EXPERT STATEMENT CONCERNING MARIA K. ROZHDESTVENSKAYA's DOCTORAL THESIS "INTERNATIONAL LEGAL REGULATION OF CLASSIFICATION SOCIETIES' LIMITATION OF LIABILITY"

by

Professor Hannu Honka
Åbo Akademi University
hhonka@abo.fi

1. Background

Ms Maria K. Rozhdestvenskaya has taken up a legal topic that for years has been targeted in legal doctrine. This does not mean that the liability of classification societies would have been exhausted in terms of further research. Gradually, more sources develop, including court rulings, and the legal framework is developing; more so during, say, the last 20 years than in earlier times. An international and regional regime has been generated by the International Maritime Organization and the European Union respectively. These regimes are not, however, comprehensive and many legal problems exist outside such frames in addition to possible interpretative problems of those mentioned regimes.

These short notes already make it clear that the thesis now in question is very topical and classification society liability definitely deserves to be dealt with in form of legal research.

I have nothing critical to say about the choice of the topic in that respect. Many issues are

complicated not only systematically, but also in terms of how to anchor research conclusions and recommendations to various and often unsystematic sources. The approach must be international by nature and emphasizing this international aspect. Empirically based international material is impossible, leading to choice of, if I may say, ad hoc sources. Any legal researcher meets with the same basic questions. Often international sources are in reality made relevant in accordance with the researcher's language skills, already this making the Anglo-American legal world as particularly important. Whether that status is always deserved in true substance and argumentation is another question. Furthermore, how is United States law to be understood? Most of the legal sources are related to state law of the various states of the US, not least in civil or private law issues, while the application of federal law is not a priority, if it even exists. In view of admiralty, however, there clearly is federal law. For any researcher it is necessary to know the basics of the US legal system. On the other hand as to international sources in general, when accepting empirical research not being possible[1], the argumentation value in case law and in legal doctrine is relevant and on that basis international sources are not only acceptable, but also necessary.

As to the liability of classification societies, some legislative sources have during recent years developed. These provide solutions to a certain extent to the liability issues, but they do not cover all liability aspects.

As correctly noticed in the thesis, the role of the classification societies is basically two-fold. There is the original "private" function, whereby a classification society classifies a ship in order to enable it to trade in commercial terms. No marine insurer, for example, will insure a merchant vessel in international trade without class. The "private" function derives from old times, all from Lloyd's coffee house in London during the 17th century and then Lloyd's Register to modern classification societies (see also the thesis p 232 et seq). Today, many classification societies have diversified to other than maritime industries.

Later on the second basic role for classification societies was developed. There were no

[1] It is easily understood that reserach into the legal status of various individual states does not work. Or, how, would it be possible to look into the the laws of, say, Chile, Portugal, Holland, Belgium, Ireland etc etc

safety-at-sea administrative rules nationally or internationally required to be adhered to by shipowners before towards the end of the 19th century. Thus, in practice the safety level was guided by "private" arrangements and the class system of ships, not alway very successfully in terms of true safety. The first signs of administrative regulation came from Britain when Samuel Plimsoll, an MP, managed to push through a Parliamentary Act in the 1870's whereby merchant ships were required to establish a load line above which cargo was not to be loaded. The "Plimsoll mark" is of course still in use, but technically in a much more developed format than before. Internationally regulated development of safety at sea did not properly start before the Titanic sank in 1912. The first Safety Convention was concluded, but it only covered passenger ships. The Convention never gained influence due to World War I. But, the embryo was there and slowly but surely Safety of Life at Sea Conventions, and other safety conventions, were created, after World War II under the guidance of IMO (originally IMCO, Inter-Governmental Maritime Consultative Organization). Together with this development, it was understood that Governmental authorities might not need to or have the budgeted capacity to survey and inspect ships (properly). As classification societies were already organized and had the required expertise it was considered possible to enable on an international level Convention State Governments to delegate certain powers to these societies. Now the system is common ground, but the extent of delegation varies nationally, as correctly expressed in the thesis. This is the second basic role of classification societies.

