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LAW ON THE RATIFICATION OF THE INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS, 2004

A Legislation Drafting Project submitted in partial fulfilment of the requirements for the award of the Degree of Master of Laws (LL.M.) at the IMO International Maritime Law Institute

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1. General Introduction

In the course of a decade, the Adriatic Sea has become an important transport route. Ballast water discharges emanating from ships are having a dramatic impact on fragile marine environment in the North part of the Adriatic; furthermore, the discharges are expected to augment in the future, as local and global shipping will drastically increase. Fisheries are already being transformed, as certain species alter their migration pattern by moving to other seas. Other may proliferate because of lack of predators. As a consequence, some species may increase while others may decrease and the ecosystem will experience many changes that can not be predicted. Environmental groups around the world are concerned as it has been estimated, that the global merchant fleet annually transports some 3.5 billion tones of ballast water. Moreover, there are more than 40,000 merchant vessels at sea at any given time and 3,000-4,000 aquatic species per day have been estimated to be in motion between coastal seas in ballast water "conveyor belts" around the world.[1] The human mediated transfer of aquatic organisms and pathogens via shipping ballast water has been identified as a complex problem which needs a global response and unification of standards all over the world.

Thousands of years ago, ships carried solid ballast in the form of rocks, sand or sometimes metal. Slovenian history books record that rocks which originated from Greece were carried to the port of Trieste and were used for ship ballast purpose. According to some scholars, these rocks were subsequently used as millstone rocks in the remote Slovenian town named Pivka.[2]

Historically, ships used rocks for ballast; however this operation was time-consuming as it loaded and unloaded solid materials. To cut down the time-consuming task, ships started increasingly to use water for ballast. This seemed a perfect and environmentally sound solution until the international community realized the undesirable effects of alien species transported by ballast water from one sea to another.

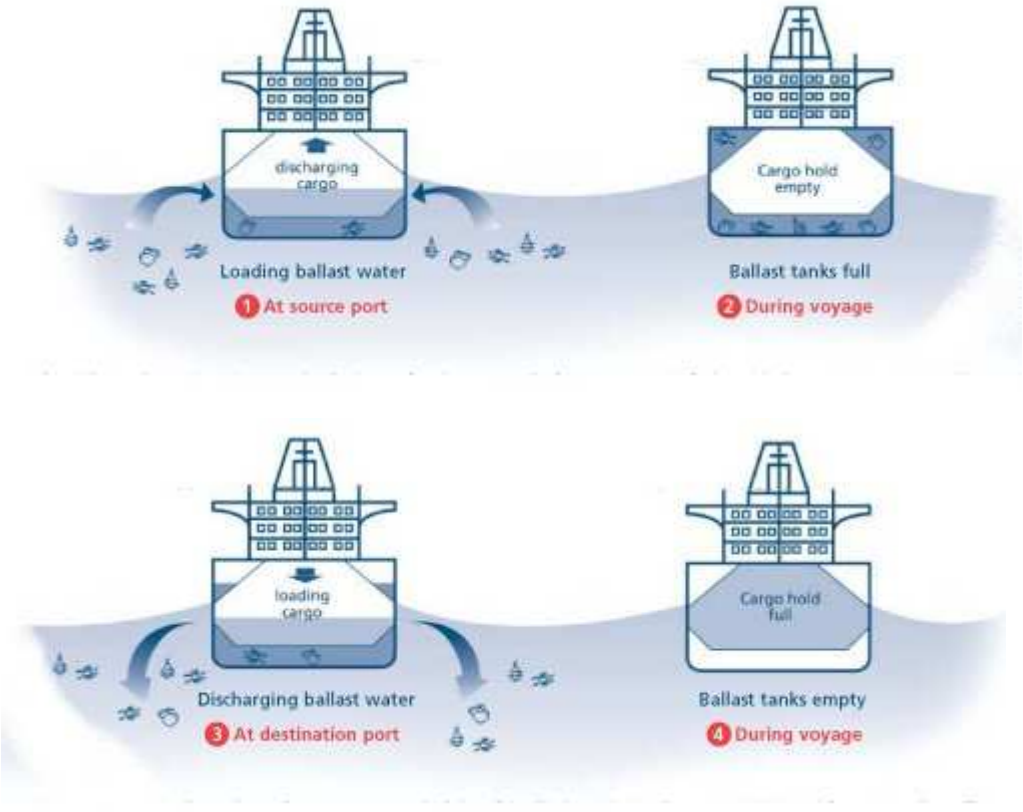
[1] Maria Fonzeca de Souza de Rolim, The International Law on Ballast water Preventing Biopollution, Martinuss Njihoff Publishers, 2008, p. 8
[2] Kolenc D., Kraji kjer je prepih doma, Galerija 2, Zavod za turizem Postojna, 2002, p. 4

Nowadays, without carrying ballast water a ship will be unstable and manoeuvrability during a voyage would be extremely dangerous. If a vessel is not fully laden, additional weight is required to compensate for the increased buoyancy that can result:

- in the lack of propeller immersion
- inadequate transversal (i.e., heeling) and longitudinal (i.e., trim) inclination
- static and dynamic stresses on the vessel hull including shear forces and bending moments
- static and dynamic transversal and longitudinal stability.[3]

There can be other situations that impose that a ship requires ballast water operations. This is especially true in the case where a vessel moves towards shallow waters and needs to discharge some ballast water to provide for less draught. Ballast water exchange usually takes place where the ship is going for loading or after she has discharged the cargo.

Figure 1: Process of Ballasting and Deballasting.[4]



[3] Matej David, Fpp, Decision support system model for ballast water management of vessels, 2007, p. 11
[4] Borut Grubar, Seminarska naloga Balastne Vode in Balastiranje, 2007, p. 6

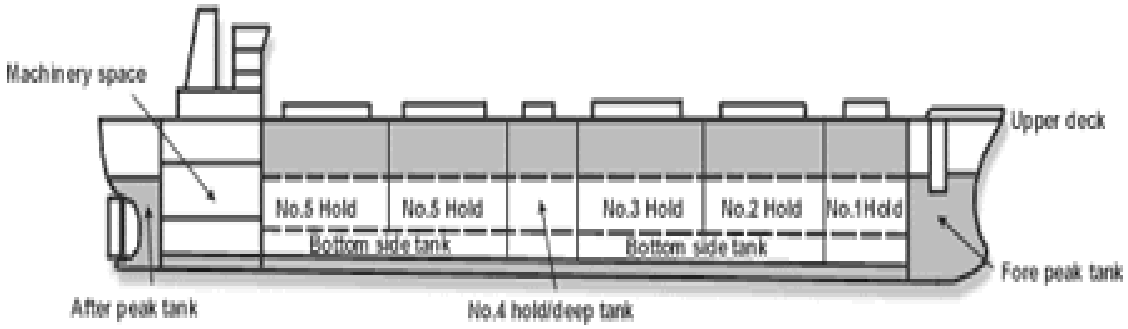
Most vessels include a ballast tank, i.e. ballast system, which corresponds to a container containing seawater as a ballast material. They are different type of vessels ballast tanks according to the type of the vessel.

Ballast tanks can be:

- in the vessel double bottom (DBT – double bottom tanks)
- underneath the main deck (TST – top side tank)
- in the bottom (FPT – fore peak tanks)
- in the stern (APT – after peak tanks)
- ballast storehouse (BH – ballast hold).[5]

Accordingly, vessels are also equipped with pumps for filling the tanks with seawater and devices such as pipelines for transferring the seawater from one tank to another. At present most of the ships are equipped with two pumps in case one of the pumps brakes down. On modern ships the amount of the ballast water is usually calculated electronically; however some older ships are still measuring the amount manually by inserting a sounding lead through the small pipe in the tank.

Figure 2: Allocation of Ballast tanks on the ship.[6]



[5]Ibid, p. 10
[6]Ibid, p. 7

2. Transfer of Harmful Organisms and Pathogens

The issue of Ballast water discharges is complex and dynamic. According to opinions of biologists the possibility for marine species to survive in the ballast tank is almost negligible; however, some species have life cycles that include plank tonic stage. A serious problem arises when ballast water is discharged and some bacteria, cysts survive and develop mechanism of adaptation to the new environment.[7] Voyage length critically affects the survival rate of organisms in ballast water. There are also known cases when organisms have reproduced and expanded their population inside a tank. Furthermore, in a recent shipping study undertaken in Germany proved that even after more than 3 months duration living organisms were found in the ballast tank.[8]

Presently, one of the most difficult questions for scientist to solve is what will be the impact of new introduced organism. Some organisms adapt completely to the conditions of the receiving environment. The problem is amplified by the fact that is has proven extremely difficult to rectify the damage done once an invasive species has successfully invaded a foreign ecosystem. When this happens invasive species displace native species, destroy fish stocks, and otherwise disrupt existing species. What is alarming is the fact that on average one new introduced species is becoming established per day.[9] In addition to environmental challenges, there is a risk for industries and a clear link to economic loss resulting from the environmental harm.

There are many different terms and definitions in the world describing introduced species and their impacts. Under the Biodiversity Convention, Alien Invasive Species are defined as “species which threatens ecosystems, habitats or species”. The United Nations Convention on the Law of the Sea (UNCLOS), Article 196, paragraph 1, adopts the term “alien” or “new species” comprising in particular those species which may cause significant or harmful changes to a particular part of marine environment. The IMO Assembly Resolution A.774 (18) refers to “unwanted” aquatic organisms. The Ballast Water Convention, 2004 defines harmful aquatic

[7] Dr. Lovrenc Lipej, Dr. Martina O. Bonaca, Tujerodne Vrste v Jadranskem morju, 14. 07. 2003, Delo press, p. 28
[8] Gollasch, S, 1996. Untersuchungen des Arteintrages durch den internationalen Schiffsverkehr unter besonderer Berucksichtigung nichtheimischer Arten. Diss., Univ.Ham.; Verlag Dr. Kovac, Hamburg, p. 314
[9] J.M Carlton, J.B.Geller »Ecological Roulette: The Global Transport and Invasion of Non-indigenous Marine Organisms« (1993) Science 261, p.78-82

organisms and pathogens as »aquatic organisms or pathogens which, if introduced into the sea including estuaries, or into fresh water courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas«.

For scientists, the expression alien species is used consistently to describe an alien species which becomes established in natural or semi natural ecosystems or habitat and threatens native biological diversity.[10]

According to different scholars today it is not clear when an introduced alien species will or may become invasive in a new ecosystem. One of the methods of proving that potentially harmful organisms are discharged into the environment through shipping is ballast water sampling. Studies that included ballast water sampling have revealed the presence of high number of aquatic organisms in ballast water and also proved that ballast water and the sediment that it contains is one of the main transfer vectors of potentially toxic dinoflagellates.[11] In the EU different ballast water studies have been carried out. In total 1398 samples were collected on 565 vessels. A total of more than 1,000 species were identified during 15 European shipping studies. Among the species that were found most of them were: bacteria, fungi, protozoans, algae, invertebrates of different life stages including resisting stages, and fish with a body length up to 15 cm.[12]

Anticipation of successful introduction of species into a new environment depends on a number of factors and such can not be accurately anticipated. Significant damage is not caused by harmful species only. Some introduced species simply compete for food and living space and can displace indigenous species. Consequently the precautionary approach suggests that every vessel transporting ballast water should be treated as a potential risk.

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[10] Maria Helena Fonseca de Souza Rolim, p. 11
[11] Hallegraeff, G.M. Bolch, C.J., 1992. Transport of Toxic dinoflagellates via ships ballast water: Bioeconomic risk assessment and efficacy of possible ballast water management strategies. Mar. Ecol. Progr. Ser. 168 p. 297
[12] Matej David, p. 34
13 http://www.geo-zs.si/publikacije_arhiv/Clanki/Geologija_50_1/179-188%20ogrinc_faganeli.pdf, visited on 09.12.2008
14 Matej David, p. 28

2.1. Ballast water Discharges in the Slovenian Sea

The bay of Koper is a small shallow bay in the extreme northern part of the Mediterranean Sea with a surface area around 17 km2. The central port of Slovenia is the Port of Koper which is centrally located in the bay. Activities in the port are growing and it currently handles around 10 millions tons of cargo every year.[13] In the last ten years there is increasing number of vessels entering into the port; consequently ballast waters are released from ships. Especially in the last few years this problem is achieving greater dimensions. In Slovenia most ballast water releases originate from the Mediterranean Hub Ports.

According to a research conducted in Slovenian Port ballast water discharges in Slovenian sea are increasing.

