of the Administration.

Later on, it was through the Sub-Committee On Implementation Of IMO Instruments On its third session, agenda item 13 on 10th May 2016 that it was decided that there was a need for a new Model Agreement for The Authorization of Recognized Organizations Acting on Behalf of the Administration.

- Primarily, the fact that the Model Agreement for The Authorization of Recognized Organizations Acting on Behalf of the Administration had been around for 21 years and many things had changed in the maritime world;
- The entrance into force of the RO code with a mandatory status for the IMO member states;
- Correspondingly, there was not a Model Agreement for The Authorization of Recognized Organizations Acting on Behalf of the Administration within the RO code;
- Also, since there was an apparent inconsistency between the RO code as a new instrument and the 1995 Model Agreement;
- There was an imperative need to take in consideration the III code (Resolution A.1070(28))
- It was also essential to take into consideration that there have to be requirements being explicitly stated for training and certification of the technical staff of the recognized organization.
So finally, after the VIMSAS report was presented, there were a series of inconsistencies between the maritime administration and the recognized organization's contractual responsibilities that were found.

Therefore it is expected that this agreement will contain all the points that need to be amended and also there should be clauses that would put more security in the action of both parties, the administration, and the RO.

2.5 Efficiency of the delegation contract

As it was mention in the previous subtitles, it was on 9th October 1995 through the MSC/Circ.710, MEPC/Circ. 307 that IMO released the Model Agreement for The Authorization of Recognized Organizations Acting on Behalf of the Administration, Until now, this has not been updated, administrations, as well as the ROs, have been using the same format. (See Annex I for Honduras National Delegation Contract sample)

The RO code section 8, numeral 8.2 under Legal basis of the functions under the authorization, one of the requirements that the flag state is obliged to have is a formal written agreement with the RO, with in the same Resolution MSC. 349(92) within appendix 3 the smallest elements of the delegation agreement are given.

- Application
- Purpose
- General conditions
- The execution of functions under authorization
- Legal basis of the functions under authorization
- Reporting the flag
- Development of rules and regulations- information
Other conditions
- Specification of the authorization from the flag state to the organization.
- The flag state’s supervision of duties delegated to the organization.

As said before minimum requirements and have to be fulfilled in order for the RO to carry on with the statutory functions on behalf of a State, the most important consideration by the author is the last one, regarding the monitoring procedures which will cover later in chapter 3 in a particular way.

However, the aspect of analyzing as to whether the agreement complies with the guidelines given by the IMO instruments, the delegation of flag State to the ROs, as well if this is enough to make sure there is a proper enforcement tool, can be found in annex 3 of the RO code.

Is it enough to have the merest outline of the requirements of the Delegation Agreement between the RO and the flag stated mention in the RO code?
The answer is no; as mention by professor Mukherjee, there is no updated IMO Model Agreement so far, this takes us to the use of an outdated delegation agreement that lacks uniformity at an international level, that might eventually encounter difficulties for those who take part in it. (Mukherjee P, 2002)

To accurately describe de delegation agreement that is being used as a legal binding document up to date; Proshanto K. Mukherjee uses the word “patchwork quilt” to describe the lack of uniformity within the international maritime law, the author totally agrees with that, since there is no uniformity, not only in the law but in the sanctions regarding the breach of it. (Mukherjee P., 2002)

It has been over the years that many flag states throughout their maritime administrations have undertaken the signing and transfer of the delegation agreements in total lack of a national regime.
The perfect example is the case of Honduras; there is a lack of legal instruments to control and enforce the ROs that are delegated by the country, a situation that has to change and should be given the attention that it deserves regarding this matter.

Additionally, delegation agreements may contain clauses regarding duties and responsibilities; the ultimate liability will always fall upon the state, suitable for task carried out by the member state with the purpose of liability and defense, thus, the high possibility for the RO to be subject of state immunity.

2.6 Institutional challenges of the state of Honduras in the regulatory scope as well as in the supervision of the ROs.

IMO through the RO code, has established in part 3 numeral 5 UNDER ESTABLISHING AN OVERSIGHT PROGRAM, the measures the flag state shall undergo in order to provide proper supervision of the ROs as well as to make sure there is full compliance with the international obligations.

For this topic, the author will proceed to take an overlook at recommendations of the RO code as well as civil procedures in the case of Honduras.

For the flag state to accurately ensure the quality of the performance of the recognized organizations that it has under its delegation, it has to establish within its national law a range of procedures to do so, and this will give a proper oversight and monitoring.

In the case of Honduras in its Organic Law of the Merchant Marine which is the only source of maritime law in its regulation of inspection, recognition and issuance of certificates of maritime safety of Honduran registry, in its 8article 23, item B states

4 Ley Orgánica de la Marina Mercante Nacional, Artículo 23, b) La entidad autorizada estará sujeta a la auditoría y calificación de sus sistemas de calidad por un cuerpo independiente de auditores nombrados por la administración Marítima Hondureña.
that the authorized entity will be subject to audits and rating of its quality system, through an independent body of auditors that will be appointed by the Honduras Maritime Administration.

It is evident the lack of enough instruments to ensure a strict overview of the ROs and is this the primary reason why in some cases the actions of the ROs cannot be supervised and may illegal action can take place without the administration’s knowledge.

The RO Code, states that it is required to have supplementary surveys to ensure compliance with the international Instruments, in the same manner, it also requires supplementary surveys to guaranty that the vessels which will be navigating under any flag complies with the national requirements, this with the objective of carrying out the proper oversight of the ROs. (IMO, 2013)

At this point, it can be an adventure to say that in most cases the regulation and supervision are the Achille’s heel of most maritime administrations as it is the case Honduras;

The first requirement for a proper oversight of the ROs, is requiring having personnel for the supplementary survey that should have the technical knowledge regarding the rules and regulations of the flag state and the ROs.

Having in place procedures to monitor the surveyor's activity is essential, but they are not always carried out by the member states, having processes in place to ensure that the work of the surveyors has been carried out adequately and moreover in compliance with the national processes.
It is of great importance to know how the surveyors act on behalf of the RO from an independent oversight and not only by the information provided by the RO.

Many maritime administrations do not have qualified personnel to assume supervision; therefore, ORs will go for the time of the validity of the contract without proper supervision; being this one of the most common and most dangerous issues surrounding the delegation of authority to ROs.

There are two keys aspects that all maritime administrations have to have and, are recommended by the international conventions and guidelines, and that is:

- Firstly, to have strong national laws that will instruct the supervision and regulation of the ROs acting on behalf of the state, these have to foreshadow as many situations that can arise from the performance of the delegation agreement;
- Secondly, to have all means necessary to exercise control over ROs, nationally and internationally, having control over the performance of ROs is critical, if this is not done, many aspects of security and safety can be eluded and might result in incidents or accidents to ships flying the state´s flag.

2.7 The impact in the safety of navigation

To ensure that the ships are safe enough throughout their operational lifetime, the ship to go through periodical inspections, which is done by the recognized organization to re-confirm their owners as well as the client who make use of it, that the vessel is in a good seaworthiness condition;

Even though the topic of seaworthiness can be a topic to be discuss by itself, for this dissertation, the author will acknowledge that it is responsible in the first instance of the shipowner, the RO and finally the administration.
Consequently, from safety of navigation point of view, the ROs play an essential role, the survey and certificate is a vital piece of information about a ship's condition at a specific time, therefore, the work that the ROs undertakes is a vital part of the maritime safety and security.

The author will venture to say that cargo owners in an indirect way can and do put their trust in the evidence presented that most of the vessels are in compliance with the requirements for a seaworthy vessel according to their shipowner and the certificates displayed.

When it comes to safety, there is a reservation made by some of the recognized organizations, and that is that the technical certificates issued by the ROs according to them do not constitute a warranty of safety, fitness or seaworthiness of the ships. (IACS, 2012)

The statements above can be ample discussed, since ROs have exercised statutory authority on behalf of the flag States in order to comply with provision given by IMO instruments, which have as the primary purpose to safeguarding safety and security of the maritime trade, then can it be plainly state that is an element of responsibility since that's the final purpose of exercising the delegation based on the instruments regarding the safety and security.

The document issued to a vessel, to give an example of a Load Line Certificate, which is a requirement under FAL.2/Circ.131, MEPC.1/Circ.873, MSC.1/Circ.1586 and LEG.2/Circ.3, which has the purpose of ensuring that a ship has sufficient freeboard and therefore sufficient reserve buoyancy. It should also ensure adequate stability and avoid excessive stress on the ship's hull as a result of overloading. (Gard, 2013)
All of which have the ultimate purpose of keeping the ship safe and secure, in the case of omitting this requirement there would be a latent danger for the vessel, the environment, and the lives on board since the ship might not even have the minimum safety requirements.

The importance of documents and accuracy of them cannot be disregard from a safety point of view, the impact on safety of a ship with a LL 66 Certificate that do not comply with the requirements of LL 1966, article 16; LL PROT 1988, article 16 could end in grave consequences,

Therefore, the importance of the proper surveys and inspections, for the issuance of the documents, the issue should not be taken lightly when it comes as the role that ROs play in the safety and security of vessels these actions prove that, there is a responsibility of safety upon the ROs.

In the case study that will be presented in chapter 3 will the author will show, how lightly the issuance of a certificate can be taken, and the possibly dangerous effects of damage that this can lead to a breach of the safety of navigation and the life at sea.

Therefore to assume that the technical certificates and the documents issued by ROs are not directly associated with the safety and security of cargo as well as life will be a fallacy that needs to be exposed and be taken more seriously.

In the gradual development of the topic, the author will touch on the adverse effects of forged information of documents, be it a technical certificate or document, the effects that can have on the safety and security of ships, their cargos and the lives of the crew onboard.
2.8 Implementation and development of the International Guidelines.

As is was indicated before the Recognized Organization Code (RO Code) was adopted by IMO by Resolution MSC 349(92) and MEPC 237 (65)

It is appropriate at this point to clarify the scope of the RO code in order to proceed a little more in-depth on the topic, the scope of application can be found in the RO code itself and therefore:

"The Code applies to:

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

all flag States that intend to recognize an organization to perform, on their behalf, statutory certification and services under mandatory IMO instruments."