Once the functions of classification societies are separated in the above-mentioned manner, it follows that liability issues related to them might vary accordingly. Systematically, a separation is not only possible, but to my mind necessary.

It could be debated whether more functions and liability connected to them should be considered, not least the design role of classification societies in relation to shipbuilding and such like matters, but I do not think it necessary. And, such additions are normally not discussed together with the two basic functions mentioned above.

The thesis correctly recognizes the basic functions and the necessity to separate between them as to liability issues. I consider that the choice in the thesis is correct and appropriate.

2. The method and structure of the thesis

The thesis first introduces the features of the legal status and liability of classification societies.

The author's intention is to establish general outlines on the liability of classification societies in terms of damages, but not to deal with administrative or criminal sanctions, nor with administrative requirements. The summarized programme declaration is found in "Introduction". The main message here is the observation that classification societies should be entitled to limit their liability, as the case is with many other maritime operators and that such limitations should de lege ferenda be introduced internationally. Furthermore, it is stated that the purpose of the thesis is to identify particulars of the legal liability of classification societies as further specified in the thesis.

On the basis of those outlines certain conclusions as to liability are drawn. But, prior to dealing with those issues, the author has decided to debate legal policy matters, foremost of all, if not completely, concerning the question whether classification societies should be created the right ex lege to limit their liability in damages.

Thus, the order is: Features of legal status of liability, international legal regulation of the liability of classification societies, and the relationship between international and national regulation of the liability of classification societies.

The issues taken up are relevant and properly enumerated. And, if I understand the approach correctly, the thesis includes conclusions on what the existing legal status is in an international light and what improvements as to the liability of classification societies are necessary de lege ferenda, particularly in international terms.

I have some methodical notes on the issues that I have mentioned above,

The author declares the necessity to create a limitation-of-liability regime for the benefit of classification societies *prior* to having charted or established what the liability of those

societies is. The general rules for liability are found in Chapter 3 subsequent to the discussion in previous chapters on limitation of liability, particularly Chapter 2.4.

I find it problematic that a declaration of de lege ferenda is given before de lege lata issues in their entirety are clarified. In most cases the order is the opposite. Do the arguments of the author on de lege ferenda hold when it is not in that debate known or considered what the basic liability of classification societies is?

I find these observations relevant. In a critical approach, it can be asked would it not have been a preferred choice to start with research and a review of all preconditions for liability to arise. If liability does not exist, then the matter of limited/unlimited liability is rather moot.

There are preconditions for liability in damages to arise. They vary whether a claim by a person who has suffered damage is based on tort or on contract. Claims may arise via the insurance system through a subrogated claim, as an insurance company (insurer) that has paid compensation to the insured, instigates recourse action against the classification society. Furthermore, in liability insurance there is the issue of the right of the person who has suffered damage to direct action against the liability insurer. Some national law allows this widely, others hardly at all, and many lie in between. However, I do not think that such insurance angles are necessary to be dealt with particularly, whilst other insurance aspects relating to the liability of classification societies play a role in the legal debate, as also has been correctly observed in the thesis.

As to tort liability, it would be necessary to establish negligence of the tortfeasor (the tort system may be larger than this, as is the case in Anglo-American law), a causal connection between the tortfeasor's act or omission and the damage that has arisen, and a compensable damage to have arisen. This simplified approach already indicates that a court or other decision-maker may exclude the liability of the classification society by, for example, not finding negligence in relation to the scope of obligations that the classification society had in surveying a ship. There are now in existence quality assessment procedures for classification societies (eg included in the EU system). Should the quality organization be found appropriate, it would exclude the possibility to refer to negligence in organizing the survey

system. The concept of negligence could be discussed.