Table 1: Ballast water discharges in the Slovenian Sea from 1990-2006.[14]

YEAR	BW Discharges	Cumulative Discharge (t)
1990	273.605	273.605
1991	146.685	420.290
1992	182.363	602.653
1993	125.070	727.723
1994	169.497	897.220
1995	439.855	1.337.075
1996	230.780	1.567.855
1997	297.491	1.865.346
1998	533.140	2.398.486
1999	480.900	2.879.386
2000	354.520	3.233.906
2001	302.298	3.536.204
2002	485.540	4.021.744
2003	500.000	4.521.744

2004	532.841	5.054.585
2005	544.133	5.598.718
2006	701.674	6.300.392

In 2003 a Slovenian group of experts conducted Ballast water sampling on 15 vessels which have discharged ballast water in the Port of Koper.

Table 2: Ballast water sampling in Slovenia – sample number, ship type, sampling days, duration of ballast water tank prior sampling and source region of the ballast water sampled.[15]

Sample Number	**Ship type**	**Date of Ballast water uptake**	**Sampling date**	**Days in tank**	**Ballast water source**
1	Bulker	30.05.2003	02.06.2003	3	Ravenna (Italy)
2	Tanker	27.05.2003	05.06.2003	9	Tuapse (Russia)
3	Bulker	06.06.2003	09.06.2003	3	Drač (Albania)
4	Container	04.06.2003	11.06.2003	7	Limasol
5	Bulker	05.06.2003	12.06.2003	7	Porto Levante (Italy)
6	Container	14.06.2003	16.06.2003	2	Gioa Tauro (Italy)
7	Container	14.05. 2003 12.06.2003	18.06.2003	20	Gemlik, Kumport

[15]Matej David, p. 35

					(Turkey)
8	Bulker	11.06.2003	18.06.2003	7	Sfax (Tunisia)
9	Bulker	23.06.2003	24.06.2003	1	Venice (Italy)
10	Bulker	24.06.2003	26.06.2003	2	Bari (Italy)
11	General Cargo	15.06.2003	26.06.2003	11	Tripoli (Libya)
12	Bulker	28.06.2003	07.07.2003	9	Porto Marghera (Italy)
13	Bulker	05.07.2003	10.07.2003	5	Alger (Algeria)
14	Container	08.07.2003	12.07.2003	4	Gioia Tauro (Italy)
15	Bulker	23.07.2003	25.07.2003	2	Bari (Montenegro)

According to the results all samples contained organisms; however, not all taxomic groups were found in each sample. The lowest number of total taxa (excluding bacteria) was 6 (sample 14, ballast water kept in tank for 4 days) and the sample with the highest number contained 54 taxa (sample 2.9. days in tank). The average number of species was 20.8. In total 134 taxa and 2 bacterial groups were identified.[16]

Because of the results, Slovenia recognized that isolated action by individual States can never be sufficient to manage the full extent of activities that lead to invasions. This will be customary in consonance with international law important principle - the principle of good neighbourliness and international cooperation. The International Tribunal on the Law of the Sea (ITLOS) confirmed

[16] Matej David p. 36

the customary duty to cooperate in 2001 in the MOX Plant Order Case (Ireland v. United Kingdom).[17]

The momentum for regional cooperation between Slovenia, Italy and Croatia came from national governments of the three neighbouring States, which acknowledge that the problem related to ballast water required immediate attention and action particularly with regard to fisheries resources and possible degradation of fragile marine environment in this part of the Adriatic. Furthermore, it has been acknowledged by biologists that harmful aquatic species can migrate by natural means and reach a neighbouring country in a short period of time. Therefore, it is significant in this context to point out that Slovenia is a member of the trilateral (Croatia-Slovenia-Italy) Ballast Water Management Sub-commission (BWMSC) of the Adriatic Sea. The agreement deals with the problem of introduction of harmful organisms transported into the region by ballast water of ships. The three countries recognized the need to intensify concerned actions regarding ballast water issue in the Adriatic Sea. For this reason they decided to purport the Ballast Water Management Sub Commission (BWMSC) to consider the Ballast Water Management (BWM) options that are proposed as Associated Protected Measures in conformity with the proposal to designate the Northern part of the Adriatic as the world's thirteen Particularly Sensitive Sea Area (PSSA).

The fundamental aim of this cooperation is to deal with the problem of ballast water discharges and to prepare a common ballast water management plan. Under the IMO guidelines[18] PSSA are defined as "Areas which need special protection through action by IMO because of their significance or recognized ecological, socio-economic or scientific attributes where such attributes may be vulnerable to damage by international shipping activities".[19] To be eligible as PSSA an area has to fulfil three conditions. Firstly, it should meet at least one of the ecological, socio-economical or scientific criteria extensively expressed in the IMO guidelines.[20] Secondly, after designation, information about PSSA is broadly disseminated to mariners operating in the designated area through identification on charts and brings the attention of the shipping

[17] Available online at: http://www.itlos.org/start2_en.html, visited on 02.12.2008
[18] PSSA, IMO Publication, London, 2007
[19] Revised PSSA Guidelines, Annex I (Para.1.2.)
[20] Ibid, Para 4

community through Notices to Mariners in almost all countries.[21] Thirdly, after the submission of the proposal, IMO has to decide in a case to case basis if the application has fulfilled all necessary requirements.

Even if the IMO will approve the designation of such an area it is worth to observe that the designation of PSSA has no legal effect. Nonetheless, we should not under estimate the PSSA status which confers a "special status" to an area that influences the users of the area to be more aware and to "change" their behaviour regarding the senility of the region. Moreover, the PSSA status raises the standards of care that may be expected in the assessment by courts in claiming for damage to PSSA[22]. It is important to emphasize, that in so far measures permitted in PSSA do not include provisions on ballast water operations.

[21] PSSA, IMO Publication, London, 2007, p. 2
[22] On the designation of PSSA see, Past, Present Future, Nihan Unnlu IMO available on http://www.imo.org/includes/blastDataOnly.asp/data_id%3D17988/Particularly.pdf, visited on 10.09.2008

3. A Long Way Toward the Adoption of a Global Convention

The problem related to non-indigenous species is not a new phenomenon. It was first raised in 1903 when scientists acknowledged the signs of alien species phytoplankton algae Odontella in the North Sea.[23] In 1933 the Convention relating to the Preservation of Fauna and Flora in the Nature State established that in certain natural reserves, primarily in Africa "The introduction of any species of fauna or flora, whether indigenous or imported, wild or domesticated, shall be strictly forbidden."[24]

In the late 1980 Australia and Canada called the attention of the IMO Maritime Environment Protection Committee (MEPC) soon after experiencing the problem related to invasive species.
The landmark in solving the matter was the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992, where new objectives and principles were endorsed in Agenda 21.[25] All this achievements called the attention of International Maritime Organization (IMO) to take immediate action regarding harmful organisms introduced by ships.

To review the progress in the implementation of Agenda 21, the World Summit on Sustainable Development (WSSD) was held in Johannesburg in 2002. The contribution of WSSD Plan can not be underestimated. The Plan urges States to ratify and implement the 1982 Law of the Sea Convention and to promote Chapter 17 of Agenda 21 dealing with an integrated approach to ocean management. The WSSD was an important landmark, since its Plan of Implementation brings the notion to encourage the development regarding further steps that need to be taken regarding invasive species; furthermore it called the attention of IMO to increase the acceleration process relating the ballast water Convention.[26]

[23] http://www.imo.org/newsroom/mainframe.asp?topic_id=848&doc_id=3475, visited on 10.11.2008
[24] http://eelink.net/~asilwildlife/conv_nature.html, visited on 12.11.2008
[25] Maria Helena Fonseca de Souza Rolim, p. 9
[26] http://www.Johaneesburgsummit.org/html/documents/documents.html (paragra.29a and 29b), visited on 15.11.2008

IMO has developed guidelines for the control and management of ships ballast water and sediments, which were adopted by IMO Assembly on 1997, by Resolution A.868 (20).[27] The main purpose of the guidelines is to assist Governments and appropriate authorities, ship masters, operators and owners, port authorities and all interested parties (while protecting the safety of the ship), to minimize the risk of introducing harmful aquatic organisms and pathogens from ships' ballast water and associated sediments. However, the main deficiency was the lack in providing an operative and effective solution to the problem. A very important role in providing help and assistance to IMO was given by International Chamber of Shipping (ICS) and Classification Societies which published Model Ballast Water Management Plans.

Finally, on February 13, 2004 the International Convention for the Control and Management of Ship Ballast Water and Sediments was adopted at Diplomatic Conference in IMO, London.

In Europe, the Convention has been signed only by two of the 28 EU Member States.[28] Many EU Countries have made an announcement that they are planning to ratify the Convention until 2009. In addition some EU countries emphasized difficulties regarding the ratification of the Convention due to unknown impact of the procedures (e.g. financial, operational); that will be required by the guidelines which are not yet finalized and adopted. At present time, the main target is the completion date of the remaining two guidelines; guidelines on ballast water sampling (G2), and port State Control (G15), which has to be completed by IMO by 2010.[29]

[27] http://www.directemar.cl/dai/dai-esp/r-omi/asamblea/las%20q%20faltan/A.868.pdf, visited on 11.11.2008
[28] http://www.imo.org/includes/blastDataOnly.asp/data_id%3D23562/status-x.xls, visited on 11.11.2008
[29] Matej David, Gollasch S., EU Shipping in the dawn on managing the ballast water issue, Mar. Pollut. Bull. (2008), doi:10.1016/j.marpolbul.2008.09.027, p. 3

4. Ballast Water Policy in European Union

Generally speaking, most of the EC marine related legislation consists of the fact that the legislation focuses solely on the mentioning of land based pollution. The legislation in question makes no attempt to directly address the matter of differencing between fresh and sea waters but rather refers to this wholly as "aquatic environment." Therefore the problem lies within the lack of clarity within the legislation.

At present there is no common EU ballast water policy and no legal requirements in place. This is detrimental to the concern and issue at hand. The 1976 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution (BARCON) is the oldest of the United Nations Environment Programme (UNEP) Regional Seas Agreements. It sets out the general frame for cooperation in the protection of the Mediterranean Sea from several sources of pollution (dumping, accidental and operational discharges from ships, exploration and exploitation of the continental shelf, and land based activities).[30] According to Article 17 the BARCON is administered by UNEP, which carries out secretariat functions, while five "regional activities centers" assist the contracting parties in the implementation of their obligations under different Protocols. UNEP set up the Mediterranean Action Plan (MAP) which involves 20 States and the European Commission. The MAP consists of the coordination unit in Athens, the Mediterranean Commission for Sustainable Development, the programme for pollution control, six regional cooperation centers, and the programme for the protection of coastal historical heritage.

The Mediterranean regime with the MAP, the Barcelona Convention and the 1995 Protocol concerning specially protected areas and biodiversity, offers a feasible framework for ballast water policies. Barcelona congregated a summit of specialists in the field of ballast water from Mediterranean countries in the year 2002. This meeting concluded that an Invasive Action Plan for non-indigenous species in the region of the Mediterranean was a matter of primary concern. [31]

[30] Leon Gosar, Gregor Muri - National Action Plan (NAP), Document prepared for the Mediterranean Action Plan - Slovenia, January 2005, p. 41
[31] Matej David, p. 54

The EU Marine Strategy Directive 2007[32] expressly states that Member States shall "take all necessary measures to achieve or maintain good environmental status in the marine environment" as soon as possible; however not later than 2020. By 2020 each Member State shall adopt and develop marine strategies related to:

- protection and preservation of the marine environment
- preventing its deterioration
- where practicable, restore marine ecosystems in areas where they have been adversely affected
- prevention and reduction of inputs in the marine environment.[33]

The directive includes Member States obligation to establish Marine Protected areas. Member States sharing a marine region such as Slovenia, Italy and Croatia, will need to cooperate to ensure that their marine strategies are coherent and coordinated. They must also make every effort to coordinate their activities with non - EU countries in the same marine region through regional sea conventions.

In 2005, an EU - founded project named "Delivering Alien Species Inventories for Europe" (DAISIE) was established. Its primary goal is detection of alien species, quantifying the possible risk and warning managers before a respective alien species spreads beyond its point of initial introduction.