( IMO, 2013)

Having this in mind, and all the information regarding the legal responsibilities these entities acquire once there is a delegation agreement between the state and the RO, it makes more sense to understand why IMO had to develop an instrument to regulate their performance, furthermore taking in consideration that the administration will remain fully responsible of the actions of the RO when this is done under delegation of the administration.

The author will proceed to show the structure of the RO Code from a superficial but consistent way, and eventually, this will help us to understand more the legal gaps that exist in the application of it at some level in the maritime administrations:
RO Code, Part 1 GENERAL, item 4 DELEGATION OF AUTHORITY:

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.

The delegation authorization is given but not the application or procedure to do so and to make sure there are strictly comply with it.


A flag State may authorize an RO to act on its behalf in statutory certification and services and determination of tonnages only to ships entitled to fly its flag as required by these conventions. Such authorizations shall not require ROs to perform actions that impinge on the rights of another flag State.

The main supervisions regarding to the security and safety of the navigations and life at sea are or can be delegated to ROs, and such issue should have a more strict requirements than the ones stated on the RO code;

The author believes that because of the importance of the security and safety matter regarding these certifications based on these maritime conventions, there is the need for a more strict supervision upon the private organizations authorized to issue the certifications.

RO Code, Part 3 OVERSIGHT OF RECOGNIZED ORGANIZATIONS, item 6 PRINCIPLES OF AUDITING: 6.1 The flag State should be satisfied that the RO has
an effective quality management system in place. The flag State may rely upon the audits carried out by an accredited certification body or equivalent organizations.

In reality, the maritime administrations are the ones who undertake the audits; in many cases people of the maritime administration that might not even have the technical people to undertake the audits and this is done only to comply in the short term.

All of the above, to be functional, have to be implemented in the national framework of each member state, and this will vary from state to state, as is stated by Francesco Berliengieri, a distinction has to be made between the states that have adopted the monist approach, in which case the conventions are executed automatically and ad the same time obtain a national effect, Berliengieri, also mentions that as is the case on most of the states that have a dualistic approach require an explicit national law in order to be able to implement the conventions that have been adopted by the state. (Berlingieri F., 2013)

In the case of Honduras the implementation was done in a proper legal way, but the enforcement of it still a milestone for the country, since there are so many requirements to be developed, and at the same time so little human and economic resources to do so, therefore the danger of illegal acts on behalf of some ROs tend to increase.

Conclusion:

It can be concluded from this chapter’s information that even though there are contractual responsibilities stated in the delegation agreement, that are to be complied with by the recognized organizations in some cases these are not thoroughly followed, there are also contractual responsibilities that the apart from the stated the ROs have to follow these are with the shipowners, and as it will be seen later this might be breach by both parties, nevertheless the responsibilities before third parties will always have
an element that will always belong to the shipowner and that is the inalienable as is the seaworthiness.

despite the author firmly believe the liability of these organizations has been taken slightly, and there is a strong need to make some changes at international levels;

In the first instance, in order for it to be automatically transcribed to the national law of the countries as a mandatory prescription, and only then could be a more strict control on the performance of many ROs that do not fall into the IACS supervision circle.
3. Case studies of fraud and forgery in Honduras.

Introduction

It at this point, it is appropriate to begin stating that the intentions of the author are by no means to elaborate a profound comparative analysis of the situations and legal cases along this research as well as the possible legal solutions that could come out, but more to be a window to view some cases that at this stage in time, are not considered with the seriousness of the case;

Fraud and forgery of certificates can have a tremendous and severe impact on the maritime trade, as it will be showed during the progress of the chapter.

3.1 Fraud and forgery of technical certificates of ships.

For starters, the definition of fraud and forgery and how these figures work separately or together has to be given, and how these two play a negative role in the maritime industry, the definitions will be given first.

Many authors have remitted to Black’s Law Dictionary when defining the fraud and forgery, and in this case, the author will also use this source since it is the most assertive definition for this research.

According to Black’s Law Dictionary fraud;

“a knowing misinterpretation of the truth or concealment of a material fact to induce another to act to his or her detriment."

(LAW DICTIONARY BLACK’S, 1979)

In the case of the forgery, the definition is as follows,
“(a) alters any writing of another without his authority; or (b) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other, then was, in fact, the case, or to be a copy of an original when no such original existed; or (c) utters any writing which he knows to be forged in a manner specified in paragraph”

(LAW DICTIONARY BLACK’S, 1979)

Another Definition of forgery that by its simplicity the author would like to refer is the one given by Lemert, Edwin M, where he defines forgery in a common law approach saying it is the false signing of a legal document that creates liability, moreover, it will be hold even when the complete legal document is false and only provides an apparent legality. (Lemert. E., 1953)

Having these two definitions in consonance make it suitable to proceed with the development of the chapter, in a more specialized manner, as well as for the presentation of 3 Honduras’s cases of forgery and fraud.

It has been indicated before that the ROs do play an essential role in what is the maritime security and safety, but there are other stakeholders that also provide elements of safety and security, the shipowners, the shipbuilders, the flag states, the port state control, the underwriters, marine financiers, charterers and among others actors that have duties with the maritime industry. (Clyne & Saville, 2007)

In 2014 Professor Henning Jessen in his article for the CMI YEARBOOK 2014 regarding The Liability of Class Societies, has stated that there was for that time an estimated number of more than 100 private organizations that offered the services of survey, inspection and certification, in the same article he raises two issues that I considered of great importance, first the end to a long-time monopoly of the exclusive class societies meaning IACS, and the increase in competition for this maritime market
regarding the surveying and certification that has now bring a high competition. (Jessen, 2014)

It is the opinion of the author, that this increase of competition, many serious issues have surfaced, the lack of a system of supervision of the quality of performance of the ROs for example, in contrast with the IACS who have to undergo a quality performance inspection every 2 years, which is done by the European Union though is legislation in its Regulation (EC) No 391/2009 and Directive 2009/15/EC.

This inspections englobe the inspection of the head offices as well as the regional ones, including the inspection of the ships with the sole purpose to ensure that the performance of the recognized organizations that belong to IACS comply with the highest given standards, this inspections can be carried out by the request of the state's members of the European Union. (European Maritime Safety Agency, 2019)

But what happens to the rest of the organizations that are offering the same services?, who is supervising from close?, The answer of that can be found in the article 94 of the UNCLOS 82, under Duties of the flag state “1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.” (Convention on the Law of the Sea, 1982).

UNCLOS, give us the utopian answer, as it is supposed to be the member state, but as it has been mention throughout this work, this is not what happens in practice, many member states do not implement a proper supervision or enforcement and there is no type of system to prevent illegal action by the ROs, not because they do not want but in many cases because they cannot do so.

It has been observed, that due to the increase of the maritime market of class societies or in this case ROs, the standards have lower their standards to keep up with
competition, and attract more clients who engage into “class hopping” (Hosanee, 2009), and here is where the problems arise.

Since many flag states have not developed a proper oversight of their ROs these issues might go undetected and the ship will be registered under its flag, posing a latent danger for the navigation, the human life and the environment;

This will be categorized under the definition of the Black's Law dictionary as an evidence of fraud, since the real information is being concealed, as well as can be the case that a substandard ship will be registered under the flag of a country, and there won't be any knowledge of this as it will be seen under the cases of "Phantom Ships" later on this chapter.

When referring to maritime certificates fraud, it has to be taken in consideration the ROs that are not delegated by the states and proceed to act in the name of them by registering ships under their flag, this is a growing issued that has already since 2015 has been taken as an essential matter to be deal with by the member states of IMO.

The forgery in the other hand has been more latent in the agenda of IMO from a certificates of competency point of view, this does not mean that the forgery and fraud do not go together in this specific case, in fact they do;

IMO has issued many guidelines for the administrations to be implemented to deal with this and in many countries it has succeeded, but when it comes to the ship certificates IMO has not attacked the issue as it should have.

Moreover, in the year 2001, The Maritime Safety Committee in its 74th session, issued a 34-page Research study on fraudulent practices associated with certificates of competency and endorsements, the enhancement of the STCW was proposed;

interesting enough, is that in the same report was mention that the administrations and industry reported a high prevalence of fraudulent practices in ship's certificates and
expressed at that time the need to take action over this issue about this issue nothing was done. (IMO, MSC 74/6/2, 2001)

3.2 Fraudulent practices associated with phantom ships.

There are many practices that will have; as a result of fraudulent certificates, therefore it is appropriate to raise a somehow trending issue, but not a new one, by that it is inferred that the fraudulent registration of ship "Phantom Ships"; are highly related to the fraud and forgery of technical certificates, since the consequences will be the same, a latent risk for the safety and security of the maritime trade.

IMO has followed this issue from a very subtle manner, after reporting to IMO Secretariat of some member states whose flag was being used without any authorization, as in the case of The Democratic Republic of the Congo, who informed IMO about 73 vessels that were not registered within their maritime administration and where flying their flag; IMO release such information through Circular Letter No.3717 on the 23 March 2017, along with the list of the ships with their IMO numbers.

The above was not an isolated case at IMO during that year, in the same manner the following countries reported similar incidents in different years, but for reference, it has been used the last two years as shown in table 1 and 2 below:

<table>
<thead>
<tr>
<th>Year 2017</th>
<th>Member State</th>
<th>IMO Circular Letter No.</th>
<th>No. of vessels/info.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Republic of Vanuatu</td>
<td>3734</td>
<td>Illegal Vanuatu international ship registry</td>
</tr>
<tr>
<td></td>
<td>Democratic Republic of Congo</td>
<td>3717</td>
<td>73</td>
</tr>
<tr>
<td></td>
<td>Republic of Fiji</td>
<td>3798</td>
<td>91</td>
</tr>
</tbody>
</table>

Table 1: Reports received in 2017 by IMO regarding the fraudulent registration under their flag
Source: Authors  IMO, LEG 106/7, 2019
<table>
<thead>
<tr>
<th>Member State</th>
<th>IMO Circular letter No.</th>
<th>No. of vessels/info.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republic of Maldives</td>
<td>3840</td>
<td>3</td>
</tr>
<tr>
<td>United Republic of Tanzania</td>
<td>3876</td>
<td>11</td>
</tr>
<tr>
<td>The Republic of Nauru</td>
<td>3855</td>
<td>Illegal use of country name</td>
</tr>
<tr>
<td>Independent State of Samoa</td>
<td>3866</td>
<td>Revoke of delegation Agreement with RO</td>
</tr>
<tr>
<td>Independent State of Samoa</td>
<td>3854</td>
<td>18</td>
</tr>
</tbody>
</table>

Table 2 Reports received in 2018 by IMO regarding the fraudulent registration under their flag
Source: IMO, LEG 106/7, 2019

Micronesia, was one of the cases that in 2016 reported to IMO the incredible number of 150 vessels registered without any authorization, additionally IMO was also a victim of the fraud since it was drawn to open an administrator account with a username and password, in the name of Micronesia;

Later on, it was found that the documents presented for that purpose where forged, luckily IMO soon enough realized the fraud and cancel the accesses; nevertheless 150 vessels had been already registered. (LEG 106/7, 2019)

Therefore, in a total there has been the information of 345 fraudulent ship registrations between the years of 2016 and 2018, an alarming number; the effects that this ship can have on international trade is a severe issue.