Furthermore, the causal connection might be deemed lacking: the nature of survey did not comprise detailed in-depth research, therefore in view of the classification society, proximity or foreseeability is not found. The damage might not be physical directly or indirectly, but consist of pure economic loss. Many states restrict the possibilities to compensate pure economic loss in tort. For example, when the ship is in port and is inspected through the port state control system and then detained due to deficiencies found, economic loss may arise due to the detention for the cargo owners and/or others. There is loss of time (loss due to delay) and thus pure economic loss, but no personal injury or damage to property or loss resulting from those alternatives. As said, that type of pure economic loss might be partly excluded on a statutory basis in national law. And finally, there might be contributory factors that make not only the classification society liable to third parties but also the shipowner or another subject. Even if liability is joint and several as to the claimant, the internal liability is shared, this creating a particular type of limitation of liability.

In contract, different preconditions as to liability arise compared with tort. Fault/negligence is the first precondition, unless there are specific reasons to establish strict liability or other variations not mentioned here. As to causal connection, the Hadley v Baxendale rule and its development is one example requiring the consequential damage to be foreseeable at the time the contract was made, another is the principle of foreseeability at the time breach of contract took place. Furthermore, a classification society may limit its liability in contract in relation to the other contracting party. Some problems may arise due to the fact that contractual terms are relevant in the private duties of the classification society, but, as also the author correctly has observed, particularly due to situations where the classification society has performed its public duties. The latter could be discussed on the basis whether the "private" contract is truly "private" or of a sui generis nature.

Recourse action is a separate matter. The shipowner etc may instigate recourse action against the classification society due to the shipowner's own liability and compensation paid. This claimant might have been able to limit its liability ex lege and, therefore, cannot claim more than what its own liability is. The limitation is indirectly for the benefit of the classification

society.

I do note that the author has used the above-mentioned tools in various contexts, such as on page 311, and the points I have emphasized above have to some extent been taken up in proposing an independently legislated liability system for classifications societies. However, it does not change the way the issues to my mind could systematically be approached.

I have explained my approach at length, but, as said, another systematic approach than the one used in the thesis might have given further grounds for discussing the limitation of liability issues.

3. Limitation of the liability of classification societies

The author has clearly shown her opinion as to the right for classification societies to limit their liability. Such limitation should be introduced through an international legal instrument. The arguments speaking for limitation have been introduced, as said, already in the Chapter "Introduction". Those arguments follow the whole thesis.

However, in legal, as in any other, research it is necessary to take into consideration various balancing factors, in this case also those that speak against introducing any ex lege limitation rights for the benefit of classification societies. I would find several such factors that seemingly cannot be found in the thesis. There is the initial argument that many, if not most, maritime actors are entitled to limit their liability ex lege. Consequently, this should be allowed for classification societies too. The counterargument is that the type of limitation of liability used in maritime matters is an exception overall, not a main rule in society. The principle of full compensation prevails in tort. In breach of contract full compensation consists of compensation for costs arisen (damnum emergens) and compensation for loss of profit (lucrum cessans). In case of physical damage to property, of course, compensation covers loss due to this. In addition, there are several contractual variations not necessary to specify here.

Thus, in view of general tort law and contract law, are there any particular circumstances

making it necessary to entitle classification societies to limit their liability ex lege? There are several operations on the "landside" that can be compared with the activities of classification societies. A designer of buildings who does it unprofessionally might be targeted for considerable claims if it is proved that the building collapsed due to bad design. The law does not entitle the designer on a general level to limit the liability ex lege.

Furthermore, there is the possibility under many national laws for courts to adjust the amount of compensation in tort due to particular and individual circumstances on the basis of what is to be considered fair, but the evaluation is individual, not a general limitation of full compensation.

The amounts of global limitation rights have been gradually increased, particularly in view of personal injuries, as shown in the LLMC 1976 Convention Protocol 1996 and its Amendment 1996. When it is argued that limitation rights are necessary as a classification society does not have the means otherwise to cover its liability, the question arises, is there any true economic difference between full compensation and reaching the limitation ceiling in any singular case. The economic burden even in the latter is serious, if the economic position of a classification society is taken into consideration.