DAISIE will bring together:

- The European Alien Species Expertise Registry- a directory of researchers and projects
- European Alien Species Database - including all known established alien species in Europe
- European Invasive Alien Species Accounts - description of all established alien species known in Europe
- Species Distribution Maps and Maps Analysis - distribution maps of all invasive alien species in Europe known or suspected of having environmental or economic impacts.[34]

[32] Available on http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:164:0019:0040:EN:PDF, visited on 12.12.2008
[33] M. David, Gollasch S., p. 4
[34] http://www.daisie.se/projectdescription/Daisiepresentation_1%20mars.pdf, visited on 25.12.2008

However, the geographic coverage of the DAISIE project is more comprehensive; as it also includes the non-European countries along the southern and eastern Mediterranean.

5. Legal Instruments in Slovenia

Currently in the Slovenian legislation there are no direct regulations concerning introduction of alien harmful organisms and pathogens via ballast water. Nonetheless, some legal instruments to a certain extent refer to the examined phenomenon. These are: the Constitution of the Republic of Slovenia, the Maritime Code, the Environment Protection Act, the Water act, the Contagious Disease Act and the Penal Code of the Republic of Slovenia.

According to Article 72 of the Constitution of the Republic of Slovenia[35] everyone has the right in accordance with the law to a healthy living environment. It is expressly stated that the state shall promote a healthy living environment. To this end, the conditions and manner in which economic and other activities are pursued shall be established by law.

The Slovenian Maritime Code was adopted by the National Assembly in March 2001.[36] It regulates the sovereignty, jurisdiction and control of the Republic of Slovenia over its sea. Among others the Maritime Code includes provisions on the protection of the sea. According to these provisions the Republic of Slovenia provides for the safety of its national sea waters and territorial sea against pollution; furthermore it is bound to preserve and meliorate the marine environment. During a harmless transition a foreign vessel is prohibited for engaging in any sea an environment-polluting activity. In addition, no substances that could contaminate the sea or the coast can be dumped into the sea.[37]

In order to ensure environmental protection every vessel shall carry documents and books relating to environmental protection such as Certificate on the Prevention of Marine Pollution by Garbage, Certificate on the Prevention of Pollution by Sewage, Waste Treatment Book and others.[38] Furthermore, the Maritime Code in Section X provides inspectional control on Sea

[35] http://www.dz-rs.si/index.php?id=271&docid=34&showdoc=1, visited on 25.12.2008
[36] Maritime Code of the Republic of Slovenia, Official Journal of RS, nos. 26/2001, 21/2002
[37] Ibid, Art. 1, Art. 5, Art. 15, Art. 69, Art. 76
[38] Ibid, Art. 138

pollution. It gives the Maritime Inspector the right to issue a document to detain the ship in the port if justifiable grounds exist for suspecting that it will pollute the environment.[39]

The next legislative instrument where Ballast Water problem is further discussed is the Water Act, which has been adopted in 2002. The Water Act explicitly states that water protection against ship-generated pollution shall be in accordance with regulations governing maritime traffic. Article 66 expressly provides that discharges of ship-generated wastewater into the sea are prohibited. Unpolluted cooling water is excepted from this provision. The main draw back of this provision however rest on the fact that it does not state whether the provision is applicable to sea pollution.

The Environmental Protection Act regulates the protection of the living and intrinsic natural environment as well as the general conditions for the use of natural resources. It requires that development procedures, spatial and other interventions in the environment, stem from balanced developmental and environmental needs, and the present generation has to take into consideration the equal opportunities of future generations relating their needs. The objectives of environmental protection and ballast water management are alike; these are preservation, melioration and development of the integrity, diversity and quality of natural elements, natural communities, natural goods and natural resources. The standard to be met by all activities and norms related to environmental protection is set by human health and quality of human life, as well as the survival and health of other living organisms.[40]

The objectives of environmental protection classified into several sections are target toward common goals: the preservation of natural vitality, biological diversity, autochthonous species, their habitats and ecological balance; the preservation of the diversity and quality of natural resources, the natural genetic bank, and fertility of agricultural land; the prevention of threats to and pollution of the environment; restoration of environmental damage and re-establishment of natural restoration capacity; use of technologies that minimize and eliminate negative impacts on

[39] Ibid, Art. 183
[40] Environmental Protection Act, Art. 1

the environment; use of harmless and degradable chemicals and substances that do not accumulate in live organisms.[41]

Recently, it has been established that ballast water may possibly pose a risk to the health of people and be the causative agent of disease; hence the Contagious Disease Act should also be presented. According to Article 4 each individual is entitled to the right of protection against contagious disease while his obligations include the protection of his own and other people's health.[42] Furthermore, the Environmental Protection Act defines water-spread disease and delineates measures for the prevention of the spreading of diseases, the monitoring and control.

Another important document regulating the environmental protection is the Penal Code of the Republic of Slovenia. It regulates criminal offences against the environment, space and natural assets.[43] In November 2008 an important provision was inserted in the Slovenian Penal Code which expressly prohibits pollution of the sea caused by discharges from ships.

[41] Ibid, Art. 4
[42] CDA, Official Journal of RS, No. 69/95, Art. 1
[43] Penal Code of the Republic of Slovenia, Official Journal of Republic of Slovenia, nos. 63/94, 70/94, 23/99, 40/04, 17/06, 55/08, 89/08

6. Process of Lawmaking in Slovenia

In accordance with article 114 of the Rules of Procedure of the National Assembly of the Republic of Slovenia; a draft law may be sent to the President of the National Assembly by the government, a deputy, the National Council, or at least 5,000 voters.

The President of the National Assembly calls upon the proposer to supplement the draft law if necessary. If the proposer fails to supplement the draft law within 15 days from being called upon to do so by the President of the National Assembly, it is deemed that the draft law will not been tabled.

The President of the National Assembly forwards the draft law to all deputies immediately after it has been tabled. Thereby the legislative procedure begins. The President of the National Assembly sends the draft law also to the Government when it is not itself the proposer of the law. The Government may provide an opinion thereon.

The draft law is published in the gazette of the National Assembly.
According to Article 8 of the Constitution of the Republic of Slovenia (Ustava Republike Slovenije) International Conventions, which have been proclaimed and to which Slovenia adheres, shall take immediate effect in the wording, which have been ratified and published.

After the International convention/treaty is ratified (and duly published in Official Journal) by the Parliament (or in limited cases by the Government) Article 8 of the Constitution of the Republic of Slovenia[44] states that the provisions of the convention / treaty directly effect and are automatically binding for everyone. Moreover, the provisions of national legislation, which would contradict the provisions of the ratified convention/treaty, are automatically void. In the Slovenian legal order there is a principle of supremacy of international law. Once ratified and published international conventions are directly applied by Slovenian courts and in case of inconsistency the same prevail over national law.

[44] Available on http://www.dz-rs.si/index.php?id=351&docid=25&showdoc=1, visited on 18.12.2008

The main aim of this drafting project is to implement the Ballast Water Convention into the legal system of the Republic of Slovenia. The option to implement the whole Convention seems to be appropriate at the moment as the possible establishment of the Particularly Sensitive Sea Area (PSSA) in the Northern part of Adriatic. Legal experts in Slovenia are convinced that after the designation of PSSA the Convention will be soon implemented. However, the Convention will enter into force 12 months after ratification by 30 states, representing at least 35% of world merchant shipping tonnage. As of 28th February 2009 just eighteen states representing 15.36% of world tonnage had ratified it. The eighteen states include just two from the EU; Spain and France.[45] Even if Slovenia will ratify the Convention soon, as long as the Convention is not in force; the only way in the mean time is to implement the provisions of the Convention in domestic legislation, in form of Rules as secondary legislation, in accordance with Slovene Maritime Code Provisions.

[45] http://www.imo.org/Conventions/mainframe.asp?topic_id=247, visited on 28.02.2009

7. Main features of the International Convention of the Control and Management of Ships Ballast Water and Sediments 2004

The International Convention of the Control and Management of Ships Ballast Water and Sediments 2004 is divided into Articles and contains an Annex which includes regulations relating to the management of the ballast water activities within the ship, including the ballast water management plan, the surveying and certification of the ships.

The writer wants to emphasize that the most important part of the Convention is the Annex which interpret the general principles contained in the Convention and introduces mechanisms by which these principles can be applied.

7.1. General obligations

Parties undertake to give full and complete effect to the provision in the Convention and to the Annex in order to prevent, minimize and ultimately eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships ballast water and sediments.[46]

The Convention defines a ship as "Any vessel of any type whatsoever operating in the aquatic environment."[47] However, it does not use the term "invasive alien species" but the more restrictive term "harmful aquatic organisms and pathogens" which are defined as "aquatic organisms or pathogens, which if introduced into the water environment, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas".[48] This definition focuses on the hazardous toxic or pathogenic role of the organisms, while non-toxic invasive alien species are arguably included if there is a possibility of impairment of biological diversity.[49]

The next question that arises is related to the environment to which the Convention applies. Is the environment globally or is it the environment of specific shipping route that ballast water

[46] The International Convention for the Control and Management of Ships Ballast Water and Sediments, 2004 Art. 2 (1)
[47] Art. 1(1)
[48] Art. 1(8)
[49] Michael Tsimplis, Alien Species Stay Home: The International Convention for the Control and Management of Ships Ballast Water and Sediments 2004, The International Journal of Marine and Coastal Law, 2003, Vol. 19, p. 415

exchange takes place that matters? According to M. Scimplis:" If the immediate surroundings are already polluted and a health hazard already present or the biological diversity are already polluted and a health hazard already present, the discharge of the same organism would not further impair the environment or create extra hazards. If the environment is considered as a general abstract notion with a global character then such difficulties disappear because anything that can damage the environment or human health at any place in the world is subject to the definition (an ecosystem- approach)."[50]

According to Article 2 of the Convention, States may adopt more stringent measures with respect to the prevention, reduction or elimination of the transfer of harmful aquatic organisms and pathogens through the control and management of ships Ballast Water and Sediments, consistent with International law.[51] Thus States can give "full and complete" effect to the Convention by applying more stringent measures.[52] Collaboration with non - parties is not expressly permitted or prohibited, however it is not a concern because if the measures are more stringent than one of the Convention, the objectives of the Convention will be served.

It is interesting to address the question of additional measures in relation to EU framework. According to Article 95 of the EC, EU Members are permitted to impose more stringent environmental measures than those imposed by the Community. A distinction between pre-existing measures and those imposed afterwards was imposed in the Case C-3/00 Denmark v. Commission.[53] In this case, for the first time, the Court has been called upon to rule in an action by a Member State contesting a refusal by the Commission to authorize it to maintain national measures which derogate from a harmonization directive. The Treaty allows the Member States to maintain or to introduce national measures which derogate from a harmonization measure for reasons relating, *inter alia*, to the protection of public health. The Court considers that a Member State may ask to maintain derogating national provisions which already exist on the basis of an assessment of the risk to public health different from that accepted by the Community legislature at the time it adopted the harmonization measure. The Member State must prove that the derogating national provisions ensure a level of health protection which is higher than the

[50] Ibid, p. 416
[51] Art. 2
[52] Art. 2 (3)
[53] Ibid, 417

Community harmonization measure and that they do not go beyond what is necessary to attain that objective.[54]

According to writer's opinion, what is important is that Parties should ensure that ballast water management practices do not cause greater harm than they prevent to their environment, human health, property or resources, or those of other States.

7.2. Application of the Convention

The Convention operates to ships operating under the authority of a party whether they are entitled to fly the flag of that party or not.[55] One special feature of the Convention is the "non more favourable treatment clause". Ships flying the flag of non-parties should not be treated more favourably.[56] This clause will encourage and facilitate an equitable and fair application of the standards throughout the international maritime industry. It should be noted that under the Convention, vessels arriving in countries that have ratified the Convention will have to demonstrate that they are in conformity with the Convention, whether their flag country has, or has not, ratified the Convention. For example; foreign states that have ratified the Convention will require that Slovenian vessels in their ports demonstrate that they meet the requirements of the Convention even if Slovenia has not yet ratified the Convention.

Article 3 is important because expressly states that the Convention shall not apply to:

– ships not designed to carry ballast water
– ships which only operate in waters of one party, unless the party determines that Ballast water discharge would damage the environment, human health etc
– ships which only operate in waters of one Party at the high seas
– warships, naval auxiliary and others used only in governmental non-commercial service
– permanent Ballast water in sealed tanks, not subject to discharge.

If we look to the first exception related to ships which are not designed to carry ballast water the question arises whether the parties have jurisdiction to extend the scope of the Convention even

[54] available on http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:112:0001:0002:EN:PDF, visited on 25.01.2009
[55] The International Convention for the Control and Management of Ships Ballast Water and Sediments, 2004, Art. 3 (a), 3 (b)
[56] Ibid, Art. 3 (3)

into areas and ships excluded from the Convention. The answer is if this will be consistent with the general framework of "International Law", whatever this includes.