In order for us to understand the importance of this "Phantom Ship" issue with our current topic, it is essential to understand the following logic behind it, which is shown in the diagram below:
As it represented above in table 3, there are many actors involved in the fraudulent ship registration, as mention before it is one of the issues that involves the forgery and fraud of technical certificates in the role of ROs but is one segment of it;

There is no real sign that this problem will go away soon enough, even though the International Maritime Organization has in the committee’s 2018–19 biennial agenda, agreed to eradicate this issue with a target completion year of 2021. (IMO, LEG 105/11, 2018)
The phantom ship problem has to be taken as a serious matter since it jeopardized the security and safety, there is a significant amount of vessels many of which have not been identified yet sailing in international waters and arriving to ports all over the world, holding technical certificates as well as other documents that look legitimate, in many cases there is no procedure in place for the verification on those certificates; therefore the Port State Control Inspector will release the vessel with any further setback.

Even though, this is an big concern for IMO, since the fraudulent registration of ships will pose an impediment for the member states to properly implement the international instruments,

Also, is a very serious issue from the maritime security point of view; many of these vessels are used to undertake transportation of narcotics, stolen goods, and even smuggling weapons; therefore the problem has to be targeted for those reasons and many more that will be touch upon later. (Ellerman B. A., 2011)

Since there is no real effective control over these vessels, besides the known illegal and document irregularities, there may be many other illegal activities that are taking place on board, that could be maintaining substandard conditions on the ship, that in the short term can also endanger the lives of the crew onboard. (Gallagher J., 2018)

3.2.1 Fraudulent process of certification to ships

It has been mention already that some of those elements play a significant role in the whole framework of fraud and falsification of certificates, as well as documents in the fraudulent registration of ships,

It is now appropriate to give a closer look at some specific cases, for these the author will present some real cases;
However, before there has to be acknowledged what was mention, regarding the proliferation of organizations that provide the service of certification, and surveying as well in some cases of registration under the delegation of many states;

The proliferation is one of the main reasons why the problem of forgery and fraud still an issue in the maritime industry.

The outstanding matter that contribute to fraud and forgery of certificates, the most common one is the loathing to the change; by that it is meant that there still old practices that for many circumstances the maritime authorities still clenching to them as it is the use of paper documents.

Realizing that up to this point in time where the world has headed very rapidly to an electronic era, interesting enough is that the maritime industry still hanging to the paper era;

Moreover, this is the reason why up to know the fraud and forgery can still happen and in many cases, with very damaging consequences for the trade. (Kapoor P., 1987)

The author agrees with Kapoor with the statement above regarding the procedures that are maintained in the maritime industry and is the usage of document paper as proofs, that can give a breach of security up to now.

Is not strange to find out that every time the topic of fraud and forgery in the maritime trade comes, the first thing that comes to mind is the commercial maritime documents, or for that matter, fraudulent practices associated with certificates of competency and endorsements;
Issues that have been the target of many academic research as well as matters of investigation by national and international entities, as is the case of the International Maritime Organization (UNCTAD, 1983)

"The RO shall perform statutory certification and services by the use of only exclusive surveyors and auditors, being persons solely employed by the RO, duly qualified, trained and authorized to execute all duties and activities incumbent upon their employer, within their level of work responsibility." (IMO, MSC.349(92), 2013)

The keywords that to be concern with are: *duly qualified, trained and authorized*; issues that play a role in the fraud and forgery at some point, it will be seen more in practice when the study cases of fraud and forgery are introduced, relating Honduras Administration.

It was already mention before as it is shown in table 3, that the ships that are subject of fraud and forgery when it comes to their technical certificates or documents of registry are the ships that have been subject of piracy, substandard ships and as well victims of fraud who are not aware unscrupulous organizations are deceiving them.

3.2.2 Study cases of fraud, forgery by Honduran ROs

A) Detention By PSC Of A Ship with fraudulent certificates onboard.

**Problem:**

*The following cases A, B and C took place in Honduras, Central American; the name of the ship or its IMO number or the name of the RO involved, will not be disclosed for privacy issues.*
On the 12 of July of 2013 a report of the detention of an international ship flying the flag of Honduras was received in its maritime safety department;

The detention took place in the Braila, Romania (PSCO #8) according to the international procedures, the information of the detention were accompanied by the documents presented by the master of the ship to the PSCO,

The documents the ship had on board at the moment of the detention were revised, as the procedure of the maritime safety department requires.

It was concluded in the technical opinion SM-258/2013 that:

Regarding the Minimum Safe Manning Certificate that the ship had on board the maritime administration concluded that the certificate was forged given the following:

1. The serial number of the certificate did not belong to the maritime safety department.
2. The date of issuance did not correspond to the serial number that was issued on that date.
3. The signature of authorization on the certificate did not corresponded to the Honduras General Director at that moment.

Therefore it was stated by the Maritime Safety Department that this certificate was forged.

Regarding the Registration Certificate presented by the master of the onboard to the PSCO, the maritime administration of Honduras concluded that:

1. The registration certificate had been expired for more than two years since it was expired on the 22 of September of 2010.
2. The maritime administration does not authorize the issuance of technical certificates to ships whose registration certificate is expired.
3. The vessel was reported in the maritime administration records to be inactive; nevertheless, the vessel was navigating at the moment of the detention. Regarding the issuance of the rest of the certificates, these were regarded as forged.

The condition of the forged documents onboard was reported to the PSC where the ship was at that moment detained; nevertheless, the ship was released on the ground of exemption letters issued by the RO, amazingly enough, was that the RO was never authorized to issue those exemption letters, this was done in an apparent contravention of SOLAS chapter I, regulation 4.

Later on, maritime administration of Honduras, under which the ship was supposedly register contacted the shipowner who informed, he had made all the arrangements with a representative of the maritime administration in Syria, information was exchanged via email,

As part of the procedures information of the contacts were requested as well as the information that could be of any help to proceed legally.

As it is part of the procedure in these cases, the problem was reported to the Viña del Mar memorandum of understanding as well as other MoUs, stating that the vessel shall proceed to be detained at any port since the vessel was carrying fraudulent certificates,

In the same manner, the information of the illegal action of the RO was informed to IMO.

It was later informed that the surveyor of the OR in question, had been forgedly representing the flag state for the periods 2011 and 2012 as well as making federal tax charges and issuing technical certificates, and the endorsement of documents which only the maritime administration has authorization to do.
Impressively enough, the RO was only fined with $5,000.00, and there was no legal action against the surveyor posing as a flag inspector; moreover, the RO was renewed as to act a delegated recognized organization.

b) Case of Fraudulent Actions by Recognized Organization.

**Problem:**
On the 14 of August of 2018 the complaint and information department of the Honduras Maritime Administration received a request from a shipowner of a vessel placed in Singapore,

Who was requesting the verification of technical certificates issued by an RO that had been delegated by the maritime administration some years back, and not in a continues manner.

The documents that were presented were the following:

- Confirmation of Registry;
- Seaworthiness Certificate;
- International Tonnage Certificate(1996);
- Cargo Ship Safety Radio Certificate; and
- Record of Equipment for the Cargo Ship Safety Radio Certificate(Form R)

The maritime safety departments preceded accordingly with the procedure stated for verification of information, and in the national as well as the international registry did not have any record of the ship in questions.

The documents were inspected, and the professional opinion concluded that:

1. There was no record of the ship in the database of the Honduras Maritime Administration.
2. The date of issuance of the technical certificates presented by the shipowner was issued before there was a delegation agreement between the Honduras Maritime Administration and the RO.

3. The RO was not delegated with authority at any time to issue a certificate of registry, since that is an exclusive power of the Honduras Maritime Authority.

4. The delegation agreement was exclusively to act upon the ships that sail in Honduras national waters or upon ships that made international voyages but that their port of call was the national port.

After the verification of the certificates as well as the non-compliance of the RO with the clauses of delegation agreement and the confirmation of the fraud on the issuance of a certificate of registry, without the authorization of the format of the one the maritime administration is entitled to issue;

The shipowner was contacted to verify the person of contact or for that matter the surveyor representing the RO.

On the 19 August 2018, the shipowner forwarded information of surveyor as well as business card, and it was a proven fact that signatures on the technical certificates as well as name on the business card corresponded to authorized surveyor of the RO as well as the owner of the RO.

It is being this the second case of fraud committed by the same RO in less than a year since in 25 of April of 2018, it was also received by a request of verification of a certificate of registry of a vessel that did not appear as registered by the Honduras Administration or for that matter in the database.
c) Case of Forgery of Document By RO.

**Problem:**

On November 14th of the year 2018, it was received the request of a ship to cancel, this was done by the legal presentative of the shipowner in the country, to procedure requires for the shipowner to provide the continuous synopsis record;

The Continuous synopsis record (CSR) is issued by the administration of the ship, which would be flying its flag, the CSR was presented and the following observation by the Maritime Safety department where made:

1. The CSR was not issued by the Maritime Safety Department, as it states;
2. There is no official copy of such CSR in the file of the ship that the maritime administration has for that ship;
3. The CSR was issued in the format for application of it and not in the required format;
4. The format presented as a CSR does not have the amendments like the form 2 and 3;
5. The logos in the documents did not correspond to those in the documents issued by the administration;
6. The signatures in the documents did not correspond to the General Director of the Merchant Marine as it should, as well as the stamps were not the ones that the original documents have.

