

CLASSIFICATION SOCIETIES

INTRODUCTION TO THE PANEL ON CLASSIFICATION SOCIETIES

by Dr. Frank Wiswall

Ladies and Gentlemen: You will have read the Report on the Joint Working Group on a Study of Issues re Classification Societies which begins on page 328 of the CMI Yearbook 1996, so I will not bore you with a lengthy introduction to this very interesting subject.

Suffice it to say that what is presented in the Yearbook is the fruit of five years of labor on the part of persons from various sectors of the industry who have been intent upon resolving a number of difficult and contentious issues. I am happy to say that complete agreement has been reached within the Joint Working Group on one important document, the Principles of Conduct for Classification Societies. It is the first document of its kind, and in addition to establishing a standard for measurement of the performance, it has a bearing upon one of the core issues in the other document – the liability and limitation of liability of Classification Societies.

The other document is, in terms of printed text, 99% agreed. Unfortunately it is necessary for you to mark the text of the Model Clauses at page 341 with square brackets around clause 8 and around the last few words in clause 9(a), beginning with the word “multiplied” in line 3. As you see, the remaining difficulty is over what is usually the most troublesome point, limitation of liability.

The whole exercise began, as the Report makes clear, with an examination of the problems posed by an increasing frequency of claims against the Societies. Some of this, the Societies admit, is attributable to themselves; but in large part the jump in claims results from the search by claimants for a “deep pocket” in addition to the shipowner and his insurers.

An attempt will be made to bridge this final gap at one or two future meetings of the Joint Working Group. If it succeeds we will have triumphed over all the odds, which were from the outset truly formidable. If we fail, the familiar square brackets will appear around an “X” and a “Y” in the final text, leaving it to the Societies and their clients to work out a limitation – with out internationally-agreed benchmarks – whenever an individual contract is negotiated. Clearly success here is better for the industry than failure.

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This morning we will see where the principal interests stand at present on the open issue. You will hear from two individuals who have been deeply involved in this work from the beginning. Our first speaker is Mr. Amund Skou, Vice-President and General Counsel of Det Norske Veritas, who has been sitting behind the "IACS card" at all the meetings of the Group; I know from experience that we can count on Amund to "tell it like it is" from the IACS viewpoint. Our second speaker is Dr. Bernd Kröger, who has been sitting behind the "CMI card" at the group's meetings and who is a Titulary Member of the Comité, but who speaks today from his viewpoint as the Managing Director of the German Shipowners' Association and also the Chairman of the Maritime Law Committee of ICS. Let us hear what these gentlemen have to say, and then we will entertain questions and comments for the remainder of our allotted time.

**PRESENTATION ON BEHALF OF IACS TO THE
CENTENARY CONFERENCE OF THE CMI**

By A.W. Skou, DNV

The CMI Joint Working Group on Classification Societies.

Ladies and Gentlemen – Colleagues

I am head of Corporate Legal Affairs at DNV in Oslo. However, today my function is to represent IACS which is a participant in the Joint Working Group on Classification Societies. The work of this group has just been presented to you by Frank Wiswall and we thank Frank for his able chairmanship.

A. The beginning of the exercise.

Before commenting on the results of the Working Group, allow me briefly to go back five years.

CMI took the initiative on this work to discuss certain legal aspects related to classification societies. IACS was invited to participate and has attended every meeting of the Group during these five years. Throughout this exercise IACS has participated in a positive and constructive manner. We think the initiative by CMI was important and timely and we have enjoyed the close co-operation and communication during these years with the other important members of the international shipping community. The classification societies have not always been effective in their communication within the industry. However, I think we have improved. And I think the CMI work also has presented an opportunity to the class societies to reaffirm to the industry that we are a part – an important part – of the shipping world.

The basis for the Joint Working Group task was presented as follows by CMI five years back:

"The premise for this undertaking is that the classification societies play

a unique and increasingly vital role in the promotion of maritime safety and environmental protection. A considerable problem is felt to be the frequency of claims against the classification societies as additional “deep pocket” defendants. If this claims exposure to the societies was of continue unchecked, the societies could, *in extremis*, be forced to withdraw some of the services which they perform in the public interest – the necessary implication being a deterioration in maritime and environmental safety”.