7.3. Sediment Reception Facilities

Each party shall develop strategies, policies or programmes of ballast water management in accordance with the objectives of the Ballast water Convention.[57] Moreover, each party must have adequate sediment reception facilities which should not cause delays in the designated ports where the ballast tanks are repaired or cleaned which should not damage the environment, human health, property or resources or those of other States.[58]

This provision is further enforced as article 5(2) provides that in case where facilities may be inadequate, each party is under obligation to inform the IMO. Under the Convention, each party is not under an obligation to provide sediment reception facilities, but where it does so these must be adequate. However, if the facilities are inadequate, each party is under an obligation to inform the IMO.

7.4. Research and Monitoring

The Convention in Article 6 establishes Scientific and Technical Research whereas:

– parties shall endeavour to promote, facilitate and monitor research on Ballast Water Management

– including onboard sampling, analysis of the effectiveness and adverse effects of Ballast water Management methods.

According to A 6 (2) the results of such studies should be made available to other parties upon request. However, under the Convention there is no encouragement for the environmental assessment in respect of ballast water management to be extended to areas not under the national jurisdiction of the parties, whether or not these areas belonging to nearby States.

[57] Ibid Art. 4 (2)
[58] Ibid Art. 5 (1)

7.5. Survey, Certification and Inspection

Each party shall survey and certify its ships.[59] Any ship to which the convention applies can be inspected in any port or offshore terminal by port state control officers[60]. However the purpose of such inspection is to establish whether:

- the ship is in compliance with the Convention
- inspection of ballast water record book and validity of Certificate and
- ballast water sampling, which has to be taken promptly with unduly delaying the ship.

If it is established that a ship is without a valid certificate, a detailed inspection can be carried out and the inspection shall ensure that the ship shall not discharge Ballast Water until proven harmless effect to the environment, human health, property and resources.[61] Nevertheless, it is unclear whether the inspecting party has to justify the "clear grounds" on which a detailed inspection has been carried out.

The Coastal Party may also inspect a vessel following a request submitted by another party that includes sufficient evidence regarding the past or the present operation of the ship if in breach of Convention.[62] In such a case the report of the inspection will be sent to both the ship s flag state and to the party that has requested such an inspection.

In all these procedures all possible efforts shall be made to avoid a ship being unduly delayed. Otherwise a ship is entitled to compensation for any loss or damage suffered.[63]

7.6. Technical Assistance, Co-operation and Regional Co-operation

Parties undertake, directly or through the Organization and other international bodies, as appropriate, in respect of the control and management of ships ballast water and sediments to provide support for those parties which request technical assistance to train personnel, availability of technology, equipment and facilities, joint research and facilities and implementation of this

[59] Ibid, Art. 7
[60] Ibid, Art. 9
[61] Ibid, Art. 9
[62] Ibid, Art. 10 (4)
[63] Ibid, Art. 12

Convention and of guidance developed by the Organization related thereto.[64] Active co-operation is suggested in respect of transfer of technology but this is subject to national laws.

Under the Convention regional co-operation and agreements consistent with the objectives of the Ballast water Convention are encouraged. These are supplementary encouraged in enclosed and semi enclosed seas.[65]

7.7. Communication of Information

Each Party or ship shall report to the Organization (IMO) and to other parties information regarding the Implementation of the Convention in respect of national laws and regulations on ballast water management requirements and on availability of reception facilities,[66] including the requirements for ships which can not comply with the requirements of the Convention due to unforeseen circumstances,[67] as well as the reception facilities.[68]

7.8. Coming into Force, Disputes and Amendments of the Convention

States can become parties to the Convention either by signature or by accession.[69] According to Art. 18 (1) the Convention will come into force when 30 States covering at least 35 per cent of the gross world tonnage have unreservedly become parties to the Convention. After entry into force the Convention will come into force in respect of new parties three months after each new party has deposited the required instrument.[70]

The amendment mechanisms of the Convention are rather complicated. The complication was apparently required in order to provide alternatives for changes in the major part of the Convention as well the annex. This provision was drafted by Japan on the basis of the International Convention on the Control of Harmful Antifouling Systems on Ships.[71] However, complication was necessary in order to provide alternatives for changes in the major part of the Convention as well as the Annex.

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[64] Ibid, Art. 13
[65] Ibid, Art. 13 (3)
[66] Ibid, Art. 14 (1) (a)
[67] Ibid, Art. Art 14 (1) (c), reffering to ships which can not comply as they fall under reg. A-3 and B-4 of the Annex.
[68] Ibid, Art. 14 (1) (b)
[69] Ibid, Art. 17 (2) (c)
[70] Ibid, Art. 18 (3)
[71] Michael Tsimplis, p. 424

The Annex is an Integral part of the Convention as it is concerned with detailed arrangements concerning the management of ballast water and sediments; however, it would have been more reasonable if the Convention will provide alternative mechanisms for revision of each part of the Convention.

7.9. Annex A - General Provisions

While the major part of the Convention relates to the general principles that govern its application and the issues as between the party states, the Annex detail the mechanism by which these principles will be applied and thus it is arguably the most important part of the Convention.

Article 2.2, makes it clear that the Annex "forms an integral part of this Convention." Moreover, "unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to the Annex." Annex A includes definitions, application and exemptions.

It is worth to observe that Regulation A-5 requires equivalent Compliance with the Annex for: pleasure craft (recreation, competition, search and rescue) less than 50 m with maximum ballast water capacity of 8 cubic meters.

7.10. Annex B – Management and Control Requirements or ships

Each ship shall implement and have on board a ballast water management plan approved by the Administration. The ballast water management plan is specific to each ship and should provide a detailed description of the actions to be taken to implement the ballast water management requirements and supplemental ballast water management practices; and shall designate the officer on board in charge of ensuring that the plan is properly implemented.[72]

Each ship shall have on board a ballast water record book (also in electronic form) which shall be kept readily available for inspection and shall contain all information about discharges about Ballast Water and circumstances of accidental or exceptional discharge; or when Ballast water is discharged in a reception facility.[73]

[72] Ibid Reg. B-1
[73] Ibid Reg, B-2

These two records must be kept on board for two years and for another three years in the owning company.[74] The ballast water record book shall be available for inspection by all officers authorized by a party who are entitled to copy parts of it and ask the master to certify that a true copy has been made. In judicial proceedings such certified copies are admissible for use.[75]

Regulation B-3 contains precise requirements of Ballast water management for ships.

- **Ships constructed before 2009** with a ballast water capacity of between 1500 and 5000 cubic meters must conduct ballast water management that at least meets the ballast water exchange standards or the ballast water performance standards until 2014, after which time it shall at least meet the ballast water performance standard.

- **Ships constructed before 2009** with a ballast water capacity of less than 1500 or greater than 5000 cubic meters must conduct ballast water management that at least meets the ballast water exchange standards or the ballast water performance standards until 2016, after which time it shall at least meet the ballast water performance standard.

- **Ships constructed in or after 2009** a ballast water capacity of less than 5000 cubic meters must conduct ballast water management that at least meets the ballast water performance standard.

- **Ships constructed in or after 2009 but before 2012** with a ballast water capacity of 5000 cubic meters or more shall conduct ballast water management that at least meets the ballast performance standard until 2016.

- **Ships constructed in or after 2012** with ballast water capacity of 5000 cubic meters or more shall conduct ballast water management that at least meets the ballast water performance standard.

[74] Ibid Reg, B-2 (2)
[75] Ibid Reg. B-2 (6)

7.11. Annex C – Additional Measures (to section B)

A Party or jointly with other Parties, may if consistent with international law and after the consultation with adjacent or other States require additional standards or requirements and should communicate their intention to establish additional measures to the Organization at least six months, except in emergency or epidemic situations, prior to the projected date of implementation to the measures.[76]

Such additional measures shall be in accordance with IMO guidelines;[77] should not compromise the safety of the ship and can be only introduced after being communicated to the IMO,[78] except in epidemic situations. Approval by IMO is also required in cases when the 1982 Law of the Sea Convention so require and should not conflict with any other convention with which the ship shall comply.

Regulation C-2 covers warnings concerning Ballast water uptake in certain areas and related flag State measures and establishes that Ballast Water uptake shall be avoided in cases of outbreaks of harmful aquatic organisms, near sewage outfalls, and in cases of poor tidal flushing. Such warning issued by the State should contain alternative areas where ballast water may be safely exchanged.

7.12. Annex D – Standards for Ballast water Exchange

The Convention introduces two alternative standards:

- The first (regulation D-1) requires ships to exchange a minimum of 95% of ballast water volume,[79] for ships pump through method - three times the volume of each ballast tank shall be considered to meet the standard required. Pumping Less than three times is accepted when the ship demonstrates that at least 95% volumetric exchange is met.
- The second, stricter standard (regulation D-2) requires that ballast water discharges have the number of viable organisms below the specified limits.[80] Ships conducting ballast water management shall discharge less than 10 viable organisms per cubic meter greater than or equal

[76] Ibid Reg., C-1
[77] Ibid Reg., C-1 (1)
[78] Ibid Reg., C-1 (3) (2)
[79] Ibid Reg. D-1
[80] Ibid Reg., D-2

to 50 micrometres in minimum dimension and less than 10 viable organisms per millimetre, less than 50 micrometres in minimum dimension and greater than or equal to 10 micrometers in minimum dimension.

Therefore, the concentrations are given in relation to the organisms involved. They are three microbe indicators related to human health standards. The discharges of indicator microbes are limited to:

a. Toxicogenic Vibrio cholera (O1 and O139) with less than 1 colony forming unit (cfu) per 100 millilitres or less than 1 cfu per 1 gram (wet weight) zooplankton samples
b. Escherichia coli less than 250 cfu per100 millilitres
c. Intestinal Enterococci less than 100 cfu per 100 millilitres.

The writer wants to highlight, that the main drawback of this provision, is related to its inefficiency in practice. Usually the crew involved in operation of discharging ballast water does not have adequate knowledge of sampling and performing microbiological analysis. Rarely, mariners and crew have enough knowledge and usually the ship is not carrying all the necessary equipment to perform a microbiological analyze. The development of required systems need sufficient time, therefore the Convention allows parties to delay for five years the application of regulation D-2 to vessels that are involved in national experimental programmes for the treatment of ballast water. Hence, this process needs approval of the Organization (IMO).

According to IMO guidelines, today in most European ports the discharge of ballast water is performed in suitable reception facilities; therefore sometimes none of the regulations are applicable. In this regard some scholars[81] suggest that would be appropriate to develop various reception facilities around the world which will clean ballast water, instead of cleaning ballast water on board of each singular ship. Each procedure performed in the port or at the boat related to ballast water management systems must be safe for ship, equipment and crew.[82]

It is important to mention that ballast water exchange shall take place (in accordance with IMO guidelines) at least 50 nautical miles from the closest land and in waters deeper than 200 meters,

[81] Michael Tsimplis, p. 433-435
[82] Reg. D-3

which is measured from the baseline of the territorial sea.[83] Where possible the water exchange should take place at least 200 nautical miles distant and in water deeper than 200 meters.[84] In practice, this provision is sometimes difficult to esteem because of safety and "extraordinary conditions". When sea conditions are bad the provision to discharge ballast water 200 nautical miles distant seems risky for the safety of the boat, crew and passengers. Therefore, the Convention in regulation B.4 (4) provides words "any other extraordinary condition". This general provision refers to all situations that can occur irrespective to safety exception. The regulation referring to 50 nautical miles would be difficult to observe particularly in the Adriatic where sometimes depth requirements are difficult to meet. In this regard it would be reasonable that the Convention will provide additional provisions regarding which will apply particularly to enclosed or shallow regions; where coastal states shall have the option to discharge ballast water in specially designed areas for exchange of ballast water. This proposal was also submitted by Italy[85] in cooperation with Slovenia and Croatia to Marine Environment Protection Committee (MEPC).

7.13. Review of Standards by the Organization

Under regulation D-5 IMO is required to review the Ballast Water Performance Standard, taking into account a number of criteria. There is a comprehensive review in determination to assess best available technology. In addition the review is also considering: safety and environmental aspects, practicability, cost, and biological effectiveness.

7.14. ANNEX E – Survey and Certification requirements for Ballast water Management

Annex E provides for ships of 400 gross tonnages and above: initial survey before the ship is put in service, a renewal survey which does not exceed five years, intermediate surveys and additional survey after change, replacements or significant repair of the structure.

