The IMO’s Ballast Water Management Convention of 2004: A Decade of Evolution and Challenges

Andreas Zink*
Institute for Environmental and Technology Law, Trier, Germany

Introduction

The International Convention on Management and Control of Ships’ Ballast Water and Sediments (BWMC 2004)\(^1\) was adopted in London on 13 February 2004. Ten years after its adoption, the BWMC 2004 has not yet entered into force.\(^2\) The reasons for this delay are manifold,\(^3\) and the most recent issues associated with its slow entry into force will be described and analysed in this article. In particular, it will be argued that the international community has developed legal approaches that, in effect, amend in advance of entry into force mandatory provisions that were understood as barriers to ratification. These approaches relate to the need for a more flexible time schedule that

* The author is member of the interdisciplinary graduate school, Cooperation of Science and Jurisprudence in Improving Development and Use of Standards for Environmental Protection – Strategies for Risk Assessment and Management, funded by the German Science Foundation (DFG, GRK 1319). The research for this article was done during a research visit at the Marine & Environmental Law Institute at Dalhousie University, Halifax, Nova Scotia, Canada, funded by the German Academic Exchange Service. The author would like to thank Amber Rose Maggio, LL.M for her helpful comments.


2 The BWMC 2004 enters into force 12 months after the date on which not less than 30 States that represent not less than 35 percent of the gross tonnage of the world’s merchant shipping fleet have ratified, accepted or acceded the BWMC 2004 (Art. 18(1)). By the end of March 2015, 44 States had ratified the BWMC 2004. However, they represent only 32.86 percent of the gross tonnage of the world’s merchant fleet. See IMO, “Status of Conventions,” 10 March 2015, available online: <http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>.

The Ballast Water Problem

The purpose of the BWMC 2004 is to address and help to prevent the so-called ‘ballast water problem’ through uniform global rules and standards. The term ‘ballast water problem’ generally refers to the processes and patterns connected with the unintentional transfer of aquatic species in ships’ ballast water between coastal regions. For millions of years, the transfer of aquatic species was influenced exclusively by natural phenomena such as ocean currents, winds, differences in water temperature and salinity, as well as the existence of land barriers in the form of continents. The advent of shipping in the ancient world introduced ships as a vector for the transfer of aquatic species beyond natural biogeographic and ecological barriers.

Following the invention of steel and advances in ship construction permitting watertight hulls, ballast water has been used to ensure ships’ stability since the 1850s and completely replaced solid ballast in shipping by the end of the 19th century. Ballast water can be defined as “water with its suspended matter taken on board of a ship to control trim, list, draught, stability or stresses of the ship.” Ballast water is an integral part of safe and efficient shipping because the position, stability, and maneuverability of a vessel are ensured at any given

7 BWMC 2004, n. 1 above, Art. 1(1).