As I said above, the limitation debate should be related to the general rules for liability to arise in the first place. Research might show that establishing liability for classification societies is not common. This is already indicated through the fact that the author does mention court cases on such issues being rare. Thousands of surveys and other measures by classification societies have unofficially passed the "legal test" and no claims are made in spite of even some damage that has arisen. Or, if liability issues are settled, the settlement shows that the classification society has considered it affordable, thus not ruining its commercial activities. Finally, it might not always lie in the interest of the claimant to claim against a classification society, which might disrupt the mutual trust forcing the shipowner to change the classification society, not always a priority choice in commercial terms.

Admittedly, for example, the EU Directive 15/2009 provides a possibility for an Administration to introduce a limitation of liability clause in the respective agreement or

similar arrangement, providing for the lowest allowed limit as specified, for the benefit of the classification society, but this is in a way a specified situation of contractual arrangements that are in principle possible in any case in contractual relations. Perhaps the provisions in Directive 15/2009 also safeguard the Administration as it would be a problem otherwise to claim less than full compensation, as an administrative unit would run the risk of being blamed for not having claimed full compensation.

The author is fully entitled to her conclusions stating that ex lege limitation for classification societies is motivated and necessary, but before reaching such a conclusion it is necessary to look into all relevant balancing factors, not only or even mainly into those on the basis of which such limitation rights can be argued.

There are more specific liability aspects that have been dealt with, such as the regulatory basis for the liability of classification societies in relation to the respective Government, and jurisdictional immunity.

4. Particulars

I have above focussed on issues on a general level, but relating to the thesis in a fundamental way. In the following some of the particular issues are discussed.

On page 226 (I refer from now onwards to the English-language version) the last hyphen refers to international case law as basis for conclusions. However, it would be desirable to also refer to legal doctrine which, as shown by the list and use of sources, the author has used in an impressive way.

The thesis provides a good overview of the nature and activities of classification societies and it is helpful in understanding the follow-up in the thesis. For example, on page 245 (and 249) there is the relevant and clarifying comment that the private and public functions of classification societies are closely interrelated and usually coincide. There are more examples of important clarifications, not necessary to specify here.

Having said that, I find also some problematic issues. On page 246, and further on page 264 et seq, the author takes up the concept of seaworthiness. It has been related to what has been regulated in the Hague Rules 1924. In fact, those Rules were amended in 1968 by the Visby Protocol, even if the concept of seaworthiness was not touched upon. The Hague-Visby Rules largely cover sea carriage of goods today, even if there are Hague Rules states left.[2] It is somewhat unclear to me how this approach relates to the liability of classification societies.

Also, the problem in using this source (the Hague Rules basis) is that it intends to cover the contractual relationship (mostly tripartite) between the sea carrier and the shipper, and often the consignee. The source is not intended to be a general coverage of seaworthiness, it merely relates to the mentioned contractual relationship. This is shown by the fact that in that context the carrier shall be bound before and at the beginning of the voyage to exercise due diligence to " make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation". This is clearly only a contractual issue, not always at all in the public interest (unless there exist some specific situations, such as public health rules requiring cleanliness due to the cargo, such as grain) . For example uncleanliness of the holds does not put the ship at risk, but it might damage the cargo. Nor has a classification society have a true function relating to the mentioned seaworthiness concept in relation to its general survey operations. It is a different matter if this society for some reason would have been asked to inspect the holds just before the cargo was loaded on board, but such inspections belong to other entities to deal with. The Hague system has three requirements, the cargoworthiness is actually the third. The second requirement is for the carrier to "properly man, equip and supply the ship". This certainly may relate to seaworthiness also of public interest so that, for example, stability requirements are taken care of, but when the requirements relate to individual contracted voyages the classifications society is not involved. Bad stowage might affect the stability of the ship, it becoming unseaworthy, but this is beyond the control of the classification society.