The Maritime Safety Department recommended the legal department to proceed with investigations of issuance of such a document as well as it was not allowed for the vessel to cancel its registration in that maritime administration.

In this same situation, two more ships requested the cancelation in the same month and as well as the case presented above the documents of CSR where forged; therefore their cancelation was stopped until further investigation was done.
The representative of the shipowner presented documentation regarding the source of the documents presented and as well a letter of the shipowner stating that he had no information that the company that issued the documents;

moreover, that the RO had no delegation agreement with the maritime authority as well he presented the receipts paid to that company for the fraudulent documents, he paid an alarming amount of $62,000.00 for the document of two ships.

Going more into the investigation it was discovered that the RO who had issued in recent times fraudulent certificates (cases mention above case B) was the same as the enterprise that sells the services of documentation to the owner of the ships above mentioned.

3.2.3 Resolution of the cases:

In the cases A, B, and C the Honduras Maritime Administration follow the internal procedures stated for forgery and fraud of documents, these procedures being an internal ones and lacking international legal steps, therefore just reaching upon to the point of reporting to the memorandums of understandings and the International Maritime Organization, and even though it is mentioned in the National Organic Law, Article 23 this is not at any point, a safeguard that the fraud and the forgery will not take place.

One of the most critical issues that Honduras as an IMO member state has is the matter of not having in place a procedure that involves the judicial system for the investigation from a criminal point of view, in the case of fraud and forgery as well as official documents, committed by international companies, therefore the reporting of the cases to the international bodies as IMO and MoUs would not be enough to stop

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9 Ibid., No. 5, P. 34
these illegal actions, there has to be an international investing with the international investigation bodies and there has to be a court judgment followed by a penal sanction in order for this issue to be stopped.

3.3 The authenticity and integrity of the certificates.

For this subtitle, the author will be refereeing to the case studies, since those are the most tangible examples, we will also be referencing to the MSC 74/6/2 Research study on fraudulent practices associated with certificates of competency and endorsements, since it will be used as a comparative, this because there is not enough public information on the example of forge technical certificates available; not because there are no cases but because the maritime administrations have not collaborated by given this information as it is already mentioned in the methodology section.

We shall start by defined certificates to proceed with the flow of ideas. IMO has defined certificates within one of the Circulars that will be the one will be using;

"Certificate means a document issued by an Administration that is used to show compliance with IMO requirements. The term "certificate" does not include publications, manuals, instructions, or ships' logs used to record ongoing operations;" (IMO, FAL.5/Circ.39, 2013)

The above premise, it is essential to remark that this responsibility of the issuance of certificates in compliance with the IMO conventions can and is delegated to recognized organizations as it was mention in the preceding chapters.

It has been stated by the relevant Convention the format that all technical certificates shall follow, but it is the Member State the one that give the final instruction for the
format, and is by that approval that the ROs will issue in the name of the administration.

When there is an intention to obtain the relevant technical certificates by and RO, one of the requirements will be the registration certificate; those certification procedures can also be delegated as well, as other technical certifications, being this the genesis of many fraud and forgery issues.

It is important to remember that once the RO is authorized to issue the technical certificates or whatever document it was authorized to be issued by the maritime administration, the format and the security paper will be at a free disposition of the personnel working for that private entity, therefore the importance of delegating to an RO that is renown with international prestige and honorability as the Honduran Government requires it;

However, is this enough? After looking at the study cases, it can be assumed in a premature manner that is not.

Now the fraud and forgery will be shown from a practical point of view, exposed with documents;

In the case of the Case Study A), this is the first document that was detected as fraudulent:
A. Fraudulent safe manning document

Figure 1 SMD object of forgery by a delegated RO.

1. The serial number does not correspond to the ship.
In the case study A) referred to in the document above, it can be identify clearly the inconsistencies of forgery as it is define in the Black’s Law Dictionary\textsuperscript{10}, clearly as numbered from 1 to 3 in the specimen above;

This document was given to the shipowner by an authorized RO, that had a delegation agreement, but that was not authorized to issue this Minimum Safe Manning Document, since is the duty of the Maritime Administration only, down below the original document is presented in order for the reader to have a broad idea of the inconsistencies found in the case study A);

\textsuperscript{10} Black’s Law Dictionary; Forgery; (a) alters any writing of another without his authority; or (b) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other, than was in fact the case, or to be a copy of an original when no such original existed;
B. Legal same manning document issued by DGMM

The original document presented in figure 2, has many security elements, it has a bar code, for easy identification;

As well as two serial numbers the one related to the ship itself and one analogous to the security paper used for the issuance of the certificate; Reasons for which it was an easy task to detect the forged document.

It was due to the appropriate timing of the detention by the PSC, to the ship that the administration had a hold of such forged document, and here is where it can be seen that the issue might escalate into a safety issue;

Figure 2 Original certificate issued by DGMM of Honduras, 2019
If the ship would not have been detained most likely it would have continue sailing with a forged documents of which there is no way for any PSC to be able to identify.

Continuing with the examples in practice the author would like to show how far a fraud of documents can go in the role of ROs, that have been delegated by Maritime Administrations but that act outside the remit of the delegation agreement.

The following documents are the ones referred to in the case study B);

As the author stated it in the case study b), only the accredited entity to issue the certificate of registration is the Maritime Authority of Honduras, nevertheless an RO can be delegated to it, and it is the case of two entities that have been delegated to it, but in the case of figure 3, the RO was not delegated for it.
C. Fraudulent certificate of registry

![Fraudulent Certificate of Registration](image)

The undersigned does hereby confirm that the vessel whose particulars provided herein is to be registered in Merchant Marine of the Republic of Honduras in accordance with the provisions of the Merchant Shipping Act.

<table>
<thead>
<tr>
<th>Name</th>
<th>Length</th>
<th>Breath</th>
<th>Type</th>
<th>Utility Boat</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>37.52m</td>
<td>7.52m</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>GRT</th>
<th>NRT</th>
<th>IMO No.</th>
<th>Port of Registry</th>
<th>Distinctive No. or Letters</th>
<th>Place &amp; Year Built</th>
<th>Engine &amp; Type</th>
<th>Horsepower</th>
<th>Speed</th>
<th>Date of issue</th>
<th>Date of expiry</th>
</tr>
</thead>
<tbody>
<tr>
<td>319</td>
<td>117</td>
<td>-</td>
<td>San Lorenzo</td>
<td>HCTM 3</td>
<td>2002 / Thailand</td>
<td>Cummins Diesel x 1</td>
<td>746 kw</td>
<td>8 Kts</td>
<td>23 July 2018</td>
<td>22 September 2018</td>
</tr>
</tbody>
</table>

Figure 3 Fraudulent Certificate of Registration, in detriment of Honduras flag.
Source: Maritime Safety Department of Honduras, 2018
For the reader to do the proper comparison of documents down below it has been included a real documents format issued by the Maritime Administration.

D. Legal Certificate of Registry

Figure 4 Authorized Certificate of Registration, by the Honduras Maritime Authority
Source: Maritime Safety Department of DGMM Honduras.
In the case study B), one of the documents that was issued was a fraudulent certificate of registration, as explained by the author before the RO, was not delegated to do so,

The following document have a condition of fraudulence since the ship was in international ship to which the RO wan no delegated to issue certificates to, only ships that sail in national waters or that their home port was Honduras, the proper clarification has to be made that the following documents belong to the same ships whose certificate of registration was fraudulent.

The documents showed below are as follows;

1. Fraudulent Seaworthiness Certificate
2. Fraudulent International Tonnage Certificate
3. Fraudulent Cargo Ship Safety Radio Certificate
4. Fraudulent Cargo Ship Safety Radio Certificate Form R

It is important to take in consideration that the fraudulent certificates mention above and shown below can have an element of safety that if breach can have serious repercussions on the marine environment and the life at sea,

It is unknown how many years that vessel had been sailing under those fraudulent certificates but one thing is sure;

It was by initiative of the ship owner to contact the Honduras Administration to be able to verify those documents, if it was not because his enquiring that vessel would have continue being a latent marine hazard, since the conditions are not reliable.

As it is mention by the author in many occasions, the fact that a RO is delegated by a maritime Administration does not guarantee that the actions of this private entity will go accordingly to the delegation agreement if there is not a close supervision and control over the actions of this entities.
Figure 5. Fraudulent Certificate of Seaworthiness issued by an RO.
Source: Maritime Safety Department of DGMM of Honduras.
F. Fraudulent International Tonnage Certificate

Figure 6 Fraudulent International Tonnage Certificate
Source: Maritime Safety Department of DGMM of Honduras, 2019
G. Fraudulent Cargo Ship Safety Radio Certificate

![Fraudulent Cargo Ship Safety Radio Certificate](image)

**Figure 7** Fraudulent Cargo Ship Safety Radio Certificate issued by an RO

*Source: Maritime Safety Department of DGMM of Honduras.*
H. Fraudulent Cargo Ship Safety Radio Certificate Form R

Figure 8 Fraudulent Cargo Safety Radio Certificate Form R, issued by a RO.
Source: Maritime Safety Department of the DGMM of Honduras, 2018.
Recapping the fact that all documents showed above where issued by an RO, that had a delegation agreement but was not authorized for the issuance of such documents,

The author will present the last document object of fraud, and this is mention in the case study C), reiterating the importance of a good and strict supervision of the ROs.

I. Fraudulent CSR

![Figure 9 Forge CSR issued by an RO.](Link)

Source: Maritime Safety Department of DGMM of Honduras.
The CSR document, shown above, was issued on a CSR request format and it was given to the ship owner as a real document, it is assumed that the owner until today did not had any idea the document was not real.

3.4 Prevention of Fraud and Forgery.

There are many ways that forgery and fraud can be prevented, and if it is true that the flag state has a significant role when it comes to revising and supervising the actions of the ROs, that are being delegated, there is a need of a more strict supervision, the vertical contractual audits (VCA)\textsuperscript{11} as is prescribed by the RO code, might not be enough since with these audits there is no way to determines the actions that the RO are assuming outside the delegation contract if any.

It is by PSC that many certificate that are not legal can be detected, unless the physical certificate is the only proof of compliance, as it is stated by UNCLOS\textsuperscript{12}, nevertheless it is by the procedures that each maritime administration should have in place within the national legislation procedures that could be as helpful for the prevention of fraud and forgery but not only at a national or regional level but an international level this can be done by creating an integrated PSC system.