The appendices give form of Ballast Water Management Certificate which requires information as:

- name of ship, port of registry

[83] Reg. B-4 (1) (2)
[84] Reg. B-4 (1) (1)
[85] MEPC-IBWWG 49 Session, Agenda Item 2, 24 March 2003, 2/2/3, p. 40

- details of ballast water used (installation date, manufacturer)
- principal ballast water method employed according to Regulation D-1, D-2, prototype testing
- documentation of Annual and Intermediate Surveys according to Section E.

Appendix II – Form of Ballast Water Record Book which requires information as

- ballast water uptake (date, time, port or lat/long, volume)
- if ballast water is circulated or treated for ballast water management purposes
- of ballast water discharge into the sea and reception facilities
- of accidental or other exceptional uptake or discharge of ballast water.

8. Implementation of the International Convention for the Control and Management of ships' Ballast water and Sediments, 2004

LAW
ON THE RATIFICATION OF THE INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS, 2004

Article 1

The International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, shall be ratified.

Article 2

The text of the convention in the English language is set hereunder followed by the translation thereof in the Slovenian language:

INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS, 2004

THE PARTIES TO THIS CONVENTION,

RECALLING Article 196(1) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which provides that "States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto,"

NOTING the objectives of the 1992 Convention on Biological Diversity (CBD) and that the transfer and introduction of Harmful Aquatic Organisms and Pathogens via ships' ballast water threatens the conservation and sustainable use of biological diversity as well as decision IV/5 of the 1998 Conference of the Parties (COP 4) to the CBD concerning the conservation and sustainable use of marine and coastal ecosystems, as well as decision VI/23 of the 2002

Conference of the Parties (COP 6) to the CBD on alien species that threaten ecosystems, habitats or species, including guiding principles on invasive species,

NOTING FURTHER that the 1992 United Nations Conference on Environment and Development (UNCED) requested the International Maritime Organization (the Organization) to consider the adoption of appropriate rules on ballast water discharge,

MINDFUL of the precautionary approach set out in Principle 15 of the Rio Declaration on Environment and Development and referred to in resolution MEPC.67(37), adopted by the Organization's Marine Environment Protection Committee on 15 September 1995,

ALSO MINDFUL that the 2002 World Summit on Sustainable Development, in paragraph 34(b) of its Plan of Implementation, calls for action at all levels to accelerate the development of measures to address invasive alien species in ballast water,

CONSCIOUS that the uncontrolled discharge of Ballast Water and Sediments from ships has led to the transfer of Harmful Aquatic Organisms and Pathogens, causing injury or damage to the environment, human health, property and resources,

RECOGNIZING the importance placed on this issue by the Organization through Assembly resolutions A.774(18) in 1993 and A.868(20) in 1997, adopted for the purpose of addressing the transfer of Harmful Aquatic Organisms and Pathogens,

RECOGNIZING FURTHER that several States have taken individual action with a view to prevent, minimize and ultimately eliminate the risks of introduction of Harmful Aquatic Organisms and Pathogens through ships entering their ports, and also that this issue, being of worldwide concern, demands action based on globally applicable regulations together with guidelines for their effective implementation and uniform interpretation,

DESIRING to continue the development of safer and more effective Ballast Water Management options that will result in continued prevention, minimization and ultimate elimination of the transfer of Harmful Aquatic Organisms and Pathogens,

RESOLVED to prevent, minimize and ultimately eliminate the risks to the environment, human health, property and resources arising from the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments, as well as to avoid unwanted side-effects from that control and to encourage developments in related knowledge and technology,

CONSIDERING that these objectives may best be achieved by the conclusion of an International Convention for the Control and Management of Ships' Ballast Water and Sediments,

HAVE AGREED as follows:

Article 1 *Definitions*

For the purpose of this Convention, unless expressly provided otherwise:

1 "Administration" means the Government of the State under whose authority the ship is operating. With respect to a ship entitled to fly a flag of any State, the Administration is the Government of that State. With respect to floating platforms engaged in exploration and exploitation of the sea-bed and subsoil thereof adjacent to the coast over which the coastal State exercises sovereign rights for the purposes of exploration and exploitation of its natural resources, including Floating Storage Units (FSUs) and Floating Production Storage and Offloading Units (FPSOs), the Administration is the Government of the coastal State concerned.

2 “Ballast Water“ means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship.

3 “Ballast Water Management“ means mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of Harmful Aquatic Organisms and Pathogens within Ballast Water and Sediments.

4 “Certificate“ means the International Ballast Water Management Certificate.

5 “Committee“ means the Marine Environment Protection Committee of the Organization.

6 “Convention“ means the International Convention for the Control and Management of Ships‘ Ballast Water and Sediments.

7 “Gross tonnage“ means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969 or any successor Convention.

8 “Harmful Aquatic Organisms and Pathogens“ means aquatic organisms or pathogens which, if introduced into the sea including estuaries, or into fresh water courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas.

9 “Organization“ means the International Maritime Organization.

10 “Secretary-General“ means the Secretary-General of the Organization.

11 “Sediments“ means matter settled out of Ballast Water within a ship.

12 “Ship“ means a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, FSUs and FPSOs.

Article 2 *General Obligations*

1 Parties undertake to give full and complete effect to the provisions of this Convention and the Annex thereto in order to prevent, minimize and ultimately eliminate the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships‘ Ballast Water and Sediments.

2 The Annex forms an integral part of this Convention. Unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to the Annex.

3 Nothing in this Convention shall be interpreted as preventing a Party from taking, individually or jointly with other Parties, more stringent measures with respect to the prevention, reduction or elimination of the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships‘ Ballast Water and Sediments, consistent with international law.

4 Parties shall endeavour to co-operate for the purpose of effective implementation, compliance and enforcement of this Convention.

5 Parties undertake to encourage the continued development of Ballast Water Management and standards to prevent, minimize and ultimately eliminate the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships‘ Ballast Water and Sediments.

6 Parties taking action pursuant to this Convention shall endeavour not to impair or damage their environment, human health, property or resources, or those of other States.

7 Parties should ensure that Ballast Water Management practices used to comply with this Convention do not cause greater harm than they prevent to their environment, human health, property or resources, or those of other States.

8 Parties shall encourage ships entitled to fly their flag, and to which this Convention applies, to avoid, as far as practicable, the uptake of Ballast Water with potentially Harmful Aquatic Organisms and Pathogens, as well as Sediments that may contain such organisms, including promoting the adequate implementation of recommendations developed by the Organization.

9 Parties shall endeavour to co-operate under the auspices of the Organization to address threats and risks to sensitive, vulnerable or threatened marine ecosystems and biodiversity in areas beyond the limits of national jurisdiction in relation to Ballast Water Management.

Article 3 *Application*

1 Except as expressly provided otherwise in this Convention, this Convention shall apply to:

(a) ships entitled to fly the flag of a Party; and

(b) ships not entitled to fly the flag of a Party but which operate under the authority of a Party.

2 This Convention shall not apply to:

(a) ships not designed or constructed to carry Ballast Water;

(b) ships of a Party which only operate in waters under the jurisdiction of that Party, unless the Party determines that the discharge of Ballast Water from such ships would impair or damage their environment, human health, property or resources, or those of adjacent or other States;

(c) ships of a Party which only operate in waters under the jurisdiction of another Party, subject to the authorization of the latter Party for such exclusion. No Party shall grant such authorization if doing so would impair or damage their environment, human health, property or resources, or those of adjacent or other States. Any Party not granting such authorization shall notify the Administration of the ship concerned that this Convention applies to such ship;

(d) ships which only operate in waters under the jurisdiction of one Party and on the high seas, except for ships not granted an authorization pursuant to sub-paragraph (c), unless such Party determines that the discharge of Ballast Water from such ships would impair or damage their environment, human health, property or resources, or those of adjacent of other States;

(e) any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Party shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Convention; and

(f) permanent Ballast Water in sealed tanks on ships, that is not subject to discharge.

3 With respect to ships of non-Parties to this Convention, Parties shall apply the requirements of this Convention as may be necessary to ensure that no more favourable treatment is given to such ships.

Article 4 Control of the Transfer of Harmful Aquatic Organisms and Pathogens Through Ships‘ Ballast Water and Sediments

1 Each Party shall require that ships to which this Convention applies and which are entitled to fly its flag or operating under its authority comply with the requirements set forth in this Convention, including the applicable standards and requirements in the Annex, and shall take effective measures to ensure that those ships comply with those requirements.

2 Each Party shall, with due regard to its particular conditions and capabilities, develop national policies, strategies or programmes for Ballast Water Management in its ports and waters under its jurisdiction that accord with, and promote the attainment of the objectives of this Convention.

Article 5 *Sediment Reception Facilities*

1 Each Party undertakes to ensure that, in ports and terminals designated by that Party where cleaning or repair of ballast tanks occurs, adequate facilities are provided for the reception of Sediments, taking into account the Guidelines developed by the Organization. Such reception facilities shall operate without causing undue delay to ships and shall provide for the safe disposal of such Sediments that does not impair or damage their environment, human health, property or resources or those of other States.

2 Each Party shall notify the Organization for transmission to the other Parties concerned of all cases where the facilities provided under paragraph 1 are alleged to be inadequate.

Article 6 *Scientific and Technical Research and Monitoring*

1 Parties shall endeavour, individually or jointly, to:

(a) promote and facilitate scientific and technical research on Ballast Water Management; and

(b) monitor the effects of Ballast Water Management in waters under their jurisdiction.

Such research and monitoring should include observation, measurement, sampling, evaluation and analysis of the effectiveness and adverse impacts of any technology or methodology as well as any adverse impacts caused by such organisms and pathogens that have been identified to have been transferred through ships‘ Ballast Water.

2 Each Party shall, to further the objectives of this Convention, promote the availability of relevant information to other Parties who request it on:

(a) scientific and technology programmes and technical measures undertaken with respect to Ballast Water Management; and

(b) the effectiveness of Ballast Water Management deduced from any monitoring and assessment programmes.

Article 7 *Survey and certification*

1 Each Party shall ensure that ships flying its flag or operating under its authority and subject to survey and certification are so surveyed and certified in accordance with the regulations in the Annex.

2 A Party implementing measures pursuant to Article 2.3 and Section C of the Annex shall not require additional survey and certification of a ship of another Party, nor shall the Administration of the ship be obligated to survey and certify additional measures imposed by another Party. Verification of such additional measures shall be the responsibility of the Party implementing such measures and shall not cause undue delay to the ship.

Article 8 *Violations*

1 Any violation of the requirements of this Convention shall be prohibited and sanctions shall be established under the law of the Administration of the ship concerned, wherever the violation occurs. If the Administration is informed of such a violation, it shall investigate the matter and may request the reporting Party to furnish additional evidence of the alleged violation. If the Administration is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken as soon as possible, in accordance with its law. The Administration shall promptly inform the Party that reported the alleged violation, as well as the Organization, of any action taken. If the Administration has not taken any action within 1 year after receiving the information, it shall so inform the Party which reported the alleged violation.

2 Any violation of the requirements of this Convention within the jurisdiction of any Party shall be prohibited and sanctions shall be established under the law of that Party. Whenever such a violation occurs, that Party shall either:

(a) cause proceedings to be taken in accordance with its law; or

(b) furnish to the Administration of the ship such information and evidence as may be in its possession that a violation has occurred.

3 The sanctions provided for by the laws of a Party pursuant to this Article shall be adequate in severity to discourage violations of this Convention wherever they occur.

Article 9 *Inspection of Ships*

1 A ship to which this Convention applies may, in any port or offshore terminal of another Party, be subject to inspection by officers duly authorized by that Party for the purpose of determining whether the ship is in compliance with this Convention. Except as provided in paragraph 2 of this Article, any such inspection is limited to:

(a) verifying that there is onboard a valid Certificate, which, if valid shall be accepted; and

(b) inspection of the Ballast Water record book, and/or

(c) a sampling of the ship‘s Ballast Water, carried out in accordance with the guidelines to be developed by the Organization. However, the time required to analyse the samples shall not be used as a basis for unduly delaying the operation, movement or departure of the ship.

2. Where a ship does not carry a valid Certificate or there are clear grounds for believing that:

(a) the condition of the ship or its equipment does not correspond substantially with the particulars of the Certificate;

(b) or the master or the crew are not familiar with essential shipboard procedures relating to Ballast Water Management, or have not implemented such procedures;

a detailed inspection may be carried out.

