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CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER IN THE ADRIATIC SEA REGION - A COLLECTION OF LEGAL TEXTS -



The project is co-funded by the European Union,
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"CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER IN THE ADRIATIC SEA REGION.
A COLLECTION OF LEGAL TEXTS"

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PREFACE

The United Nations had recognized the transfer of harmful organisms and pathogens (HAOPs) across natural barriers as one of the greatest pressures to the world's oceans and seas, causing global environmental changes, threatening human health, property and resources. Among the activities causing such pressure is international shipping.

The negative effects of the discharge at sea of ballast waters which, even if not mixed with cargo residues, may contain harmful organisms and pathogens, are likely to be more dramatic if considering the recipient environment feature. In the Adriatic Sea, a semi-enclosed basin wedged within the Mediterranean Sea, a huge volume of shipping coexists with vulnerable ecosystems and significant economies which highly depend on the sea qualities. Environment, human health, tourism, fisheries as well as other sea uses and values might be impaired by this form of biological pollution.

Along these considerations, the European Union has included the protection from ballast water pollution among strategic priorities for funding under the IPA Adriatic cross-border cooperation programme and, in 2012, the BALMAS project "Ballast water management system for Adriatic Sea protection" received financial assistance. The BALMAS activities focus on the development of knowledge and tools, including the establishment of links between experts and national authorities from Adriatic partner's countries, supporting a common Adriatic cross-border system for the control and management of risks deriving from the HAOPs introduction. Such system would facilitate the development of consistent measures and coherent responses for the whole basin.

Nowadays, the global legal terms for the control and management of ships' ballast hinge upon the entry into force of the 2004 International Convention on the Control and Management of Ships' Ballast Waters and Sediments (the BWM Convention), as complemented by a number of international guidance documents. Pending the entry into force of these global obligations, States have approved national measures on ballast water management or have developed regional policies acting through international organizations. In the Adriatic Sea, three bordering States already ratified the BWM Convention and approved measures on the same matter. In other Adriatic countries, administrative arrangements have been set in connection to the forthcoming global standards.

The existing legal and policy framework is a fundamental for the BALMAS Project, which has dedicated a specific work package to this end. This book was realized with the aim to enhance acquaintance of the upcoming rules for authorities, interested bodies and other stakeholders. An appropriate familiarity with the existing framework of policies and commitments is a pre-requisite of any action – either public or private, international or local – aiming at managing the HAOPs transfer through ballast water and to keep the related threats under control. As it was underlined, training of responsible parties in time to comply with the enforcement of the BWM Convention is the greatest challenge to the twenty year-long effort to standardize the management of ballast water globally. In the Adriatic region, education and training could benefit from the key legal materials of this book, which includes the formal instruments currently available.

Because regulations are frequently amended, this book has been printed in a limited edition, whereas a user-friendly pdf version will be downloadable from the project website (www.balmas.eu).

1. INTRODUCTION

The presence of marine “invasive”, “alien” or other way “harmful” species at sea has been recognized as a major threat for the marine environments, human health and marine/maritime economies, such as fisheries and tourism. At different levels, different sectors of law are addressing related concerns, thus establishing obligations on the presence of these species and on the management of those human activities capable to introduce them into environments¹. International shipping is among these activities because of the uptake and discharge of vessel’s ballast waters, which is a routine operation for the overwhelming majority of ships’ engaged in international trade. The international maritime community committed to the adoption of global standards on the matter, facilitated to this end by the agency within the UN system specialized on international shipping and maritime issues, the International Maritime Organization (IMO). According to its founding treaty, the IMO provides machinery for co-operation among Governments for the prevention and control of marine pollution from ships and encourages the general adoption of the highest practicable standards on international shipping². The IMO discussion on the ballast water theme started in 1991³ and made a fundamental step forward with the signature of the text of the International Convention for the Control and Management of Ships’ Ballast Water and Sediments (London 2004).

At the moment of publishing this collection of legal materials, the BWM Convention’s entry into force is still pending. As it happens for all shipping-related multilateral agreements, the conditions set for its entry into force are linked not only to the number of ratifying States but also to the percentage of the world’s tonnage fleet that these States represent⁴. Several elements are delaying the coming into force of the new rules: from the technical complexity of the standards implementation, to the extent of the private investments needed. Following the Convention’s text adoption, an intensive cooperation is taking place within the IMO’s Marine Environment Protection Committee. Attempting to clear the picture, guiding the standards implementation and smoothing constrains, this international process resulted in a huge amount of legal materials so far. Most of these materials are collected and organized in this book, which aims to facilitate their consultation and to support both the BALMAS project training activities and further training that might take place in the Adriatic region.

Although many environmental law materials were identified as relevant for the subject, in order to maintain the focus on shipping matters, this book includes only those documents specifically referring to the control and management of ships’ ballast waters⁵. Other documents connected to the broader environmental sector of law have been mentioned in different BALMAS project publications⁶.