In other words: CMI launched this initiative in an attempt to help the classification societies to establish an appropriate level of protection. I would like to emphasise this point. I think it is important for this Conference to have this in mind when considering the final result of the Working Group.

IACS are pleased to note that useful model contractual clauses and principles of conduct have been formulated as an important result of the Group’s work.

B. The rationale for limitation.

I would also like to add another observation before commenting upon the result of the Working Group:

Classification societies have always offered their services under provisions providing for limitation of liability. I think there is no question about the fact that the liability should be limited also in the future. As for myself, I have never met any customer, underwriter or any other direct or indirect user of the classification service – or lawyer for that matter – who has questioned the fact that classification societies ought to enjoy limitation of liability. It is not on this point that there are differences of opinion. The debate has focused, however, on the appropriate level of limitation.

When discussing that level, I think it is important to start with some basic observations as to the reasons for limitation. I think these are fundamental and I think their nature is important when discussing the overall liability exposure of classification societies. The major reasons are as follows:

1. The classification service does not add to the risk picture. The purpose of classification is to reduce the risk, not to increase it. The classification society does not replace other participants in the industry. The classification society operates in addition to others, not instead of. Hence, the incident is not caused by a classification society, but by others. The potential error or default by the class society in most cases is the fact that something that should have been discovered was nevertheless not discovered.
2. Classification often relates to assets of high value and therefore the class society is exposed, potentially, to high risks. These risks do not correspond to the level of classification fees charged. The fees are based upon the service performed, not the values of the assets surveyed – and certainly not the tonnage; I shall come back to this later.
3. It is expected that the class societies shall be in the forefront of technology. For example, in the past decade or two we have been involved with the industry in exiting new developments like high speed light craft and FPSO’s. In such situations, we cannot always base our decisions on many years

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of survey experience and/or many years of research and development. In some cases a specific project might be regarded more as a research project than a straightforward operational matter. In spite of this, it is expected that the class societies take a firm position. It nevertheless, things go wrong, the societies should not face a huge claim.

4. The class service is performed for our fee-paying customer, but is regularly relied on by many more such as underwriters, cargo-owners, cargo-underwriters, secondhand vessel buyers, governmental authorities, banks, etc., etc. In other words, the class society communicates with many different parties, and the consequence for failure is correspondingly high.

5. The classification service is performed in the public interest. If the liability exposure is high, this public interest service becomes more expensive or might even be abandoned to be taken on by governments enjoying sovereign immunity.

6. High liability exposure is often used as an argument for motivating high quality performance. However, the highest motivating factor for class societies is our dependence on the trust and confidence of the market. If customers, flag authorities, underwriters and others do not have confidence in the individual society, that society will wither and die. That is the driving force behind all quality-driven classification societies.

These were some arguments for liability limitation. How can CMI help establish such protection on the right level? This was the original objective of the working group – five years ago, as quoted above. Please understand we are not asking for *immunity* from liability.

C. What is the proper liability level, and what is the right limitation mechanism?

This is a difficult question because of the following elements:

1. There is a dramatic difference between potential risk/loss and the fee charged.
2. The size of the fee varies widely. Anything from USD 1,000 to USD 1 million or more. A typical annual classification survey fee for one ship may be in the region of USD 20.000.

During the first 4 years of work within the Joint Working Group the fee was the only basis for drafting a limitation clause. Suddenly, during the last year, the tonnage of the vessel has emerged, as an alternative. However, I shall quote from the report of the Group – the Joint Working Report (page 331 in the CMI Yearbook 1996):

“It is not the size of the ship, but the service rendered by the Society – whose value is measured by the amount of the fee for the service which is payable by the shipowner – which in the final consensus of the Group forms an acceptable basis upon which to calculate a limitation of liability”.

Tonnage as a criterion for limitation is unacceptable. Tonnage has no relevance to the class service. Tonnage as a criterion will also invite comparison with the liability of the shipowner under the Limitation Convention. This is absolutely unacceptable to IACS. As an example: a

100.000 tonne vessel will represent a potential liability of USD 45 million. This Conference should appreciate that this is utterly unacceptable to IACS.

