**Standing between Navigation and the Marine Environment:**

**Classification Societies and Their Role in Implementing the BWM Convention**

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**Abstract**

Under contemporary international law, private actors have gained increasing attention as a participant in international law-making and law implementation. This is particularly so in the context of maritime activities because most of them are essentially private in nature. Classification society, a non-governmental organization with the overall objective to promote maritime safety and pollution prevention, channels international obligations on shipping into the private sector. While based locally in some maritime States, (at least) for those that are members of the International Association of Classification Societies (IACS), they follow unified requirements. These bodies fill in the regulatory gaps by laying down their own technical requirements owing to their expertise and provide guidance to the subsequent development of international shipping regulations, especially when new challenges and technologies begin to surface. The governance system of the Ballast Water Management Convention (BWM Convention) is a typical example demonstrating how such capabilities of classification societies are utilised in practice.

Due to the distinctive nature of ballast water discharge and premature technologies, it was not until 2017 that the BWM Convention entered into force. Like other international instruments on shipping, such a set of mandatory regulations allows classification societies to be entrusted with the power of survey and certification on behalf of the flag States – under the name of so-called “Recognized Organizations”. However, it is argued that classification societies do not merely act as an enforcer of international obligations; they are also an “unofficial” international law-maker to the effect their amplifying and interpreting the treaty obligations have undoubtedly facilitated the implementation of the BWM Convention at the global level. First, the examination of the IACS, whose practice is representative of the world’s leading societies, demonstrates the advantageous position of classification societies in monitoring available technologies, which in turn provides a solid basis for private standard-setting, taking into account countervailing factors. In addition, by virtue of the consultative status at the IMO sessions, the IACS reveals the discrepancies within the BWM Convention and provides clarification through the submission of its understanding and proposals.

Admittedly, this empowerment of classification societies with ocean governance is not devoid of criticisms. First, the practical law-making effect by a private body seems questionable: one may argue whether this is compatible with the principle *pacta sunt servanda* under international law since manifest consents of States to industrial standards are lacking. Second, classification societies have long been criticized as the guardian of interests of the shipping industry, whereas little attention is paid to the protection of public interests, especially the marine environment. It is argued that classification societies are a legitimate actor in ocean governance, and their activities could be harmonized with *pacta sunt servanda*. Moreover, both IMO and IACS have provided safeguards against an over-reliance on commercial interests within the internal decision-making process of classification societies, while external oversights by other NGOs, particularly those environmental-protection-oriented could be expected.

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