Developing a worldwide system to which all PSC as well as administrations can be connected and be able to share information, the author will strongly disagree on the fact that e-certificates have been seen as a solutions for fraud and forgery, it can be to a certain level a solution for the forgery of documents that won´t stop ORs to issue

\textsuperscript{11} A Vertical Contract Audit (VCA) is a contract/order specific audit of production processes, including witnessing work during attendance at a survey, audit or plan approval in progress and, as applicable, including relevant sub-processes. A VCA is carried out at a location or a site (Survey Station/Approval Office/Site) to verify the correct application of relevant requirements in service realization for the specific work in that contract/order, and their interactions. Source: https://puc.overheid.nl/nsi/doc/PUC_2327_14/

\textsuperscript{12} Ibid., PG 75
certificates or documents to which they are not authorized as shown in the examples before.

3.5 Sanctions for the Proven Cases of Fraud and Forgery.

As it was mention in chapter 3 when it comes to responsibility before third parties, it should be the parties that affected by the action of negligence that would have to be compensated for the damages done.

However, up to what point is this done or for that matter is there a legal system that is well stated to deal with the liability of the ORs? The answer up to now; many issues contribute to this, and sadly the Maritimes administrations might share some fault.

The under-reporting of the cases of fraud and forgery of the certificates and documents of ships, to the competent international maritime authorities and for that matter to IMO itself, entity in charge of regulating such issues,

even though the member states might not have a legal procedure to proceed against this informing the rest of the member states might help to reduce the recurrence of it.

Revoking the delegation agreement of the RO that is found not complying with the agreement, followed up by international warning might be an excellent dissuasive for future illegal actions;

However, up to now as is mention in the study cases A), B), and C) presented by the author related to Honduras it can be seen that as much a monetary penalty is not enough, there have to be more strict sanctions.
Conclusion
The authenticity and integrity of the certificates is a matter that has to be taken serious as all the documents shown above as an example of how serious and yet so easily a document can be forged, since the certificates are documents that will certify that the ship complies with the safety requirements, there has to be more procedures in place to avoid this illegal actions.
4. ANALYSIS AND DISCUSSION

4.1 Analysis of the Identification of weaknesses in the delegation of ROs

It was analysed the information given before in chapter one regarding the general historical perspective, and it is possible to establish that given the increase of classification societies/recognized organizations as the genesis of the problem; seeing that there are more than one hundred organizations, that provide their services to the member states, can at some point create a problem if not all of them have an international or regional supervision body in charge of the regulation.

The classification societies not members of the IACS. In some cases lack the installed capacity to provide high-quality maritime services; in chapter two the author provided the functions of the ROs;

It was acknowledged that there is an undeniable fact that the services that ROs provide in many cases and specifically for open registries might not have enough international coverage, personnel with the technical expertise and overall the in-depth technical experience as it is the case of Honduras.

When delegating authority to ROs, member states will display upon a prerequisite list what the RO has to fulfil in order to be delegated in compliance with the national and international conventions and guidelines.

Honduras, for that matter, has established nineteen requirements mentioned in chapter 2, subtitle 2.4, under contractual responsibilities.

13 Ibid., Pg. 2
14 Ibid., Pg. 30
The requirements have to fulfill the delegation that is granted, the issues if any, will become evident, during verification of requirements even though this issues should be detected before delegation.

The RO Code, Section 8, numeral 8.2, under legal basis, provides specific requirements that have to be fulfilled by all maritime administrations; a total of 10 requirements are given, and the most important and the more relevant to our topic is the last one, the flag state supervision.

As it was already mentioned the "Achilles’ heel" is the supervision of ROs that are delegated by member states, but what about the delegation itself, procedure and verification of procedures by which the delegation is given.

As mention in chapter 3, many state members do not have in place a national legislation when it comes to the legal supervision and enforcement to these organizations building a gap which in some cases may lead to forgery and fraud;

The weakness in the delegation contract in the case of Honduras is that there are not enough technical resources to undertake the supervision of these organizations; the delegation may only be done under the agreement of fair and legal service; in other words, only base in trust.

Honduras has in its Organic Law, the mandate to assume annual audits to the recognized organization, but in many cases because there is not enough personnel or personnel with the technical knowledge these audits are not done and if so, they are very superficial.

The reason why member states resort to ROs is for the same reason the delegation of authority might fail in the supervision, and why these private organizations may be
involved in illegal activities and the administrations might fall into serious safety issues that can directly affect their national and international fleet.

4.2 The importance of PSC in supervision and enforcement.

The supervision and enforcement of the international conventions and regulations is a responsibility of the Flag State as is mention by UNCLOS, but is it possible for the flag state to do a proper supervision and enforcement of the vessels flying their flag at an international level?

It is not, and in some cases might only be a reckless action of the flag states, but for that case, the Port State Control comes as the best compliment for the member states.

It is paramount for the author to state that the work of the Port State Control does not substitute the role of the flag state at any point; moreover, it supplements in a synchronized manner.

It was though Resolution A. 682 (27) on 21 of November of the year 1991 that IMO issue the Regional Co-Operation on the Control of Ships and Discharges, in order to support the creation of the PSC as an aid for the countries to ensure the proper application of the conventions and the regulations emanating from IMO itself.

The Port State Control has provided an incredible aid in the case of forged and fraudulent documents, and in many cases, as is the one previously presented by the case studies is the only means to detect them, as was shown in the case study A).
PSC, has become an essential aid for the states to ensure that the international conventions and regulations, the figure of PSC gives the authority to board a ship and undertake an inspection and in the case of clear ground to detain it.

Before the PSC was only restricted for the revision of the certificates and documents on board but not anymore and now the operational and the safety aspects of the ships can also be inspected, and more detail inspection can be done. (Hare J., 1997)

However, for this dissertation the author will circumscribe the topic only to the inspection of the certificates and the documents, that all ships most have onboard; reminiscing the previous chapter and especially the case study 16A), wherein July on the year of 2013, there was a detention that took the place of a vessel and following the PSC of Braila, Rumania procedures the Flag State, in this case, Honduras, was informed and the documents provided by the master of the ship where forwarded to the administration and therefore the Safe Manning Document was detected as forged.

The administrations are encouraged to invest in the training and the employment of surveyors and marine officer that can undertake the inspection with the technical knowledge that is required to do so, since the final goal for all the maritime administrations should be to eradicate all the sub-standard ships, this can only be accomplished if the ports are well prepared to take that challenge and work in harmony with the flag state authority.


16 Case study A) Detention By PSC Of A Ship With Fraudulent Certificates.
4.3 Traditional Fraudulent Situations that can Arise from The Role of ORs.

As it was presented in chapter 3 throughout the study cases, there are particular fraudulent situation that can be observed as repetitive issues under the role of the legal delegation of ROs.

It was mention throughout the present dissertation that the actions of the ROs have to be monitored and in the case where an administration is at a disadvantage to carry on these supervision enforcement many cases of fraud and forgery can come up.

The delegation agreement will provide the scope of action to which the RO will be performing, never the less, if there is no appropriate supervision many situation can occur;

Phantom ships can be one of those, since the delegation might cover only the issuance of technical certificates and not the registration of vessels under the flag of a given state member as it was in the case of Honduras.

It is common to find fraudulent or forged documents onboard ships calling in international ports, these might be discovered as well as they might not be, and the vessel will leave the port with no problem since there is not an international database up to date where the PSC can verify such documents or for that matter the scope of the delegation given to the ROs.

In the study case A) mention in chapter three, the vessel was detained, on the grounds of many deficiencies being not the certificates some of them, never the less the procedure of detention was done, and the documents sent to the maritime administration;
It is here where the safe manning certificate was discovered to be fraudulent and moreover the signatures where forge, this is a clear proof of criminal activity by the national laws of Honduras, in the database of the Honduran registry the vessel was reported inactive.

This types of issues are common and similarly dangerous, since the conditions of the ships cannot be monitored; it was as coincidence per se that the documents and the ship were discovered by the PSC;

Nevertheless, the vessel was released under the display of documents of exception issued by the OR, without being authorized to do so, a breach of the delegation agreement and an act of illegality against the Honduras flag.

Was the RO delegated? By all means, it was, it had a delegation agreement, but it was performing outside the scope of such agreement;

The supervision an proper monitoring of the RO can be a dissuasive tool to avoid those issues but as it was mention before if the administration has not the proper procedures established for that there will be no possible way to avoid fraud and forgery.

Another way common fraudulent situation can be the ones that are discovered by the referral of the shipowners as it was the case of the study case B); it was by the inquire of the shipowner that the case of forged certificate including a registration certificate was discovered.
The RO that issued those certificates had done so on previous occasions, and present year there were discovered a total of 4 cases of illegal issuance of certificates.

The RO had a delegation agreement, this delegation agreement stated that the scope of action would circumscribe only to ships that sail in national water of the ones whose port of call was Honduras, the RO did not reported any action that could call the attention of the administration, and it was until the shipowner consulted about the documents was the time when the administration got to know about the illegal actions.

Once again, the importance of having in place a proper system of monitoring and enforcement for the ROs to which each member state delegated its authority.

As is the case of the issuance of fraudulent certificates or the registration of phantom vessel, these cases are not only by ROs that do not have a delegation agreement, moreover it has been seen that the delegation agreement only opens the door to these actions since they are appropriately delegated but the lack of supervision or a national law and for that matter an international law to sanction this cases some of the ROs can take comfort and proceed to undertake those illegal actions under complete iniquity.

4.4 Possible Way by Which the Forgery and Fraud can be Eradicated.

As mention by the author in chapter two, the responsibilities of ROs, are to act on behalf of member states and member state has the responsibility to provide proper supervision on the scope of action of ROs.
The problem may arise when this supervision cannot be done for the same reason that there was a need in first place to delegate the authority to an RO; contradictory enough, is the fact that the security and safety international conventions prescribe the use of the ROs to undertake the certification of ships.

In the specific case of Honduras, its Organic Law as the only specialize maritime legal source establishes under its regulation of inspection, surveying, and issuance of maritime safety certificates to ships registered under the Honduran flag, prescribes the delegation but not a practical supervision method other than the vertical audits.