3 In the circumstances given in paragraph 2 of this Article, the Party carrying out the inspection shall take such steps as will ensure that the ship shall not discharge Ballast Water until it can do so without presenting a threat of harm to the environment, human health, property or resources.

Article 10 *Detection of Violations and Control of Ships*

1 Parties shall co-operate in the detection of violations and the enforcement of the provisions of this Convention.

2 If a ship is detected to have violated this Convention, the Party whose flag the ship is entitled to fly, and/or the Party in whose port or offshore terminal the ship is operating, may, in addition to any sanctions described in Article 8 or any action described in Article 9, take steps to warn, detain, or exclude the ship. The Party in whose port or offshore terminal the ship is operating, however, may grant such a ship permission to leave the port or offshore terminal for the purpose of discharging Ballast Water or proceeding to the nearest appropriate repair yard or reception facility available, provided doing so does not present a threat of harm to the environment, human health, property or resources.

3 If the sampling described in Article 9.1(c) leads to a result, or supports information received from another port or offshore terminal, indicating that the ship poses a threat to the environment, human health, property or resources, the Party in whose waters the ship is operating shall prohibit such ship from discharging Ballast Water until the threat is removed.

4 A Party may also inspect a ship when it enters the ports or offshore terminals under its jurisdiction, if a request for an investigation is received from any Party, together with sufficient evidence that a ship is operating or has operated in violation of a provision in this Convention. The report of such investigation shall be sent to the Party requesting it and to the competent authority of the Administration of the ship concerned so that appropriate action may be taken.

Article 11 *Notification of Control Actions*

1 If an inspection conducted pursuant to Article 9 or 10 indicates a violation of this Convention, the ship shall be notified. A report shall be forwarded to the Administration, including any evidence of the violation.

2 In the event that any action is taken pursuant to Article 9.3, 10.2 or 10.3, the officer carrying out such action shall forthwith inform, in writing, the Administration of the ship concerned, or if this is not possible, the consul or diplomatic representative of the ship concerned, of all the circumstances in which the action was deemed necessary. In addition, the recognized organization responsible for the issue of certificates shall be notified.

3 The port State authority concerned shall, in addition to parties mentioned in paragraph 2, notify the next port of call of all relevant information about the violation, if it is unable to take action as specified in Article 9.3, 10.2 or 10.3 or if the ship has been allowed to proceed to the next port of call.

Article 12 *Undue Delay to Ships*

1 All possible efforts shall be made to avoid a ship being unduly detained or delayed under Article 7.2, 8, 9 or 10.

2 When a ship is unduly detained or delayed under Article 7.2, 8, 9 or 10, it shall be entitled to compensation for any loss or damage suffered.

Article 13 *Technical Assistance, Co-operation and Regional Co-operation*

1 Parties undertake, directly or through the Organization and other international bodies, as appropriate, in respect of the control and management of ships' Ballast Water and Sediments, to provide support for those Parties which request technical assistance:

(a) to train personnel;

(b) to ensure the availability of relevant technology, equipment and facilities;

(c) to initiate joint research and development programmes; and

(d) to undertake other action aimed at the effective implementation of this Convention and of guidance developed by the Organization related thereto.

2 Parties undertake to co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology in respect of the control and management of ships' Ballast Water and Sediments.

3 In order to further the objectives of this Convention, Parties with common interests to protect the environment, human health, property and resources in a given geographical area, in particular, those Parties bordering enclosed and semi-enclosed seas, shall endeavour, taking into account characteristic regional features, to enhance regional co-operation, including through the conclusion of regional agreements consistent with this Convention. Parties shall seek to co-operate with the Parties to regional agreements to develop harmonized procedures.

Article 14 *Communication of information*

1 Each Party shall report to the Organization and, where appropriate, make available to other Parties the following information:

(a) any requirements and procedures relating to Ballast Water Management, including its laws, regulations, and guidelines for implementation of this Convention;

(b) the availability and location of any reception facilities for the environmentally safe disposal of Ballast Water and Sediments; and

(c) any requirements for information from a ship which is unable to comply with the provisions of this Convention for reasons specified in regulations A-3 and B-4 of the Annex.

2 The Organization shall notify Parties of the receipt of any communications under the present Article and circulate to all Parties any information communicated to it under subparagraphs 1(b) and (c) of this Article.

Article 15 *Dispute Settlement*

Parties shall settle any dispute between them concerning the interpretation or application of this Convention by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice.

Article 16 *Relationship to International Law and Other Agreements*

Nothing in this Convention shall prejudice the rights and obligations of any State under customary international law as reflected in the United Nations Convention on the Law of the Sea.

Article 17 Signature, Ratification, Acceptance, Approval and Accession

1 This Convention shall be open for signature by any State at the Headquarters of the Organization from 1 June 2004 to 31 May 2005 and shall thereafter remain open for accession by any State.

2 States may become Parties to the Convention by:

(a) signature not subject to ratification, acceptance, or approval; or

(b) signature subject to ratification, acceptance, or approval, followed by ratification, acceptance or approval; or

(c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4 If a State comprises two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval, or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

5 Any such declaration shall be notified to the Depositary in writing and shall state expressly the territorial unit or units to which this Convention applies.

Article 18 *Entry into Force*

1 This Convention shall enter into force twelve months after the date on which not less than thirty States, the combined merchant fleets of which constitute not less than thirty-five percent of the gross tonnage of the world‘s merchant shipping, have either signed it without reservation as to ratification, acceptance or approval, or have deposited the requisite instrument of ratification, acceptance, approval or accession in accordance with Article 17.

2 For States which have deposited an instrument of ratification, acceptance, approval or accession in respect of this Convention after the requirements for entry into force thereof have been met, but prior to the date of entry in force, the ratification, acceptance, approval or accession shall take effect on the date of entry into force of this Convention or three months after the date of deposit of instrument, whichever is the later date.

3 Any instrument of ratification, acceptance, approval or accession deposited after the date on which this Convention enters into force shall take effect three months after the date of deposit.

4 After the date on which an amendment to this Convention is deemed to have been accepted under Article 19, any instrument of ratification, acceptance, approval or accession deposited shall apply to this Convention as amended.

Article 19 *Amendments*

1 This Convention may be amended by either of the procedures specified in the following paragraphs.

2 Amendments after consideration within the Organization:

(a) Any Party may propose an amendment to this Convention. A proposed amendment shall be submitted to the Secretary-General, who shall then circulate it to the Parties and Members of the Organization at least six months prior to its consideration.

(b) An amendment proposed and circulated as above shall be referred to the Committee for consideration. Parties, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Committee for consideration and adoption of the amendment.

(c) Amendments shall be adopted by a two-thirds majority of the Parties present and voting in the Committee, on condition that at least one-third of the Parties shall be present at the time of voting.

(d) Amendments adopted in accordance with subparagraph (c) shall be communicated by the Secretary-General to the Parties for acceptance.

(e) An amendment shall be deemed to have been accepted in the following circumstances:

(i) An amendment to an article of this Convention shall be deemed to have been accepted on the date on which two-thirds of the Parties have notified the Secretary-General of their acceptance of it.

(ii) An amendment to the Annex shall be deemed to have been accepted at the end of twelve months after the date of adoption or such other date as determined by the Committee. However, if by that date more than one-third of the Parties notify the Secretary-General that they object to the amendment, it shall be deemed not to have been accepted.

(f) An amendment shall enter into force under the following conditions:

(i) An amendment to an article of this Convention shall enter into force for those Parties that have declared that they have accepted it six months after the date on which it is deemed to have been accepted in accordance with subparagraph (e)(i).

(ii) An amendment to the Annex shall enter into force with respect to all Parties six months after the date on which it is deemed to have been accepted, except for any Party that has:

(1) notified its objection to the amendment in accordance with subparagraph (e)(ii) and that has not withdrawn such objection; or

(2) notified the Secretary-General, prior to the entry into force of such amendment, that the amendment shall enter into force for it only after a subsequent notification of its acceptance.

(g) (i) A Party that has notified an objection under subparagraph (f)(ii)(1) may subsequently notify the Secretary-General that it accepts the amendment. Such amendment shall enter into force for such Party six months after the date of its notification of acceptance, or the date on which the amendment enters into force, whichever is the later date.

(ii) If a Party that has made a notification referred to in subparagraph (f)(ii)(2) notifies the Secretary-General of its acceptance with respect to an amendment, such amendment shall enter into force for such Party six months after the date of its notification of acceptance, or the date on which the amendment enters into force, whichever is the later date.

3 Amendment by a Conference:

(a) Upon the request of a Party concurred in by at least one-third of the Parties, the Organization shall convene a Conference of Parties to consider amendments to this Convention.

(b) An amendment adopted by such a Conference by a two-thirds majority of the Parties present and voting shall be communicated by the Secretary-General to all Parties for acceptance.

(c) Unless the Conference decides otherwise, the amendment shall be deemed to have been accepted and shall enter into force in accordance with the procedures specified in paragraphs 2(e) and (f) respectively.

4 Any Party that has declined to accept an amendment to the Annex shall be treated as a non-Party only for the purpose of application of that amendment.

5 Any notification under this Article shall be made in writing to the Secretary-General.

6 The Secretary-General shall inform the Parties and Members of the Organization of:

(a) any amendment that enters into force and the date of its entry into force generally and for each Party; and

(b) any notification made under this Article.

Article 20 *Denunciation*

1 This Convention may be denounced by any Party at any time after the expiry of two years from the date on which this Convention enters into force for that Party.

2 Denunciation shall be effected by written notification to the Depositary, to take effect one year after receipt or such longer period as may be specified in that notification.

Article 21 *Depositary*

1 This Convention shall be deposited with the Secretary-General, who shall transmit certified copies of this Convention to all States which have signed this Convention or acceded thereto.

2 In addition to the functions specified elsewhere in this Convention, the Secretary-General shall:

(a) inform all States that have signed this Convention, or acceded thereto, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Convention; and

(iii) the deposit of any instrument of denunciation from the Convention, together with the date on which it was received and the date on which the denunciation takes effect; and

(b) as soon as this Convention enters into force, transmit the text thereof to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 22 *Languages*

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this thirteenth day of February, two thousand and four.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose, have signed this Convention.

ANNEX

REGULATIONS FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS

SECTION A - GENERAL PROVISIONS

Regulation A-1 *Definitions*

For the purposes of this Annex:

1 "Anniversary date" means the day and the month of each year corresponding to the date of expiry of the Certificate.

2 "Ballast Water Capacity" means the total volumetric capacity of any tanks, spaces or compartments on a ship used for carrying, loading or discharging Ballast Water, including any multi-use tank, space or compartment designed to allow carriage of Ballast Water.

3 "Company" means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code[86].

4 "Constructed" in respect of a ship means a stage of construction where:

.1 the keel is laid; or

.2 construction identifiable with the specific ship begins;

.3 assembly of the ship has commenced comprising at least 50 tonnes or 1 percent of the estimated mass of all structural material, whichever is less; or

.4 the ship undergoes a major conversion.

5 "Major conversion" means a conversion of a ship:

.1 which changes its ballast water carrying capacity by 15 percent or greater, or

.2 which changes the ship type, or

[86] Refer to the ISM Code adopted by the Organization by resolution A.741(18), as amended.

.3 which, in the opinion of the Administration, is projected to prolong its life by ten years or more, or

.4 which results in modifications to its ballast water system other than component replacement-in-kind. Conversion of a ship to meet the provisions of regulation D-1 shall not be deemed to constitute a major conversion for the purpose of this Annex.

6 "From the nearest land" means from the baseline from which the territorial sea of the territory in question is established in accordance with international law except that, for the purposes of the Convention, —from the nearest land" off the north-eastern coast of Australia shall mean from a line drawn from a point on the coast of Australia in

latitude 11°00′ S, longitude 142°08′ E
to a point in latitude 10°35′ S, longitude 141°55′ E
thence to a point latitude 10°00′ S, longitude 142°00′ E
thence to a point latitude 9°10′ S, longitude 143°52′ E
thence to a point latitude 9°00′ S, longitude 144°30′ E
thence to a point latitude 10°41′ S, longitude 145°00′ E
thence to a point latitude 13°00′ S, longitude 145°00′ E
thence to a point latitude 15°00′ S, longitude 146°00′ E
thence to a point latitude 17°30′ S, longitude 147°00′ E
thence to a point latitude 21°00′ S, longitude 152°55′ E
thence to a point latitude 24°30′ S, longitude 154°00′ E
thence to a point on the coast of Australia
in latitude 24°42′ S, longitude 153°15′ E.