The limitation of liability for classification societies must be very different from the limitation applying to shipowners. Shipowners are in full control of the operation of the vessel at all times. The owner has full control over the level of maintenance, the quality of the operation, the manning, the waters in which the vessel trades, etc. In comparison, the role of the classification society is important but it is much more peripheral to the vessel. The surveyor only visits the ship intermittently and for brief periods. Therefore, it is unfair that the two parties should be treated equally as regards liability exposure.

Another factor comes into play, which is of a legal nature, namely the difference in jurisprudence and actual court cases in various parts of the world. In some jurisdictions, we have seen recent major decisions rendered by, for instance, the House of Lords and the Court of Appeal⁽¹⁾ where it has been held that class societies do not owe any duty of care towards third parties. Therefore, class societies which may face claims in these jurisdictions would be less likely to expose themselves voluntarily to high liability through the CMI work. In other parts of the world the law is less certain for the very reason that very few cases have ever been tried. In most jurisdictions, therefore, it is an open question whether class societies are subject to liability towards third parties. These differences in the international jurisprudence creates difficulties when trying to establish a common level of liability exposure applying to all classification societies in all parts of the world.

All these factors, and many more, make it difficult to establish a common basis for a global model clause on liability limitation for classification societies. If one adds to this a natural conservatism on the part of classification societies (which may or may not be justified), one can easily see the difficult task that CMI has taken upon itself

D. The draft Model Contractual Clauses.

I shall not go into any detail concerning the content of each of these clauses. However, two clauses have attracted special attention during the last few months.

1. The overall liability limitation.

The work of the Joint Working Group has taken place over a period of five long years. Only very recently did a strong disagreement emerge within the Group. A preliminary recommendation from CMI is found in the Conference document which has been submitted to each Conference participant. In that document the limitation is defined through two criteria:

Namely:

⁽¹⁾ "The Nicholas H" House of Lords, and *Reeman vs. Department of Transport & others*, C.A. 1997.

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Ten times the classification fee, or
USD 4 million, whichever is the higher.

This is however, not confirmed to be the joint solution by the entire Joint Working Group. ICS and the International Group of P&I Clubs I have indicated that the level is too low. IACS has confirmed that the level is too high. The present position of IACS is that we are prepared to accept a cap as high as 2 million dollars or ten times the fee, whichever is the *lower*. As you will see, this is different from what you see in your conference papers (see Article 9). However, if everyone can agree, IACS is prepared to discuss an increase in its exposure provided it is capped at a sensible level.

IACS supports the idea that we should try to find a common solution on this. We think it is a benefit to the entire industry that common recommendations are found as a consequence of discussions and co-operation between all participants in the industry.

If this is not possible, IACS will continue to rely on their respective liability clauses and the present international case law and jurisprudence.

2. *No liability for indirect losses.*

The other point subjected to hectic debate within the Joint Working Group lately has been Article 8 concerning exclusion of indirect losses. IACS has confirmed categorically, all through the work of the Joint Working Group, that such a clause must be included. This is in full correspondence with the other agreements that we conclude for services other than classification, typically for certification and other services within the offshore industry. It is a standard term and it is widely accepted in most industries – we claim, in all industries. We see no reason why such a provision should not be included in the model contractual clauses. We feel we have had the support from the Joint Working Group as a whole.

E. Principles of Conduct for Classification Societies.

The other document that the Joint Working Group has drafted is the Principles of Conduct. The contents are presently agreed upon by all participants. IACS feels that the document is an adequate description of the service and the way that the class societies should conduct their business. However, IACS looks upon both documents (the Principles of Conduct and the Model Contractual Clauses) as one package and we think it is essential that the one is not adopted by this Conference unless and until the other is also finalised and adopted. Therefore, since we have not reached agreement on the level of liability in Article 9 of the Model Contractual Clauses, IACS will reserve its position and will not adopt and will not recommend adoption of the Principles of Conduct.

F. Concluding remarks.

IACS has enjoyed the cooperation within the CMI Joint Working Group these last five years. We would welcome a final solution to the Model

Contractual Clauses. We believe that the remaining work should be sent back to the Working Group, where efforts should continue to resolve outstanding differences.