The delegation agreement is a national binding instrument, but if there is no legal framework to enforce it the possibilities of sanction are null in the case of a breach of contract, as seen under the case studies in chapter three.

None of the cases had a legal nation action other than an economic sanction, even though it is a crime to forge the signature of a government authority.

The verification of the documents previous to sign a delegation agreement might not be an assurance of the installed capacity of and OR to provide quality services,

Verification of the documents can also be a source of fraudulent documents, that were presented for the approval of delegation.

The only solution that can be observe viable at this point is a proper supervision of the ROs, not only by the member state but by the IMO member states as a whole;
Establishing an international oversight program that can apply an unify criteria of supervision as well as communication of results by the member states can become a solution.

The IMO guidelines as the RO code, have proven not to be enough to fight these recurrent issues; GISIS has also not given the results awaited;

Since the member states have not complied with the requirements of providing the information to GISIS, regarding the ROs and the information that might be in the system can, in some cases, be outdated.
Chapter 5

CONCLUSION:

This dissertation has a primary objective to provide a broader window to a persistent problem, and by that also to try to:

- Identify the weaknesses when it comes to the delegation to the recognized organizations when it comes to the requirements for the delegation itself.
- To analyze the importance of the Port State Control (PSC) when ensuring the legality of the technical certificates.
- Describe in a whole the traditional fraudulent situation in the roles of the recognize organizations through study cases.
- Identify a range of procedures to avoid the fraud and forgery of documents in the role of the recognized organizations.
- Prescribe possible ways on how the IMO can help fight this persistent issue.

Many inhibitory aspects were mention as well as responsive ones, as in the PSC in the case of detection of forged or fraudulent documents.

It was expected from the beginning of the research to acquire enough information regarding the procedures as well as the number of incidents, from the maritime administrations of countries that have an open registry.

Nevertheless, this was not accomplished for as much as the information that is supposed to be public has been classified as confidential by these 32 countries.

Consequently, it could be argued that there is a lack of transparency regarding important information that indirectly can contribute to the problem of forgery and fraud by not having access to the cases and name of organizations that are recurrent in these illegal actions, there has to be more
It is the opinion of the author that the delegation of authority to the RO, has been for a long time being taken slightly as the cases studies of fraud in chapter 3 where shown;

ROs with a delegation contract will have access to the documents of the administrations and just relaying in a doubtlessly manner might lead to cases of fraud and forgery being done without the knowledge of the administration and in decrement of the maritime safety and security directly affecting the maritime trade.

It is evident that there is a lack of supervision on the side of the maritime administrations, and this has to be acknowledged by IMO, with the same strength as it has been done with the fraud and forgery of the certificates of competency of the seafarers;

It has been in these cases that IMO through the member states have raised a flag and had made all the efforts to eradicate it; the same effort shall be put in the case of ROs; there has to be a more strict control at an international level.

It is understood through the research that the legal aspects of lability will and can impede to create a universal tool for the supervision and sanction, but the legislation will have eventually have to be changed, since the maritime trade as well as the maritime crime evolves rapidly.

It was touched upon the PSC as one of the most efficient tools up to now to detect and forged and fraudulent certificates and documents on board, it is not an infallible tool but though time has become a dissuasive one,

It is for this reason that the maritime administration invest more in the constant training of PSCO, since these are the only reassurance so far that the fraudulent and forge documents can be detected.
The cases that were presented in chapter 3, broadcasted an issue that might be happening in many other maritime administrations, it was a significant setback on the recollection of information not being able to have the information from the many maritime administrations of the open registries regarding the cases of forgery and falsification or for that matter the procedures in place to fight against this recurrent issue, but at the end it can be deduced that the administrations refrained from providing this information since it could put the maritime administrations in some disadvantage; nevertheless the objective of the dissertation was accomplished.

As it was mention throughout the dissertation by the author, the overview of the ROs will be a significant aid to fight this issue of illegality, but it is hard to demand proper supervision of the ROs to the maritime administrations, since that will mean that the administration will have to count on personnel with the technical knowledge;

Furthermore, in order to have more close supervision to count on the international level presence, being this the reason why ROs are delegated would be preposterous, and that is why the author recommended within this work and in many occasions the need to have an international entity to undertake this supervision and audits to avoid the illegal actions.

**Recommendations**

Based on the precedent conclusions, and the same time in the overall analysis of present work, taking in considerations the findings and the milestones found in the development of this present work the author would proceed to make the following recommendations:
There is a need to develop an international entity in charge of the overview of the ROs that do not have the status of IACS, this is indeed a responsibility of the flag states but it has been proven in some cases that there is no procedure in place that can keep up with the growing market of ROs, which in some cases are phantom organizations that lack entirely the minimum RO Code; there are delegated and act on behalf of some administrations giving; as a result many substandard vessels navigating in our international waters.

PSC as a complementary tool for the enforcement of international conventions as well as the guidelines on behalf of the member state, essential to remember that it does not substitute the concomitant job of the flag state, has to be improved technically, more investment has to be done on behalf of the member states having more qualified personnel on the PSC can make a big difference in the international fleets as well as the national fleets.

There has to be a global PSC data-based put in place where all the MoUs can share information in realtime, where information query regarding any ship can be made, and the information will be updated and readily available.

There is the need to develop a special database of all the cases of forgery and fraud committed and proved by the administrations, and this shall come in handy when the decision of contracting an ROs is made; this will work as a dissuasive tool for the irregular operating ROs to commit any illegal activity.

Based on the fact that 32 of 35 maritime administrations refuse to give the information requested which to some extent it should have been posted on the GISIS, but it was not even though it is a mandate of IMO, shows that there is a need to update and reinforce the maritime administrations of the member states to update their information, since this is one source that could actually help to avoid many cases of forgery and fraud by having access to the list of
ROs that have been delegated and to what extent they have been delegated, this would help the administrations, the PSC as well as the ship owners.

➢ The complexity of the legal situation when it comes to the sanction of this international actor has to be taken in consideration but it should not be an impediment, and there should be an international legal entity that could deal with the issues of forgery and fraud at an international level and from a point of view of an international problem that has a direct impact on the safety and security of the international maritime community and not only to the country in which the illegal activity takes place.
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APPENDIX I

Delegation agreement sample by the Maritime Administration of Honduras:


This Agreement pursuant to the legislation of the Government of Honduras in compliance with the section 18 ‘Delegation of authority’ of the “IMO Instruments Implementation (III) Code”, IMO Resolution A. 1070(28), “Code for recognized Organizations adopted by the Maritime Safety Committee in resolution MSC.349(92) and the Marine Environment Protection Committee in resolution MEPC.237(65) as amended, is between The General Directorate of the Merchant Marine of Honduras, hereinafter referred to as the “Administration” and Classification Society XXXX, and on behalf of all its affiliates, subsidiaries and their duly authorized officers, surveyors and representatives, hereinafter referred to as “XXXX”, with respect to the performance of marine statutory surveys and the issuance of relevant certificates to vessels registered under the flag of Honduras. Will be regulated by the following clauses:

This Agreement has been prepared with reference to section 8 ‘Authorization of Recognized Organizations’ of part 2 of the “Code for Recognized Organizations (the RO Code)” and in the format recommended by Appendix 3 of that Code.

1. PURPOSE

1.1 The purpose of this Agreement is to grant such authorization and to document the authority of XXX to perform statutory survey and certification services on behalf of the Administration in that role by defining the scope, terms, conditions and requirements related to delivery of those services.
2. GENERAL CONDITIONS.

2.1 Definitions

2.1.1 Terms that are defined in the RO Code have the same meaning in this Agreement.

2.1.2 The following terms are used in this Agreement and their meaning is defined as follows:

Classed: means a ship, which is issued with a “certificate of classification” by a Recognized Organization, which is otherwise authorized by the Administration.

IACS: means the International Association of Classification Societies.

Port State: means the authority of the State in whose port the ship is located.

QSCS means Quality Management System Certification Scheme.

1.2.1 Statutory certification services comprise the assessment of HONDURAS registered vessels in order to determine the compliance of such vessels with the applicable requirements of the international conventions, codes and national requirements (hereinafter referred to as "Applicable Instruments").

1.2.2 Statutory services rendered and statutory certificates issued by XXXXX will be accepted as services rendered by or certificates issued by the Administration provided that XXXXX maintains compliance with the provisions of the RO Code.

1.2.3 XXXXX shall perform statutory certification and services by the use of exclusive surveyors and auditors, being persons solely employed by XXXXX, or subsidiary and affiliate entities of XXXXX, duly qualified, trained and authorized to execute all duties and activities incumbent upon their employer, within their level of work responsibility. Use of sub contractors or other classification societies is subject to compliance with section 8.10 of this Agreement.

1.2.5 In giving effect to section 7.2 of Part 2 of the RO Code, Administration may be in attendance at IACS Vertical Contract audits undertaken of XXXXX operations it may also make a copy of resulting audit non-conformities or observations and corrective action plans available upon request of the Administration.
3 THE EXECUTION OF FUNCTIONS UNDER AUTHORIZATION

3.1 Functions in accordance with the general authorization

3.1.1 XXXX is hereby authorized to perform the functions associated with the general authorization specified in Appendix 1 of this Agreement.

3.2 Functions in accordance with special (additional) authorization.

3.2.1 Authorizations for provision of statutory survey and certification services outside the scope of Section 3.1.1 above, or other services available from XXXX will be dealt with by mutual agreement on a case-by-case basis.

3.3 Relationship between the organization’s statutory and other related activities

3.3.1 Noting section 2.3 ‘Independence’ of Part II of the RO Code, XXXX shall endeavor to avoid undertaking activities that may result in a conflict of interest regarding provision of services under these authorizations. If any conflict or potential conflict should arise, XXXX must refer the matter to the Administration.

3.4 Functions to Cooperate with port States to facilitate the rectification of reported port State control deficiencies or the discrepancies within the organization’s purview.

3.4.1 In so far as the statutory survey and certification services covered by this Agreement are concerned, XXXX agrees to co-operate with port State control officers to facilitate the rectification of reported deficiencies on behalf of the Administration on ships classed with XXXX and to review proposed action with respect to safe management system without non-conformities.