7 "Active Substance" means a substance or organism, including a virus or a fungus, that has a general or specific action on or against Harmful Aquatic Organisms and Pathogens.

Regulation A-2 *General Applicability*

Except where expressly provided otherwise, the discharge of Ballast Water shall only be conducted through Ballast Water Management in accordance with the provisions of this Annex.

Regulation A-3 *Exceptions*

The requirements of regulation B-3, or any measures adopted by a Party pursuant to Article 2.3 and Section C, shall not apply to:

1 the uptake or discharge of Ballast Water and Sediments necessary for the purpose of ensuring the safety of a ship in emergency situations or saving life at sea; or

2 the accidental discharge or ingress of Ballast Water and Sediments resulting from damage to a ship or its equipment:

.1 provided that all reasonable precautions have been taken before and after the occurrence of the damage or discovery of the damage or discharge for the purpose of preventing or minimizing the discharge; and

.2 unless the owner, Company or officer in charge wilfully or recklessly caused damage; or

3 the uptake and discharge of Ballast Water and Sediments when being used for the purpose of avoiding or minimizing pollution incidents from the ship; or

4 the uptake and subsequent discharge on the high seas of the same Ballast Water and Sediments; or

5 the discharge of Ballast Water and Sediments from a ship at the same location where the whole of that Ballast Water and those Sediments originated and provided that no mixing with unmanaged Ballast Water and Sediments from other areas has occurred. If mixing has occurred, the Ballast Water taken from other areas is subject to Ballast Water Management in accordance with this Annex.

Regulation A-4 *Exemptions*

1 A Party or Parties, in waters under their jurisdiction, may grant exemptions to any requirements to apply regulations B-3 or C-1, in addition to those exemptions contained elsewhere in this Convention, but only when they are:

.1 granted to a ship or ships on a voyage or voyages between specified ports or locations; or to a ship which operates exclusively between specified ports or locations;
.2 effective for a period of no more than five years subject to intermediate review;

.3 granted to ships that do not mix Ballast Water or Sediments other than between the ports or locations specified in paragraph 1.1; and

.4 granted based on the Guidelines on risk assessment developed by the Organization.

2 Exemptions granted pursuant to paragraph 1 shall not be effective until after communication to the Organization and circulation of relevant information to the Parties.

3 Any exemptions granted under this regulation shall not impair or damage the environment, human health, property or resources of adjacent or other States. Any State that the Party determines may be adversely affected shall be consulted, with a view to resolving any identified concerns.

4 Any exemptions granted under this regulation shall be recorded in the Ballast Water record book.

Regulation A-5 *Equivalent compliance*

Equivalent compliance with this Annex for pleasure craft used solely for recreation or competition or craft used primarily for search and rescue, less than 50 metres in length overall, and with a maximum Ballast Water capacity of 8 cubic metres, shall be determined by the Administration taking into account Guidelines developed by the Organization.

SECTION B MANAGEMENT AND CONTROL REQUIREMENTS FOR SHIPS

Regulation B-1 *Ballast Water Management* Plan

Each ship shall have on board and implement a Ballast Water Management plan. Such a plan shall be approved by the Administration taking into account Guidelines developed by the Organization. The Ballast Water Management plan shall be specific to each ship and shall at least:

1 detail safety procedures for the ship and the crew associated with Ballast Water Management as required by this Convention;

2 provide a detailed description of the actions to be taken to implement the Ballast Water Management requirements and supplemental Ballast Water Management practices as set forth in this Convention;

3 detail the procedures for the disposal of Sediments:

.1 at sea; and

.2 to shore;

4 include the procedures for coordinating shipboard Ballast Water Management that involves discharge to the sea with the authorities of the State into whose waters such discharge will take place;

5 designate the officer on board in charge of ensuring that the plan is properly implemented;

6 contain the reporting requirements for ships provided for under this Convention; and

7 are written in the working language of the ship. If the language used is not English, French or Spanish, a translation into one of these languages shall be included.

Regulation B-2 *Ballast Water Record Book*

1 Each ship shall have on board a Ballast Water record book that may be an electronic record system, or that may be integrated into another record book or system and, which shall at least contain the information specified in Appendix II.

2 Ballast Water record book entries shall be maintained on board the ship for a minimum period of two years after the last entry has been made and thereafter in the Company‘s control for a minimum period of three years.

3 In the event of the discharge of Ballast Water pursuant to regulations A-3, A-4 or B-3.6 or in the event of other accidental or exceptional discharge of Ballast Water not otherwise exempted by this Convention, an entry shall be made in the Ballast Water record book describing the circumstances of, and the reason for, the discharge.

4 The Ballast Water record book shall be kept readily available for inspection at all reasonable times and, in the case of an unmanned ship under tow, may be kept on the towing ship.

5 Each operation concerning Ballast Water shall be fully recorded without delay in the Ballast Water record book. Each entry shall be signed by the officer in charge of the operation concerned and each completed page shall be signed by the master. The entries in the Ballast Water record book shall be in a working language of the ship. If that language is not English, French or Spanish the entries shall contain a translation into one of those languages. When entries in an official national language of the State whose flag the ship is entitled to fly are also used, these shall prevail in case of a dispute or discrepancy.

6 Officers duly authorized by a Party may inspect the Ballast Water record book on board any ship to which this regulation applies while the ship is in its port or offshore terminal, and may make a copy of any entry, and require the master to certify that the copy is a true copy. Any copy so certified shall be admissible in any judicial proceeding as evidence of the facts stated in the entry. The inspection of a Ballast Water record book and the taking of a certified copy shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

Regulation B-3 *Ballast Water Management for Ships*

1 A ship constructed before 2009:

.1 with a Ballast Water Capacity of between 1,500 and 5,000 cubic metres, inclusive, shall conduct Ballast Water Management that at least meets the standard described in regulation D-1 or regulation D-2 until 2014, after which time it shall at least meet the standard described in regulation D-2;

.2 with a Ballast Water Capacity of less than 1,500 or greater than 5,000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in regulation D-1 or regulation D-2 until 2016, after which time it shall at least meet the standard described in regulation D-2.

2 A ship to which paragraph 1 applies shall comply with paragraph 1 not later than the first intermediate or renewal survey, whichever occurs first, after the anniversary date of delivery of the ship in the year of compliance with the standard applicable to the ship.

3 A ship constructed in or after 2009 with a Ballast Water Capacity of less than 5,000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in regulation D-2.

4 A ship constructed in or after 2009, but before 2012, with a Ballast Water Capacity of 5,000 cubic metres or more shall conduct Ballast Water Management in accordance with paragraph 1.2.

5 A ship constructed in or after 2012 with a Ballast Water Capacity of 5000 cubic metres or more shall conduct Ballast Water Management that at least meets the standard described in regulation D-2.

6 The requirements of this regulation do not apply to ships that discharge Ballast Water to a reception facility designed taking into account the Guidelines developed by the Organization for such facilities.

7 Other methods of Ballast Water Management may also be accepted as alternatives to the requirements described in paragraphs 1 to 5, provided that such methods ensure at least the same level of protection to the environment, human health, property or resources, and are approved in principle by the Committee.

Regulation B-4 *Ballast Water Exchange*

1 A ship conducting Ballast Water exchange to meet the standard in regulation D-1 shall:

.1 whenever possible, conduct such Ballast Water exchange at least 200 nautical miles from the nearest land and in water at least 200 metres in depth, taking into account the Guidelines developed by the Organization;

.2 in cases where the ship is unable to conduct Ballast Water exchange in accordance with paragraph 1.1, such Ballast Water exchange shall be conducted taking into account the Guidelines described in paragraph 1.1 and as far from the nearest land as possible, and in all cases at least 50 nautical miles from the nearest land and in water at least 200 metres in depth.

2 In sea areas where the distance from the nearest land or the depth does not meet the parameters described in paragraph 1.1 or 1.2, the port State may designate areas, in consultation with adjacent or other States, as appropriate, where a ship may conduct Ballast Water exchange, taking into account the Guidelines described in paragraph 1.1.

3 A ship shall not be required to deviate from its intended voyage, or delay the voyage, in order to comply with any particular requirement of paragraph 1.

4 A ship conducting Ballast Water exchange shall not be required to comply with paragraphs 1 or 2, as appropriate, if the master reasonably decides that such exchange would threaten the safety or stability of the ship, its crew, or its passengers because of adverse weather, ship design or stress, equipment failure, or any other extraordinary condition.

5 When a ship is required to conduct Ballast Water exchange and does not do so in accordance with this regulation, the reasons shall be entered in the Ballast Water record book.

Regulation B-5 *Sediment Management for Ships*

1 All ships shall remove and dispose of Sediments from spaces designated to carry Ballast Water in accordance with the provisions of the ship‘s Ballast Water Management plan.

2 Ships described in regulation B-3.3 to B-3.5 should, without compromising safety or operational efficiency, be designed and constructed with a view to minimize the uptake and undesirable entrapment of Sediments, facilitate removal of Sediments, and provide safe access to allow for Sediment removal and sampling, taking into account guidelines developed by the Organization. Ships described in regulation B-3.1 should, to the extent practicable, comply with this paragraph.

Regulation B-6 *Duties of Officers and Crew*

Officers and crew shall be familiar with their duties in the implementation of Ballast Water Management particular to the ship on which they serve and shall, appropriate to their duties, be familiar with the ship‘s Ballast Water Management plan.

SECTION C - SPECIAL REQUIREMENTS IN CERTAIN AREAS

Regulation C-1 *Additional Measures*

1 If a Party, individually or jointly with other Parties, determines that measures in addition to those in Section B are necessary to prevent, reduce, or eliminate the transfer of Harmful Aquatic Organisms and Pathogens through ships' Ballast Water and Sediments, such Party or Parties may, consistent with international law, require ships to meet a specified standard or requirement.

2 Prior to establishing standards or requirements under paragraph 1, a Party or Parties should consult with adjacent or other States that may be affected by such standards or requirements.

3 A Party or Parties intending to introduce additional measures in accordance with paragraph 1 shall:

.1 take into account the Guidelines developed by the Organization.

.2 communicate their intention to establish additional measure(s) to the Organization at least 6 months, except in emergency or epidemic situations, prior to the projected date of implementation of the measure(s). Such communication shall include:

.1 the precise co-ordinates where additional measure(s) is/are applicable;

.2 the need and reasoning for the application of the additional measure(s), including, whenever possible, benefits;

.3 a description of the additional measure(s); and

.4 any arrangements that may be provided to facilitate ships' compliance with the additional measure(s).

.3 to the extent required by customary international law as reflected in the United Nations Convention on the Law of the Sea, as appropriate, obtain the approval of the Organization.

4 A Party or Parties, in introducing such additional measures, shall endeavour to make available all appropriate services, which may include but are not limited to notification to mariners of areas, available and alternative routes or ports, as far as practicable, in order to ease the burden on the ship.

5 Any additional measures adopted by a Party or Parties shall not compromise the safety and security of the ship and in any circumstances not conflict with any other convention with which the ship must comply.

6 A Party or Parties introducing additional measures may waive these measures for a period of time or in specific circumstances as they deem fit.

Regulation C-2 *Warnings Concerning Ballast Water Uptake in Certain Areas and Related Flag State Measures*

1 A Party shall endeavour to notify mariners of areas under their jurisdiction where ships should not uptake Ballast Water due to known conditions. The Party shall include in such notices the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. Warnings may be issued for areas:

.1 known to contain outbreaks, infestations, or populations of Harmful Aquatic Organisms and Pathogens (e.g., toxic algal blooms) which are likely to be of relevance to Ballast Water uptake or discharge;

.2 near sewage outfalls; or

.3 where tidal flushing is poor or times during which a tidal stream is known to be more turbid.

2 In addition to notifying mariners of areas in accordance with the provisions of paragraph 1, a Party shall notify the Organization and any potentially affected coastal States of any areas identified in paragraph 1 and the time period such warning is likely to be in effect. The notice to the Organization and any potentially affected coastal States shall include the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. The notice shall include advice to ships needing to uptake Ballast Water in the area, describing arrangements made for alternative supplies. The Party shall also notify mariners, the Organization, and any potentially affected coastal States when a given warning is no longer applicable.

Regulation C-3 *Communication of Information*

The Organization shall make available, through any appropriate means, information communicated to it under regulations C-1 and C-2.