**PRESENTATION ON BEHALF OF THE GERMAN
SHIPOWNERS' ASSOCIATION
AND OF THE MARITIME LAW COMMITTEE OF ICS**

by Dr. Bernd Kröger

1. Permit me to make a preliminary point.

The ocean shipping industry is reliant on efficient and competitive services from classification societies. Such services are today especially provided by the large societies, mainly but not always by the group of classification societies represented by the IACS.

These organisations provide services in competition. Competition guarantees that safety, efficiency and cost-effective commercial operations are not contradictions. The promotion of safety in competitive markets should therefore in future remain the joint goal.

The modern industrial society has growing demands on safety in sea transport and on the safety and environmental protection standards of ocean-going ships. Political attention given to ship and environmental safety is also correspondingly growing. Following on from this, there must be increasing levels of responsibility among all those professionally involved with safety in sea transport. This concerns shipowners, insurers and classification societies. They are involved in a safety partnership. This leads to divided spheres of risk and divided responsibilities, but to a single goal: The goal of guaranteeing optimum ship safety according to the available technology, with modern management structures in markets which are open to competition.

Divided responsibilities include the readiness to take on liability. This means liability is an important component of a modern safety partnership. It signals the readiness to face up to your responsibility and if necessary to commit your own financial resources. It is part of the public perception of market participants.

2. It is within this framework that the liability and limitations of liability of classification societies must be developed. This firstly involves their liability to their contract partner – to the shipping company – and secondly also their liability to third parties which are not involved in the contract.

Many of the contracts with classification societies, which are signed in today's markets, exclude all liability or provide that liability is limited to a small amount.

But the climate is changing – perhaps slowly, but noticeably.

3. The European Commission in its communication "Towards a New Maritime Strategy" puts great weight on firmer improvements to ship safety.

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It calls for "legislative actions on financial sanctions for cargo owners who knowingly or negligently use sub-standard shipping." I will not examine at this point whether such new laws would be sensible. But if consideration is being given to rules for joint financial responsibility for cargo owners regarding the safety of a ship, how close are we to legal definitions for the liability of classification societies? One point should be clear: Such a regulation would not lead to an exemption from liability, but would establish high liability levels.

The OECD is currently discussing sea transport safety in its shipping committee. The committee wants to examine under what conditions legal obligations could be created to put greater responsibility for ship safety on parties involved in sea transport which are not shipping companies. Classification societies are clearly named here. The "public perception" of classification societies is here under discussion too. The discussion is also about the question of responsibility and so also liability.

When regional and international organisations start examining a theme that belongs on the agenda of the IMO, it will not take long before the IMO, too, starts discussing similar ideas. In earlier IMO resolutions, the question of responsibility and liability of classification societies was given clear attention. If liability of classification societies had played a role in the IMO's discussions in 1996 when it examined the increase of liability sums in the 1976 Convention for shipping companies, we would today probably have liability regulated in a convention, connected with a tonnage-based limitation of a substantial size. This would have the advantage of also regulating liability against third parties. But the financial liability level would probably be high.

The most recent legal decisions in the USA (*Sundancer* case) and in the United Kingdom (*Nicholas H.*) involved rulings in favour of classification societies. But the ruling from the House of Lords was a majority judgement. Having in mind what I have said before I am sure this decision will not be the last word. What is also interesting is that the prominent cases to date have been heard in common law jurisdictions. Rulings in civil law jurisdictions might not necessarily follow the trend of the common law courts.

In my view, the paper we have before us should not be judged only on the question of whether one or other clause is weighted towards classification societies or is framed in the interests of the shipping industry or its insurers. More important is the question of if and how a proposal from the CMI on liability and liability limits for classification societies can be integrated into the legal/political development, and whether the CMI can influence this process.