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[2] There are subsequent liability regimes as well. The Hamburg Rules 1978 have entered into force, but not largely applied. Interestingly, these Rules do not mention the seaworthiness duty at all, as the carrier's liability is based on a fault concept with some ex lege exceptions, these not including nautical fault. The Rotterdam Rules were adopted in 2008, but they have not entered into force. The Rotterdam Rules again introduce the seaworthiness concept, but in a slightly different way than the Hague and Hague-Visby Rules.

The relationship between a contract of carriage and the ship's seaworthiness on the one hand and the role of the classification society on the other is as such correctly observed in the thesis, but could perhaps have been expressed a bit more clearly.

The author then continues from page 246 onwards by stating that seaworthiness is the duty of the carrier. This covers vicarious liability in contract and I wonder, as said, how the carrier's liability is connected with the liability of a classification society. Perhaps the intention is to show that claims are directed against the carrier while classification societies are not targeted. The author is correct in the content of this vicarious liability, but it does not prevent a cargo owner from claiming directly against the classification society, if the claimed unseaworthiness having caused damage has to do with the general functions of that society. This is clearly seen in the Nicholas H case (House of Lords 6 July 1995). Furthermore, the scope of the carrier's vicarious liability is not necessarily always clear as shown in Parsons Corp v CV Scheepvaartonderneming Happy Ranger 2006 compared with the "Muncaster Castle" 1961.

I have repeated a lot what the author has already stated, but there are some specifications above, the consideration of which would possibly have made this part of the thesis clearer than now. Also, when the author on page 247 states that the "primary responsibility for seaworthiness of vessel cannot be imposed on classification societies as the cost of classification services does not allow to guarantee the safety of the vessel" I am not completely sure if this refers to de lege lata or de lege ferenda.. If it is de lege lata, I cannot agree with the conclusion without specifications. In principle, establishing such liability in tort would to my mind be possible, but in practice it would presumably be a far sought effort, as I have already indicated in Chapter 2 and 3 above and as shown in the Nicholas H case.

The author has taken up an additional aspect on page 254 dealing with negligent misrepresentation. One could say that providing a certificate turning out not be true is a separate legal phenomenon compared with basic contractual and tort issues. Also the "Sundancer-based" discussion on an implied warranty on workmanlike performance is included. These additions in the thesis are positive and a reminder to the reader that the liability issues include various important aspects. "Warranty" in Anglo-American law might

mean various things, but in this context it would, as mentioned in the thesis, equal strict liability, a basis that would turn out to be problematic for classification societies as it excludes the discretion provided by negligence/fault being the basis of liability. Strict liability might also exclude the application of the limits established for a person's vicarious liability.

On page 261 the author starts referring to sources supporting the right for classification societies to limit their liability. As I have said above, here the pick of sources seems somewhat imbalanced, as only the proponents for that outcome are taken into consideration. For example, on the other hand, the international legislator has not so far deemed it necessary to introduce such provisions, nor, seemingly, most maritime states in their national legislation.

On page 265 the author comes back to the seaworthiness requirement. But, simultaneously the "Great American" case is referred to. Does not that case exactly prove what I have said in the beginning that by applying general rules and principles in contract and tort a liability claim against a classifications society can be dismissed altogether?

In continuing, the author refers to the channelling of claims found in the CLC. However, once the shipowner has paid, the question arises if he is entitled to recourse action in any case against the tortfeasor. Channelling has to be clarified in this respect both in terms of the LLMC and the CLC.

On page 273, again, the issues of carriage of goods are taken up. There is a reference stating that the Hamburg Rules cover multimodal shipping. However, those Rules do *not* cover multimodal transport, see Article 1.6 and 25.4, only the sea carriage leg.