4. LEGAL BASIS OF THE FUNCTIONS UNDER AUTHORIZATION

4.1 Acts, regulations and supplementary provisions

4.1.1 XXXX must comply with the requirements specified in all legislative instruments when exercising the authorizations provided by the Agreement.

4.1.2 The Administration provide XXXXX the information or access to all appropriate instruments of national law giving effect to the provisions of the conventions, and specific requirements or processes to be followed in the conduct of the functions specified in the general authorization, notify XXXX of any additions, deletions or revisions thereto in advance of their effective date and specify whether the Administration’s standards go beyond convention requirements in any respect.
4.2 Interpretations

4.2.1 Whilst interpretation of the applicable instruments, as well as the determination of equivalents, or the acceptance of substitutes to the requirements of the applicable instruments are the prerogative of the Administration, KR may interpret the technical requirements of the instruments and recommend equivalents within the limits of those instruments in accordance with their technical standards to the Administration for consideration.

4.3 Deviations, Equivalent solutions

4.3.1 Deviations and exemptions from the requirements of the applicable instruments, or equivalent solutions, are the prerogative of the Administration and any certificates (if required) must be approved by the Administration prior to issuance.

4.3.2 In instances where the requirements of an applicable instrument cannot be met under particular circumstances on a temporary basis, XXXX will specify such measures or supplementary equipment as may be available to permit the vessel to proceed to a suitable port where permanent repairs or rectifications can be affected or replacement equipment fitted.

5 REPORTING TO THE FLAG STATE

5.1 Procedures for reporting in the case of the general authorization.

5.1.1 As required by section 3.9.2.1 of Part 2 of the RO Code XXXX shall establish appropriate communication processes to keep the Administration informed of the work being carried out by XXXX in accordance with the general authorization, and more generally as specified in the following sections.

Contact information of Administration: PHONE, EMAIL AND ADDRESS OF THE MERCHANT MARINE OF HONDURAS.

Contact information of XXXX:

5.1.2 All reporting under this Agreement shall be undertaken in the English language.

5.2 Procedures for reporting in the case of special authorization.

5.2.1 Reporting requirements for special authorizations shall be mutually agreed on a case by case basis.

5.3 Reporting on classification of ships (assignment of class, alterations and cancellations), as applicable.
5.3.1 XXX shall inform the Administration when a final decision with regard to the assignment of Class has been made by XXXXX. The information shall include any restrictions and essential conditions relating to the Class or statutory certificates regarding the operation and trading area of the vessel and any significant deviations from the rules of XXXX.

5.3.2 XXXXX shall advise the Administration promptly, in writing, whenever XXX suspends, withdraws, cancels, or substantially alters the operational limits of its Classification or statutory certificates for a vessel together with the reason(s) why such action was taken.

5.3.3 Where a ship is changing classification society XXXX is to provide the information specified in section 8.10 to the Administration.

5.4 Reporting of cases where a vessel did not in all respects remain fit to proceed to sea without danger to the ship or persons on board or presenting unreasonable threat of harm to the environment.

5.4.1 XXX shall promptly inform the Administration when a vessel is found to be in operation with deficiencies or discrepancies such that the condition of the vessel or its equipment does not correspond substantially with the particulars of its certificates or the requirements of applicable instruments such that, in the opinion of XXXX the vessel is not fit to proceed to sea without danger to the ship or persons on board or presenting unreasonable threat of harm to the environment.

5.4.2 If corrective action is not taken to the satisfaction of XXXX, then XXXX shall withdraw the relevant certificates and so inform the Administration.

5.5 Other reporting

5.5.1 The Administration shall be granted electronic access to documents including reports on surveys on the basis of which certificates indicated in Appendix 1 are issued or endorsed by KR.

5.5.2 KR undertakes to provide with the following information available to the Flag State under IACS Procedural Requirements:

a) Expiry Date of Class Certificate;

b) Overdue Surveys;
c) Due dates of statutory surveys;
d) Expiry Date of Statutory Certificate;
e) Registered Statutory Recommendations;
f) Overdue Statutory Recommendations;
g) Class Transfer Reporting;
h) Class Withdrawal Information.

6 DEVELOPMENT OF RULES AND/OR REGULATIONS – INFORMATION

6.1 Cooperation in connection with development of rules and/or regulations—liaison meeting

6.1.1 XXXX and the Administration, recognizing the importance of technical liaison, agree to co-operate in connection with development of rules, procedures and/or regulations and to maintain an effective dialogue toward this end.

6.1.2 XXXX may include in its rules and/or procedures:
(a) Requirements specified and communicated to XXXX by the Administration, specifically for statutory survey and certification services; and
(b) For requirements that are not stipulated by the Administration but necessary for the conduct of statutory survey and certification functions, XXXX should follow the applicable IMO/ILO guidelines.

6.1.3 XXXX shall allow participation in the development of its rules and/or regulations by the Administration.

6.2 Exchange of rules and/or regulations and information

6.2.1 XXXX shall have a system in place to provide to the Administration, or that the Administration can readily access, all XXXXX rules and regulations.

6.2.2 The Administration will make available to XXXX all necessary legislation and circulars via electronic means.

6.3 Language and form

6.3.1 Regulations, rules, instructions, report forms and the information specified in sections 6.1 and 6.2 shall be written in English.
7. OTHER CONDITIONS

7.1 Remuneration.

7.1.1 Remuneration for statutory survey and certification services carried out by XXXX under this Agreement will be charged by XXX directly to the party requesting such services.

7.1.2 The Administration and XXXX do not invoice each other for any costs or financial burden caused by this agreement.

7.2 Rules for administrative proceedings

7.2.1 Section 7.8 addresses settlements of disputes between XXXX and the Administration.

7.3 Confidentiality

7.3.1 In so far as activities related to this Agreement are concerned, both XXXX and the Administration shall be bound by confidentiality provisions to be agreed between them. Other than as detailed in this Agreement, confidential information will not be released by either party without reasonable consultation with the other.

7.3.2 A duty of confidentiality shall not apply to the extent disclosure made in accordance with a statutory obligation under applicable law, or to a person professionally bound by a duty of confidentiality, or in accordance with the obligations XXXX has towards flag state administrations and other international organizations.

7.3.3 In the event that information is released under section 7.3.2, the releasing party shall advise the other party of that release as soon as possible.

7.4 Liability and Financial responsibility

7.4.1 In the context of this Agreement, if liability is finally and definitively imposed on the flag administration for loss or damage to property or personal injury or death, which is proved to have been caused by a willful act or omission of XXXX, its bodies, employees, agents or others who act on behalf of XXXX, the Administration shall be entitled to indemnification from XXXX to the extent the said loss, damage, injury or death is, as decided by a court or as agreed between the Administration and XXXX, caused by XXXX.
7.4.2 In the context of this Agreement, if liability is finally and definitively imposed on the flag administration for personal injury or death, which is proved to have been caused by any negligent or reckless act or omission of XXXX, its employees, agents or others who act on behalf of XXX, the Administration shall be entitled to indemnification from XXXX, to the extent the said personal injury or death is, as decided by a court or as agreed between the Administration and XXXX, caused by XXXX, up to but not exceeding an amount of USD 5 million (five million US dollars).

7.4.3 In the context of this Agreement, if liability is finally and definitively imposed on the flag administration for loss or damage to property, which is proved to have been caused by a negligent or reckless act or omission of XXXX, its employees, agents or others who act on behalf of XXXX, the Administration shall be entitled to indemnification from XXXX, to the extent the said loss or damage is, as decided by a court or as agreed between the Administration and XXXX, caused by XXXX, up to but not exceeding an amount of USD 2.5 million (two point five million US dollars).

7.4.4 Neither party shall be liable to the other for any special, indirect or consequential losses or damages resulting from or arising out of services performed under this Agreement, including without limitation loss of profit, loss of production, loss of contract, loss of use, business interruption or any other special, indirect or consequential losses suffered or incurred by any party howsoever caused.

7.4.5 Without prejudice to what is stated above, for any claim arising out of XXX’s performance or non-performance under this Agreement, XXXX, its officers, employees, agents or others who act on behalf of XXX, shall be entitled to claim the same defenses (including but not limited to any immunity from or limitation of liability) as would be available to the Administration’s own personnel if they had themselves performed the work.

7.4.6 If the Administration is summoned or is expected to be summoned to answer for such liability as mentioned above in this clause, XXX shall be informed without undue delay. The Administration shall, for information purposes, send all claims, documents and other relevant material to XXXX should XXXX request to receive same. XXXX
shall be entitled to provide support and/or participate in the defense of such claim, if XXXX, in its sole discretion, deems it necessary or appropriate. If the Administration fails to plead all reasonable available defensive measures, then shall not be required to indemnify the Administration in accordance with sub-clauses 7.4.1, 7.4.2 and 7.4.3 above.

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

7.4.8 Each party shall not be liable to the other party for non-performance or delay in performance of any of its obligations under this Agreement due to war, fire, flood, earthquake, tornado, law amendment, court judgment, government action, labor dispute or any other causes reasonably beyond its control. Upon the occurrence of such a force majeure condition, the affected party shall immediately notify the other party of any further developments. Immediately after such condition is removed, the affected party shall perform such obligation with all due speed. If a party neglects its duties to carry out its obligations under this Agreement without justifiable reasons after the force majeure condition is removed, the other party may request performance under this Agreement, and terminate this Agreement if appropriate action is not taken within 90 days of the request.

7.5 Entry into force.

7.5.1 This Agreement enters into force on the later date it is signed by both KR and the Administration, as then noted in section 11 of the Agreement.

7.6 Termination

7.6.1 This Agreement may be terminated by either party by giving the other party 12 months written notice, or a shorter period as agreed between the parties.

7.6.2 If an authorization is suspended or withdrawn or the whole authorization of KR is terminated, the relevant certificates issued by KR shall remain valid until the end of the survey window for the first due survey, unless otherwise decided by the Administration.

7.7 Breach of the Agreement
7.7.1 If this Agreement is breached by one of the parties, the other party will notify the violating party of its breach in writing to allow the notified party the opportunity to remedy the breach within 90 days, failing which the notifying party has the right to terminate the Agreement immediately.

7.8 Settlement of disputes

7.8.1 The Agreement shall be governed by and construed in accordance with the laws of the Country of Honduras.

7.8.2 A party to this Agreement may give written notice to the other party that a dispute has arisen under this Agreement, such notice to include adequate particulars of the matters in dispute and nominate a representative to negotiate and settle the dispute.