4. If we lay down this position, I come to the following conclusion:

a) The CMI proposes Model Clauses for contracts with classification societies. These could only govern contractual claims. Claims from third parties, based on tort, could only be limited by laws or conventions. This could not be offered by model contractual clauses valid between the classification societies and their customers.

b) With this limitation, the Code of Conduct for classification societies should, in my opinion, be viewed positively. It defines the duty of care classification societies have towards shipowners. This means the area of performance of the classification society is contractually defined. In addition

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it is clear that the classification society is not taking the place of the shipowner, who – as is legally defined – has a “non-delegable duty to maintain a seaworthy vessel”. This duty of the shipowner is not changed. The classification society must make it possible for the shipowner to fulfil his duty. The society must survey and certify the ship “acting with reasonable care” according to its technical regulations. The society must discover deficiencies, inform the shipowner of these deficiencies and to require the owner to remove the deficiencies within an appropriate time limit if the class certificate is to be retained. If the shipowner does not take action and a loss occurs, the shipping company alone is liable. But if the classification society negligently fails to discover a major deficiency or does not inform the owner of the discovered deficiency, or does not require the deficiency to be remedied in an appropriate time, or if the society’s regulations do not reflect current technology, then the society would break its obligations to the shipowner. If a loss occurs because of this, there would be an entitlement to compensation. The draft now presented establishes this principle, and this should be welcomed.

c) The classification society is also liable for claims arising out of services by its employees. A condition is that the employees are “acting within the scope of their employment”. This clause has been criticised in the market. I believe it is correct. It reflects civil contract law, at least in European countries. The clause must of course be read in connection with the Code of Conduct. According to the Code’s clause 5 (d), the classification society has a duty “to utilize suitably qualified persons in the performance of its services”. The classification society has broken this duty if it employs a non-qualified surveyor, or takes no action when it is informed that a surveyor has exceeded the areas of his competence. The classification society would then be liable under general contract law. If it has fulfilled these duties, it would not be liable, even if a surveyor has taken action without authorisation outside his scope of employment. This concept should in my view be approved.

d) I have a more critical assessment of the financial liability levels which would be provided by the proposed clauses.

This would consist of two sections. These are clauses 8 and 9 of the Model Clauses. Under these, the classification society will not be liable for “indirect losses”. The liability sum “shall be the amount of a fee for the service giving rise to the liability multiplied by 10, or 3 million units of account, whichever is the greater amount”.

This liability volume is in total too low.

Clause 8 does not define how the difference between a direct loss and an indirect loss will be determined. This is left to national law and to the legal process. The decisive factor here was that the Working Group could not reach agreement on this point. Normally loss will involve a financial loss. Only occasionally would damage to property take place that develops into a financial loss. In many cases there will only be a financial loss. Then the question arises about when such a financial loss is a direct loss, and when it is an indirect loss. This should be made clear in the clause itself. This does not mean the classification society should be held responsible for “remote damages”. Obviously a causal connection and a proximity must exist between

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the action which caused the loss and the loss itself when these requirements are fulfilled, liability must be taken for the loss. An exclusion of financial losses for the reason they are indirect would not be accepted by the market if simultaneously the liability sum is fixed at relatively low levels, as is currently the case in clause 9.

There are some demands from the market that the level of liability for the classification society should correspond to the level of the shipowner's liability. As with shipowners, it would therefore be orientated to the ship's tonnage. The classification societies fear they would so become the insurer of the shipowner. This is not correct. The legal responsibilities and the basis for liability of the shipowner and those of the classification societies are and remain different. The point here purely concerns the liability level. Its upper level need not cover the full loss in every case. But it must reflect an appropriate relationship to the level of a possible damage. The tonnage of the ship would have the advantage of being an objective method of measurement upon which the parties have no influence. Certainly it would be possible to discuss whether the liability level of the classification societies should be set at 100% of tonnage or at a lower percentage level of tonnage. This would prevent the false impression that the liability of the shipowner and the classification society could be identical. We are not dealing with "implied guarantees" but "liability for negligence". However, up to now a compromise has not been possible in this question.

If such a compromise cannot be created on the basis of the tonnage of a ship, another form of liability measurement is of course possible. If, for example, the question is asked about how high the sum is today for which classification societies insure themselves against liability claims, then the answer is generally accepted to be between 25 and 100 million dollars per incident. So this is far higher than the 3 million Special Drawing Rights proposed in the clause. If the internal risk assessment of the classification societies today leads to such a sum being regarded as necessary and appropriate, then it must be asked whether that should also be the liability level for the external liability of classification societies. It would reflect the current situation in insurance markets. It would not make insurance cover of classification societies more expensive and it would receive much better acceptance in the market than the previous proposal. A double-figured million sum as an absolute liability limit would also more closely accord with the responsibility assumed by the classification societies and with public expectation in the current political climate than the proposal we have before us.