There is a correct description relating to global limitation rights. On page 281 the author summarizes by stating that there exists a settled system of liability limitations in maritime law. This benefits the rights of injured parties by several balancing factors, one of them being that limitation rights are excluded in case of the shipowner's actual fault or privity. I picked this particular point because it sounds good, but when looking into the true content it means nowadays in accordance with Article 4 of the LLMC that a "person liable shall not be entitled

to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result". First there must be intent or gross negligence, ie a high level of non-caring. Second, it must be connected with a personal act or omission. This requirement means that unless intent or gross negligence is found in the top leadership of the shipowning company, limitation rights prevail. Third, gross negligence (recklessly) does no suffice, it must also be proved that the act or omission is combined with knowledge that such loss would probably result. It is a qualified level of gross negligence and it must be proved that this kind of act or omission caused damage, the tortfeasor understanding that the actual damage that arose was probable. There are thresholds here that can very rarely be stepped across! In my mind it is questionable whether such a rule is a balancing factor for the benefit of the injured party. It would, in other words, be desirable not only to enumerate the balancing factors, but also to critically approach each and everyone of them.

On page 286 channelling issues are taken up in view of the CLC. This debate is well performed and arguments are correctly used. But, as said, whether a right to recourse action exists or not would have to be clarified. If such action would exist classification societies would be claimed to pay, but a limitation of liability in the first round would benefit the classification society.

On page 298 there is a reference to non-legislative acts of the EU. I wonder what non-legislative in this context means.

On page 317 (in Chapter 3.1) the author refers to the RF Civil Code. Basically, the concept of "guilt" is used, but I am not sure what it means in terms of civil law, where *dolus* and *culpa* are the basics however they are translated from Latin to various languages. This also relates to the reference in the text to "gross negligence" and "willful intent". This of course means in relation to the damage that has occurred. Further, there is a reference to "unlawful acts or omissions (willful or negligent)".The terminology in this part of the thesis is somewhat unfamiliar to me. Also, to give examples on the need of precision, can an act be "unlawful", but neither willful nor negligent? Or are willful or negligent acts always unlawful? Is intent ever anything else than willful?

There is a reference on page 319 to the French Civil Code article 1152. The text in English is slightly unclear to me.

On page 319 there is a reference to American contractual law being almost similar to English contractual law. This might be so in very general terms, but it is advisable to be careful with a reference of this type, as in time the contractual issues have become more and more separated between those jurisdictions, in addition to which there is particular state law and particular federal law in the US. But, in the context it is correct to state as in the thesis that a contracting party may have strict liability (="absolute liability"?) for the performance of the contract.

The author deals at length with the concept of good faith. It would be a valuable addition to enlarge the discussion to stating what this legal concept really means in connection with limitation of liability by contract. Concepts, such as unreasonableness, are more familiar with many jurisdictions giving courts the right to adjust contracts or their terms that are unreasonable or that lead to an unreasonable result. Also, it would be necessary to separate between commercial contracts and non-commercial contracts. The first-mentioned would perhaps not be adjusted as easily as the latter.

On page 331 some conclusions are drawn concerning limitation of liability clauses in contract. It is correctly stated, as is the norm in most jurisdictions, that dolus and gross negligence exclude the application of such a limitation clause. But shall such an act or omission be referred to anybody for which the contracting party in breach carries vicarious liability or be restricted to the contracting party himself (top leadership in case of a company)? The observations as such are normal contract law principles in any jurisdiction.

Coming to tort liability (in Chapter 3.2) it seems that the RF Civil Code includes an exceptional division on burden of proof. As cited in the thesis, the conclusion is that the tortfeasor shall prove the non-existence of fault as to the cause of the damage. I have the notion that in most at least West European jurisdictions it is the person who has suffered damage that shall prove the tortfeasor's fault. However, as the discretion is wide for a court the difference might not be that important in practice.

Some case law is discussed quite sporadically and it is difficult to evaluate why a court reached a particular result based on the relevant facts. A particular example is found on page 344 with the J Psarianos case. There is no detailed information on what basis the court issued its judgement.

An interesting reference is made in view of the Prestige case on page 346-347. The lex loci delicti commissi as basis for national applicable law was individualised as meaning the place where the negligence occurred. As a comparison, according to Article 4.1 of the EU Rome II Regulation on the law applicable in non-contractual obligations, the "law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur", but with further specifications. In any case, applicable law would be different to that of the Prestige case should an EU Member State Court have decided the matter.