¹ For an updated review see of main legal and policy instruments dealing with alien, invasive and harmful species and pathogens, RAK G. 2016. Legal and Policy Aspects Relevant for the Ships’ Ballast Water Management in the Adriatic Sea Area. BALMAS Project Final Report. Work Package 9. pp. 90 and RAK G., DEVENDICTIS G. 2015. Annotated list of BWM relevant international, European and local regulations and policies. Review. BALMAS project. Work Package 9, Activity 1, pp. 44.

² The original 1948 Treaty on the Intergovernmental Maritime Consultative Organization (IMCO) was amended by the IMCO Assembly resolutions A.358 (IX) of 14 November 1975 and A.371 (X) of 9 November 1977, which had changed the organization’s name into “International Maritime Organization (IMO)”, enhancing its scope to the protection of the marine environment and establishing, to this end, among its bodies the “Marine Environment Protection Committee” (MEPC).

³ In 1991 the IMO’s Marine Environment Protection Committee (MEPC) began the process of creating the framework of regulations which would become the BWM Convention. For the purpose of addressing the transfer of HAOPs, the IMO Assembly adopted in 1997, resolution A.868(20) containing “Guidelines for the control and management of ships’ ballast water to minimize the transfer of harmful aquatic organisms and pathogens”.

⁴ The BWM Convention would enter into force 12 months after ratification by 30 States, representing 35 per cent of world merchant shipping tonnage. The number of Contracting Governments to the Convention on 18 April 2016 was 49, representing 34.79% of the world’s merchant fleet.

⁵ The only exception are legal materials on port State control, considered of a prominent relevance for training purposes.

⁶ For further reference, see above, footnote 1.

The selected legal materials have been organized into three chapters focusing on the following different levels: the global regime and related international guidance (Chapter 2), the Mediterranean region (Chapter 3) and the national legislation of countries bordering the Adriatic Sea (Chapter 4). Following the consultation of the project partners, it was deemed important to include an Addendum on port State control, a crucial theme for the future obligations compliance and enforcement.

Chapter 2 includes the text of the BWM Convention (paragraph 2.1) as well as a number of guidelines and circulars developed within the IMO so far. Guidelines are grouped according to whether they have been specifically referred to in the Convention or their adoption was considered opportune at a later stage (respectively, paragraph 2.2. and 2.3.). As international rule making is an ongoing process, at the moment of the publication of this book some of these guidelines are under review (e.g. G8 Guidelines). Paragraph 2.4. contains a selection of IMO Circulars with a general relevance according to the periodical review made by the Organization⁷. Circulars included are those issued by the Organization under the symbol “BWM.2/ Circ.” as their contents are related to technical aspects of ballast water management⁸.

In order to comprehensively capture the Adriatic Sea picture, Chapter 3 includes implementing decisions adopted at Mediterranean level. Differently from Multilateral Environmental Agreements, global shipping agreements do not have a regional legal projection, even if cooperation would be needed at the marine regions level in order to seek a smooth and, what is equally important, effective implementation. Cooperation on ballast water management produced relevant decisions for different marine regions of the world. In the Mediterranean Sea, the forum for such decisions has been the region’s environmental framework agreement, the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (last amended in 1995), whose Secretariat functions are performed by the United Nations Environment Programme (UNEP)⁹. States Parties to the Barcelona Convention approved a number of acts, including the Regional strategy addressing ship’s ballast water management and invasive species, which can be considered as non-mandatory, beforehand implementations of the BWM Convention obligations. It can be worth noting that, within the challenging environmental cooperation in the region, the discussions on shipping-related issues are supported by the work of a jointly UNEP/MAP-IMO administered regional centre, namely the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)¹⁰.

Chapter 4 includes national legislation and regulations approved by States bordering the Adriatic Sea, three of which have already ratified the BWM Convention (e.g. Albania, Croatia and Montenegro). National legal materials are reproduced in the original language version with a courtesy English translation provided by the BALMAS project partners. Those legal acts which, although relevant to the theme, do not directly implement the BWM Convention, have been reported in other BALMAS project publications¹¹.

Finally, the Addendum on port State control includes acts proceeding from different legal levels: the Paris Memorandum of Understanding on port State control, an inter-governmental agreement among maritime authorities from Europe plus Russian Federation and Canada, which has been already amended to include the reference to the 2004 BWM Convention; and the European Union Directive No. 2009/16/EC of 23 April 2009 on port State control. Both legal instruments are legally binding only for three out of six BALMAS partners countries, however their outstanding importance for the BWM Convention compliance and enforcement has been recognized by all partners, leading to include related texts in this collection.

⁷ For an update, please consult: www.imo.org/en/OurWork/Environment/BallastWaterManagement/Pages/Default.aspx

⁸ The Organization issues Circulars with different symbols in order to facilitate the prompt identification of related content: under the symbol “BWM.1/Circ.” are those related to the status of the BWM Convention and under the symbol “BWM.2 /Circ.” those related to technical aspects of ballast water management.

⁹ For further information on the UNEP/MAP and on relevant regional agreements see www.unepmap.org

¹⁰ For details see RAK G. 2016. BALMAS Project Final Report, cit. above, footnote 1

¹¹ See above, footnote 1.