Currently the classification societies' liability volume in many contracts is limited to the "fee". The CMI proposal follows this principle. But this no longer corresponds to the high level of responsibility which the classification societies have set for themselves. The argument that the fee is low and therefore the liability must also be low is not convincing. This does not apply on the shipowner's side. It is also unfounded when capacity is available in insurance markets. The size of the premium for such insurance depends on the loss experience and on the risk management of the classification society itself. Whether it is economically possible to pass on the premium cost in the fee of

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the classification society is decided as everywhere by competition and the market.

Just how little the proposed sum of 3 million Special Drawing Rights relates to economic reality can be recognised in the contracts which classification societies have recently agreed with European governments. I am referring to contracts under which the classification societies undertake auditing and certification on behalf of the state for the ISM code. In these contracts, classification societies also accept liability up to certain limits. In all contracts, these limits are considerably higher than 3 million special drawing rights. These contracts do not involve groundwork for ship safety, but the certification of company structures. For such contracts, losses would presumably be of a considerably lower level than for contracts involving ship safety. However, the societies do accept a higher liability level. This is not consistent with the CMI proposal so far.

A further point is relevant. The Model Clauses regulate the liability inside a contract, not "liability towards third parties based on tort". But at the same time, they aim at providing a liability limitation that could also be applied to third parties. But this could only be achieved if it is proved that this liability limit is or will be internationally introduced in the relevant markets, that it is tested, accepted and desired by all participants. This is an absolute precondition if the clauses would even legally be used for limiting the liability towards third parties. If essential market partners do not view the level as "reasonable", the desired effect of an exemplary function towards claims of third parties cannot be achieved.

If in the end CMI is going to submit a proposal to the market which all the partners in the market cannot agree on, the situation would not remain at the *status quo ante*. It can be foreseen, that either courts will make new decisions and will force another regulatory form, or that national or international lawmakers would take action. Liability and liability limits would then be regulated with the help of national legislation or international conventions.

We are not asking for state interventions into private markets. The shipping industry is interested in a solution which is suitable for competitive markets, which provides an appropriate distribution of the financial risk and which provides a sensible liability level, without reducing the flexibility of classification societies in their work. The market partners should not let the chance to reach such a solution be taken out of their hands. The CMI should once more carry out further negotiations. I hope myself that today's discussion will make a contribution to providing the Working Group in CMI with arguments for this. We should not wait for the next maritime law congress with 500 maritime lawyers to take place on a passenger ship caught in a storm at sea, so that we afterwards must examine in a series of different court cases if and to what extent the classification society of a ship is liable. I am pretty sure that after these legal cases we would ask ourselves the question: what do snowflakes and the liability conditions of classification societies have in common? The answer then would be: Both owe their form to the operation of chaos. That would be the worst solution.

ANNEX A

PRINCIPLES OF CONDUCT FOR CLASSIFICATION SOCIETIES

Introduction:

1. The following Principles of Conduct for Classification Societies have been formulated on the initiative of the Comité Maritime International (CMI) by a Joint Working Group of representatives of concerned Non-Governmental International Organisations, as described in the Group's Report to the XXXVI (Centenary) International Conference of the CMI. These Principles of Conduct are intended to be consistent with and to develop further the Guidelines for the authorisation of Organisations acting on behalf of the Administration, as established by the International Maritime Organization (IMO)⁽²⁾.
2. Each Classification Society which adopts these Principles of Conduct shall maintain a status under national law such that, with respect to the surveys which it carries out and the reports and certificates which it issues, it stands independent of shipowners⁽³⁾, governments (except when acting as the agent of a government for purposes of statutory survey and certification) and all other parties having an interest in classification or statutory certification of a ship or ships⁽⁴⁾. The Classification Society shall not enter into any agreement or understanding which would contravene its independence.
3. Each Classification Society which adopts these Principles of Conduct shall ensure that the agreed services pursuant to its Rules for classification or its agreement for statutory certification are performed impartially and in good faith.
4. Each Classification Society which adopts these Principles of Conduct undertakes via its contracts with clients to perform all agreed services related to ship classification and statutory certification using reasonable skill, care and judgement.
5. Each Classification Society which adopts these Principles of Conduct accepts the following duties:
 - (a) To publish Rules for the classification of ships and Guidelines for other services, to review them regularly, and to update them when necessary;
 - (b) To carry out its plan approval and its surveys in accordance with the requirements set forth in its Rules and Regulations and its other published requirements;
 - (c) To establish and maintain an international network of offices to provide survey and certification services where they are customarily required;
 - (d) To utilise suitably qualified persons in the performance of its services;

⁽²⁾ See, e.g., Res. A.789(19) of November 1995.