When it comes to legal sources, the author in dealing with the Erika case on page 353, states that "case law in France has a significant meaning for the litigation proceedings even though France is not a common law country". I have said earlier that when dealing with civil law issues on an international level it might be a healthy approach to look at each individual legal source and decide upon its argumentation value. In that context there are in principle no priority jurisdictions, but in practice, of course, many maritime cases are taken to the US or England for various reasons. In quantity those countries may be important, and it might be possible to find a constant line of thought, but in terms of influence one may ask is a Federal circuit court judgement in Oregon/US more valuable than a Supreme Court judgement in Italy dealing with similar issues.

The last Chapter before Conclusions deals with the liability of classification societies when acting on behalf of the flag state. This is a correct choice clearly showing the need to cover these issues as "sui generis" which they are. In this context the author also deals with state immunity. This problem arises when an Administration or a classification society to which public power has been delegated is sued in another state than its own. This issue is particularly

interesting as the conclusions reached might mean that the only place to sue is the domicile of the respondent. Surely, there can be no immunity in that case. For example, according to the Finnish Code of Judicial Procedure chapter 10 section 2 and 5, a claim against the State is considered by the District Court with jurisdiction over the place where the authority that speaks on behalf of the State is located or, alternatively, by the District Court with jurisdiction over the place where the plaintiff has his or her domicile or habitual residence. There is no State immunity regulated domestically. There are separate provisions for units comparable with state entities and then companies. The status of a "domestic case" of the said nature remains partly unclear in the thesis in dealing with the State immunity issue.

Finally, I would like to say about the language: The English version is clear enough in order to understand the content, but a final polishing of the language would have been helpful. However, I understand that Russian is the decisive language, therefore my observation is not very relevant in also considering that the English version has been produced for the benefit of people like me.

5. Conclusions

I have, as is natural, concentrated my statement on criticising certain parts of the thesis, and also left out many details in that respect. A critical approach is the task of a person evaluating the thesis.

Summarizing, it is important to explicitly mention that the thesis has more strengths than weaknesses. It is a résumé of relevant liability issues relating to the maritime trade. The sources used are impressive and they have been used in an acceptable way as such, however, not forgetting a certain imbalance that I have emphasized above.

The thesis is general by nature, meaning that it is not clearly anchored to certain applicable national law and its interpretation. An approach like this brings particular problems because it is difficult if not impossible to draw conclusions and provide recommendations in view of de lege lata. Even if the thesis includes de lege lata coverage, its main message is to have a standpoint on the de lege ferenda debate concerning the liability of classification societies. In

that context it is not only acceptable, but necessary to adopt a comparative approach whereby legal sources in various jurisdictions are taken into account.

I consider that the thesis contains many issues that would have needed more precise coverage and systematically I would approach the main message in a different order to what the author has chosen. Also, various chapters and paragraphs would need reorganizing in order to make the messages more understandable and more readable.

My criticism should not hide the fact that the thesis is a serious and in many ways an impressive effort to contribute to legal research as to the status of classification societies.

I recommend that the thesis be accepted. I understand from the information that I have received that the thesis is in no need of further grading.

6. Questions

1. How do you see the systematic approach you have used in the thesis? Could you explain how you made the choices?

2. Did you find any doctrinal sources expressing a negative view on the right of classification societies to limit their liability ex lege?

3. Why did you find it relevant to bring up the Hague Rules?

4. You say (eg on page 371) that Article 3.4(b) of the CLC could apply to classification societies, but only when they perform classification functions. Could you develop the arguments behind this conclusion?

5. You refer on page 261 to a doctrinal source describing classification societies as deep-pocket defendants (respondents), and you also in other connections refer to a similar opinion that unlimited liability becomes a preference for the claimant in targeting who is to be liable. Do you have any further sources on the number of cases where global limitation of

liability would have been necessary to apply, and if so, to what extent the liability ceiling is lower vis-a-vis full compensation?

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Hannu Honka

Professor emeritus of International Commercial Law