7.8.3 The existence of a dispute between the parties will not relieve the parties of their respective obligations in accordance with this Agreement.

7.8.4 Any dispute arising in connection with this Agreement including any question regarding its existence, validity or termination, which cannot be settled by private negotiations as outlined above, shall be resolved by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

The language of the arbitration shall be English.

7.9 Use of sub-contractors

7.9.1 As noted in section 2.4, normally, surveys shall be carried out by surveyors working exclusively for XXXX. If, XXXX finds in exceptional and duly justified cases that its own exclusive surveyor is not available, then the survey or audit shall be performed by an exclusive surveyor or auditor of another RO that has an agreement with the Administration.

7.9.2 While still remaining responsible for the certification on behalf of the flag State, XXXX may subcontract radio surveys to non-exclusive surveyors or service suppliers in accordance with section 4.2.4 of Part 2 of the RO Code.

7.10 Issue of the Agreement

7.10.1 This Agreement, consisting of general clauses and an Appendix, is issued in counterpart and may be executed by the parties independent of the other.
7.11 Amendments
8.11.1 Amendments to this agreement and Appendix shall become only after consultation and written agreement between the Administration and XXXXX.

8. SPECIFICATION OF THE AUTHORIZATION FROM THE FLAG STATE TO THE ORGANIZATION
8.1 Ship types and sizes.
8.1.1 XXXX is authorized to provide statutory survey and certification services to vessels of the types and sizes defined in all applicable instruments.
8.1.2 For the purpose of this agreement, this authorization applies to vessel registered under Honduras Flag.
8.2 Conventions and other instruments, including relevant national legislation
8.2.1 Applicable conventions and relevant national legislation are detailed in Appendix 1 to this Agreement.
8.3 Approval of drawings.
8.3.1 This authorization permits XXXX to:
(a) approve stability documentation;
(b) evaluate calculations; and
(c) approve procedures, plans, manuals, etc.
as related to the certificates and other documentation required by the conventions and other instruments listed in Appendix 1 of this Agreement.
8.4 Approval of material and equipment
8.4.1 This authorization permits XXXX to approve material and equipment as related to the certificates and other documentation required by the conventions and other instruments listed in Appendix 1 of this Agreement.
8.4.2 When material or equipment:
(a) is of a novel nature, experimental or of a kind not seen before;
(b) Specifications or testing requirements are not fully developed and/or internationally agreed, or experience of their usage is limited;
(c) Has been subjected to significant design changes resulting from in-service experience; or
then the Administration must be consulted before accepting any approval issued by XXXX for any such item intended to be fitted on board a Honduras Flag registered vessel.

8.5 Surveys.
8.5.1 The surveys and inspections that may be undertaken by XXXX on behalf of the Administration are those prescribed in Appendix 1 of this Agreement.

8.6 Issuance of certificates
8.6.1 The certificates that may be issued by XXXX are those prescribed in Appendix 1 of this Agreement.
8.6.2 XXXX shall not issue statutory certificates to a ship which has been declassed or is changing class in response to adverse survey outcomes before giving the opportunity to the Administration to give its opinion within a reasonable period as to whether a full inspection is necessary. Where time does not permit consultation with the Administration, then XXXX is to undertake a full inspection.

8.7 Corrective actions
8.7.1 In connection with work carried out under authorization in accordance with this Agreement, XXXX, its employees and others acting on behalf of XXXX, are authorized to issue recommendations and otherwise take such action as is necessary to ensure that matters subject to survey and inspections correspond substantially with the particulars of the vessel’s certificates or the requirements of applicable international conventions and/or national laws/regulations.
8.7.2 If, after allowing reasonable time to rectify, the general condition of a vessel or its equipment does not correspond substantially with the particulars of any of its statutory certificates, or if its condition is found to be such that the vessel is not fit to proceed to sea without danger to the ship or persons on board, or is presenting an
unreasonable threat of harm to the marine environment, then XXXX shall immediately revoke the applicable statutory certificates.

8.7.3 In instances where the requirements of a relevant convention cannot be met under particular circumstances (e.g. appropriate repair or service facilities are not available), an email or facsimile report should be without undue delay sent to the Administration giving details of the problem and arrangements made.

8.8 Withdrawal of certificates

8.8.1 XXXX shall have the right and obligation, if deemed necessary, to suspend and/or withdraw any certificate issued by XXXX.

8.8.2 The Administration and the owner and operator of the ship in question shall be informed immediately if any statutory or class certificates are suspended or withdrawn.

8.9 Reporting

8.9.1 With regard to the reporting requirement related to the authorizations contained in this section refer to Section 6 of this Agreement.

8.9.2 The Administration shall provide XXXX with all necessary documentation for the purpose of XXX's provision of statutory certification services. 7.9.3 XXXXX and the Administration, recognizing the importance of technical liaison, agree to cooperate toward this end and maintain an effective dialogue.

8.10 Change of Recognized Organization

8.10.1 In the event that a vessel in classification changes from another authorized classification society to XXXX, XXXX shall endeavor to ensure that it has obtained all, to its knowledge, relevant information on the survey status of the vessel, including structural and operational limitations and outstanding recommendations given by the previous classification society.

8.10.2 The structural and operational limitations of the vessel shall be evaluated and agreed to by XXXX.

8.10.3 The procedures above shall be carried out before assignment of Class to a vessel by XXXX.
8.10.4 If the vessel is not classed, or is transferring class from a non-IACS member society, then full plan approval and survey must be carried out before acceptance into XXXX.

8.10.5 For vessels leaving XXXX the same kind of information shall be submitted to the recipient classification society upon request.

9. THE FLAG STATE’S SUPERVISION OF DUTIES DELEGATED TO THE ORGANIZATION.

9.1 Documentation of quality assurance system

9.1.1 The Administration will be given the opportunity to satisfy itself that XXXX’s quality system continues to comply with the requirements of sections 3, 6 and 7 of Part 2 of the RO Code.

9.1.2 XXX undertakes to give the Administration access to documentation concerning the quality management system implemented by XXXX on request.

9.1.3 Whilst the Administration may require access to audits performed on XXX by an ACB, or by independent auditors representing the interests of flag State administrations or the IMO, the Administration also reserves the right to conduct direct auditing of XXX, the frequency and extent will be subject to mutual agreement between the Administration and XXX but no less than every two years.

9.2 Access to internal instructions, circulars and guidelines

9.2.1 XXX undertakes to provide to the Administration on request instructions, rules, internal circulars and guidelines as well as other information showing that the authorized functions are being carried out in accordance with the rules and regulations that XXX has in place.

9.3 Access by the flag State to the organization’s documentation relevant the flag State fleet

9.3.1 In addition to the information prescribed within section 5 of this Agreement XXX will, upon request, provide any additional information that may be necessary for the effective oversight of Honduran flag vessels in class with XXX, provided such information is not of a privileged nature that would preclude such release.

9.4 Cooperation with the flag State inspection and verification work.
9.4.1 In accordance with section 7.1.1 of Part 3 of the RO Code, the Administration shall satisfy itself that the functions authorized to be executed under this Agreement by XXXX are effectively carried out. This shall be done, in part, by performing random inspections of the ships in its fleet. The Administration will notify XXXX of these inspections in advance whenever possible and advise XXXX of the resulting findings.

9.5 Provision of information and statistics on, e.g. damage and casualties relevant to the flag State fleet.

9.5.1 XXX is to provide the documents and reports detailed in section 6 of this agreement.

9.5.2 In addition, with respect to a classed Honduras Flag ships, XXX is to provide copies of the following to the Administration as soon as reasonably practical after they have been issued or produced:

(a) Reports of any unscheduled inspections of the vessel where these are associated with a deficiency or detention identified during port State control;

(b) Reports of KR and/or any investigation report conducted by KR with respect to the detention of, damage to or loss;

(c) Reports of Marine Incidents.

9.5.3 Reports required by 9.5.2 should be provided to the Administration in electronic form.

10. COMMENCEMENT OF THE AGREEMENT.

This Agreement commences on the later date that both parties have signed.

IN WITNESS WHEREOF the undersigned, duly authorized by the parties who signed this Agreement.

Name:  
Position:  
For [xxxxxxxxx]  
For [Name of Administration]

Date: ..................................
ANEX Nº I
AGREEMENT GOVERNING THE DELEGATION OF STATUTORY CERTIFICATION SERVICES FOR VESSELS REGISTERED IN HONDURAS, BETWEEN THE GOVERNMENT OF THE REPUBLIC OF HONDURAS AND THE “XXXX”.

APPLICABLE INSTRUMENTS AND DEGREE OF AUTHORIZATION
The General Directorate of the Merchant Marine by this act AUTHORIZES the “XXXX” to act on behalf the Republic of Honduras to realize the Inspections and Certifications for Honduran registry vessels in accordance to Resolution FAL.2/Circ.131, MEPC.1/Circ.873, MSC.1/Circ.1586, LEG.2/Circ.3., concerning to “Certificates and Documents required to be carried on board a ship List, 2017”, and based on the following International Conventions:
2. International Regulations for Preventing Collisions at Sea 1972.
ANNEX Nº II

FROM THE AGREEMENT GOVERNING THE DELEGATION OF STATUTORY CERTIFICATION SERVICES FOR VESSELS REGISTERED IN HONDURAS, BETWEEN THE GOVERNMENT OF THE REPUBLIC OF HONDURAS AND THE “XXXX”.

REPORTING TO “THE ADMINISTRATION”

1. The “XXXX” shall notify “THE ADMINISTRATION” of the issuance of the Cargo Ship Safety Construction Certificate, Passenger Ship Safety Certificate, and Load Line Certificate, with relation to the new constructions to be registered in Honduras and subsequently of the renewal of such Certificates, enclosing copies of the Issued Certificates.

2. The “RO” shall provide on a trimester basis, a report to “THE ADMINISTRATION” of the conditions of each ship.

3. If the follow up of the “RO” in the Memorandum of Understanding, should appear as a priority one of risk or low performance, it will be enough to terminate the present Agreement By “THE ADMINISTRATION”

4. The “XXXX” shall provide to “THE ADMINISTRATION” the corresponding information of the navigation area and the operation ports of the vessels navigation.