⁽³⁾ "Shipowner" for the purposes of these Principles of Conduct shall mean the individual or juridical person in a contractual relationship with the Classification Society.

(e) To achieve and to maintain compliance with the International Association of Classification Societies (IACS) Quality System Certification Scheme (QSCS), as revised, or, at the discretion of the individual society, with a published quality system based upon the ISO 9000 series of quality system standards and which is at least equivalent to the IACS QSCS in effect; and

(f) To carry out a programme of technical research and development related, but not necessarily confined, to improvement of ship and equipment safety and of classification standards.

6. The provisions of the quality system of the classification society shall govern all matters related to performance, conduct and objectives.

Standards of practice and performance:

Each Classification Society which adopts these Principles of Conduct undertakes to exercise the following standards of practice and performance in discharging its duties and responsibilities:

A. Technical, administrative and managerial:

(a) To establish and maintain such personnel and management structure as will ensure the performance of agreed services in accordance with its respective quality system;

(b) To maintain its Rules, Regulations and Guidelines in a systematic form;

(c) To take such action with regard to the application of its Rules, Regulations, Guidelines and other requirements as will facilitate compliance with them;

(d) To comply with the applicable requirements of national maritime Administrations for the statutory survey and certification duties delegated to it in respect of ships flying their respective flags.

B. Technical personnel:

(a) To establish and maintain appropriate standards for training and qualification of its technical staff;

(b) To establish and maintain periodic reviews of such standards for training and qualification;

(c) To require, prior to an individual's performance of plan approval, surveys or other engineering services, education of such technical staff by means of successful completion in a recognised institution⁽⁵⁾ of a course of relevant technical studies; and either

(i) successful completion of a programme of technical training⁽⁶⁾; or

⁽⁴⁾ "Ship" for the purposes of these Principles of Conduct shall include any type of vessel or other unit which is classed with or otherwise surveyed or certificated by the Classification Society.

⁽⁵⁾ The term "recognized institution" includes but is not limited to:

(i) degree-granting academic institutions; and

(ii) training organizations or programs certified by flag Administrations in accordance with standards established by the International Maritime Organization.

⁽⁶⁾ "The RO [Recognized Organization] should have implemented a documented system for qualification of personnel and continuous updating of their knowledge as appropriate to the tasks they

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(ii) sufficient and documented prior employment experience at an appropriate technical level and relevant to their authorised tasks.

C. *Certificates and reports:*

(a) To issue classification reports and, where appropriate, certificates in conformity with its Rules and Regulations, and to issue statutory certificates in accordance with the applicable requirements of national maritime Administrations.

(b) To maintain records of the documents referred to in (a) for so long as the ship in question remains classed by the Society, plus a further period of at least five (5) years thereafter.

(c) To make copies of the documents referred to in (a) available:

- (i) upon request, to the owner or other person in an equivalent contractual relationship with the Society;
- (ii) to third parties when authorised in writing by the owner or other person in an equivalent contractual relationship with the Society or when directed to do so by judicial or administrative process; and
- (iii) to the flag or other national Administration having the necessary legal authority.

(d) To publish periodically a register containing the principal particulars of ships relevant to classification.

D. *Confidentiality:*

Subject to Section C above, each Classification Society which adopts these Principles of Conduct undertakes to treat as confidential all documents, materials and information relating to classification and statutory matters.

are authorized to undertake. This system should comprise appropriate training courses including, *inter alia*, international instruments and appropriate procedures connected to the certification process, as well as practical tutored training; and it should provide documented evidence of satisfactory completion of the training." Report of the IMO Sub-Committee on Flag State Implementation, FSI3/17, 23 March 1995, Annex 5, p.8.