SECTION D - STANDARDS FOR BALLAST WATER MANAGEMENT

Regulation D-1 *Ballast Water Exchange Standard*

1 Ships performing Ballast Water exchange in accordance with this regulation shall do so with an efficiency of at least 95 percent volumetric exchange of Ballast Water.

2 For ships exchanging Ballast Water by the pumping-through method, pumping through three times the volume of each Ballast Water tank shall be considered to meet the standard described in paragraph 1. Pumping through less than three times the volume may be accepted provided the ship can demonstrate that at least 95 percent volumetric exchange is met.

Regulation D-2 *Ballast Water Performance Standard*

1 Ships conducting Ballast Water Management in accordance with this regulation shall discharge less than 10 viable organisms per cubic metre greater than or equal to 50 micrometres in minimum dimension and less than 10 viable organisms per millilitre less than 50 micrometres in minimum dimension and greater than or equal to 10 micrometres in minimum dimension; and discharge of the indicator microbes shall not exceed the specified concentrations described in paragraph 2.

2 Indicator microbes, as a human health standard, shall include:

.1 Toxicogenic Vibrio cholerae (O1 and O139) with less than 1 colony forming unit (cfu) per 100 millilitres or less than 1 cfu per 1 gram (wet weight) zooplankton samples;

.2 Escherichia coli less than 250 cfu per 100 millilitres;

.3 Intestinal Enterococci less than 100 cfu per 100 milliliters.

Regulation D-3 *Approval requirements for Ballast Water Management systems*

1 Except as specified in paragraph 2, Ballast Water Management systems used to comply with this Convention must be approved by the Administration taking into account Guidelines developed by the Organization.

2 Ballast Water Management systems which make use of Active Substances or preparations containing one or more Active Substances to comply with this Convention shall be approved by the Organization, based on a procedure developed by the Organization. This procedure shall describe the approval and withdrawal of approval of Active Substances and their proposed manner of application. At withdrawal of approval, the use of the relevant Active Substance or Substances shall be prohibited within 1 year after the date of such withdrawal.

3 Ballast Water Management systems used to comply with this Convention must be safe in terms of the ship, its equipment and the crew.

Regulation D-4 *Prototype Ballast Water Treatment Technologies*

1 For any ship that, prior to the date that the standard in regulation D-2 would otherwise become effective for it, participates in a programme approved by the Administration to test and evaluate promising Ballast Water treatment technologies, the standard in regulation D-2 shall not apply to that ship until five years from the date on which the ship would otherwise be required to comply with such standard.

2 For any ship that, after the date on which the standard in regulation D-2 has become effective for it, participates in a programme approved by the Administration, taking into account Guidelines developed by the Organization, to test and evaluate promising Ballast Water technologies with the potential to result in treatment technologies achieving a standard higher than that in regulation D-2, the standard in regulation D-2 shall cease to apply to that ship for five years from the date of installation of such technology.

3 In establishing and carrying out any programme to test and evaluate promising Ballast Water technologies, Parties shall:

.1 take into account Guidelines developed by the Organization, and

.2 allow participation only by the minimum number of ships necessary to effectively test such technologies.

4 Throughout the test and evaluation period, the treatment system must be operated consistently and as designed.

Regulation D-5 *Review of Standards by the Organization*

1 At a meeting of the Committee held no later than three years before the earliest effective date of the standard set forth in regulation D-2, the Committee shall undertake a review which includes a determination of whether appropriate technologies are available to achieve the standard, an assessment of the criteria in paragraph 2, and an assessment of the socio-economic effect(s) specifically in relation to the developmental needs of developing countries, particularly small island developing States. The Committee shall also undertake periodic reviews, as appropriate, to examine the applicable requirements for ships described in regulation B-3.1 as well as any other aspect of Ballast Water Management addressed in this Annex, including any Guidelines developed by the Organization.

2 Such reviews of appropriate technologies shall also take into account:

.1 safety considerations relating to the ship and the crew;

.2 environmental acceptability, i.e., not causing more or greater environmental impacts than they solve;

.3 practicability, i.e., compatibility with ship design and operations;

.4 cost effectiveness, i.e., economics; and

.5 biological effectiveness in terms of removing, or otherwise rendering not viable, Harmful Aquatic Organisms and Pathogens in Ballast Water.

3 The Committee may form a group or groups to conduct the review(s) described in paragraph 1. The Committee shall determine the composition, terms of reference and specific issues to be addressed by any such group formed. Such groups may develop and recommend proposals for amendment of this Annex for consideration by the Parties. Only Parties may participate in the formulation of recommendations and amendment decisions taken by the Committee.

4 If, based on the reviews described in this regulation, the Parties decide to adopt amendments to this Annex, such amendments shall be adopted and enter into force in accordance with the procedures contained in Article 19 of this Convention.

SECTION E - SURVEY AND CERTIFICATION REQUIREMENTS FOR BALLAST WATER MANAGEMENT

Regulation E-1 *Surveys*

1 Ships of 400 gross tonnage and above to which this Convention applies, excluding floating platforms, FSUs and FPSOs, shall be subject to surveys specified below:

.1 An initial survey before the ship is put in service or before the Certificate required under regulation E-2 or E-3 is issued for the first time. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the requirements of this Convention.

.2 A renewal survey at intervals specified by the Administration, but not exceeding five years, except where regulation E-5.2, E-5.5, E-5.6, or E-5.7 is applicable. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the applicable requirements of this Convention.

.3 An intermediate survey within three months before or after the second Anniversary date or within three months before or after the third Anniversary date of the Certificate, which shall take the place of one of the annual surveys specified in paragraph 1.4. The intermediate surveys shall ensure that the equipment, associated systems and processes for Ballast Water Management fully comply with the applicable requirements of this Annex and are in good working order. Such intermediate surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.

.4 An annual survey within three months before or after each Anniversary date, including a general inspection of the structure, any equipment, systems, fittings, arrangements and material or processes associated with the Ballast Water Management plan required by regulation B-1 to ensure that they have been maintained in accordance with paragraph 9 and remain satisfactory for the service for which the ship is intended. Such annual surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.

.5 An additional survey either general or partial, according to the circumstances, shall be made after a change, replacement, or significant repair of the structure, equipment, systems, fittings, arrangements and material necessary to achieve full compliance with this Convention. The survey shall be such as to ensure that any such change, replacement, or significant repair has been effectively made, so that the ship complies with the requirements of this Convention. Such surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.

2 The Administration shall establish appropriate measures for ships that are not subject to the provisions of paragraph 1 in order to ensure that the applicable provisions of this Convention are complied with.

3 Surveys of ships for the purpose of enforcement of the provisions of this Convention shall be carried out by officers of the Administration. The Administration may, however, entrust the surveys either to surveyors nominated for the purpose or to organizations recognized by it.

4 An Administration nominating surveyors or recognizing organizations to conduct surveys, as described in paragraph 3 shall, as a minimum, empower such nominated surveyors or recognized organizations to [87]:

.1 require a ship that they survey to comply with the provisions of this Convention; and

.2 carry out surveys and inspections if requested by the appropriate authorities of a port State that is a Party.

5 The Administration shall notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations, for circulation to Parties for the information of their officers.

6 When the Administration, a nominated surveyor, or a recognized organization determines that the ship‘s Ballast Water Management does not conform to the particulars of the Certificate required under regulation E-2 or E-3 or is such that the ship is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources such surveyor or organization shall immediately ensure that corrective action is taken to bring the ship into compliance. A surveyor or organization shall be notified immediately, and it shall ensure that the Certificate is not issued or is withdrawn as appropriate. If the ship is in the port of another Party, the appropriate authorities of the port State shall be notified immediately. When an officer of the Administration, a nominated surveyor, or a recognized organization has notified the appropriate authorities of the port State, the Government of the port State concerned shall give such officer, surveyor or organization any necessary assistance to carry out their obligations under this regulation, including any action described in Article 9.

7 Whenever an accident occurs to a ship or a defect is discovered which substantially affects the ability of the ship to conduct Ballast Water Management in accordance with this Convention, the owner**,** operator or other person in charge of the ship shall report at the earliest opportunity to the Administration, the recognized organization or the nominated surveyor responsible for issuing the relevant Certificate, who shall cause investigations to be initiated to determine whether a survey as required by paragraph 1 is necessary. If the ship is in a port of another Party, the owner**,** operator or other person in charge shall also report immediately to the appropriate authorities of the port State and the nominated surveyor or recognized organization shall ascertain that such report has been made.

[87] Refer to the guidelines adopted by the Organization by resolution A.739(18), as may be amended by the Organization, and the specifications adopted by the Organization by resolution A.789(19), as may be amended by the Organization.

8 In every case, the Administration concerned shall fully guarantee the completeness and efficiency of the survey and shall undertake to ensure the necessary arrangements to satisfy this obligation.

9 The condition of the ship and its equipment, systems and processes shall be maintained to conform with the provisions of this Convention to ensure that the ship in all respects will remain fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources.

10 After any survey of the ship under paragraph 1 has been completed, no change shall be made in the structure, any equipment, fittings, arrangements or material associated with the Ballast Water Management plan required by regulation B-1 and covered by the survey without the sanction of the Administration, except the direct replacement of such equipment or fittings.

Regulation E-2 *Issuance or Endorsement of a Certificate*

1 The Administration shall ensure that a ship to which regulation E-1 applies is issued a Certificate after successful completion of a survey conducted in accordance with regulation E-1. A Certificate issued under the authority of a Party shall be accepted by the other Parties and regarded for all purposes covered by this Convention as having the same validity as a Certificate issued by them.

2 Certificates shall be issued or endorsed either by the Administration or by any person or organization duly authorized by it. In every case, the Administration assumes full responsibility for the Certificate.

Regulation E-3 *Issuance or Endorsement of a Certificate by Another Party*

1 At the request of the Administration, another Party may cause a ship to be surveyed and, if satisfied that the provisions of this Convention are complied with, shall issue or authorize the issuance of a Certificate to the ship, and where appropriate, endorse or authorize the endorsement of that Certificate on the ship, in accordance with this Annex.

2 A copy of the Certificate and a copy of the survey report shall be transmitted as soon as possible to the requesting Administration.

3 A Certificate so issued shall contain a statement to the effect that it has been issued at the request of the Administration and it shall have the same force and receive the same recognition as a Certificate issued by the Administration.

4 No Certificate shall be issued to a ship entitled to fly the flag of a State which is not a Party.

Regulation E-4 *Form of the Certificate*

The Certificate shall be drawn up in the official language of the issuing Party, in the form set forth in Appendix I. If the language used is neither English, French nor Spanish, the text shall include a translation into one of these languages.

Regulation E-5 *Duration and Validity of the Certificate*

1 A Certificate shall be issued for a period specified by the Administration that shall not exceed five years.

2 For renewal surveys:

.1 Notwithstanding the requirements of paragraph 1, when the renewal survey is completed within three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.

.2 When the renewal survey is completed after the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.

.3 When the renewal survey is completed more than three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of completion of the renewal survey.

3 If a Certificate is issued for a period of less than five years, the Administration may extend the validity of the Certificate beyond the expiry date to the maximum period specified in paragraph 1, provided that the surveys referred to in regulation E-1.1.3 applicable when a Certificate is issued for a period of five years are carried out as appropriate.

4 If a renewal survey has been completed and a new Certificate cannot be issued or placed on board the ship before the expiry date of the existing Certificate, the person or organization authorized by the Administration may endorse the existing Certificate and such a Certificate shall be accepted as valid for a further period which shall not exceed five months from the expiry date.

5 If a ship at the time when the Certificate expires is not in a port in which it is to be surveyed, the Administration may extend the period of validity of the Certificate but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so. No Certificate shall be extended for a period longer than three months, and a ship to which such extension is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port without having a new Certificate. When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.

6 A Certificate issued to a ship engaged on short voyages which has not been extended under the foregoing provisions of this regulation may be extended by the Administration for a

period of grace of up to one month from the date of expiry stated on it. When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.

7 In special circumstances, as determined by the Administration, a new Certificate need not be dated from the date of expiry of the existing Certificate as required by paragraph 2.2, 5 or 6 of this regulation. In these special circumstances, the new Certificate shall be valid to a date not exceeding five years from the date of completion of the renewal survey.

8 If an annual survey is completed before the period specified in regulation E-1, then:

.1 the Anniversary date shown on the Certificate shall be amended by endorsement to a date which shall not be more than three months later than the date on which the survey was completed;

.2 the subsequent annual or intermediate survey required by regulation E-1 shall be completed at the intervals prescribed by that regulation using the new Anniversary date;

.3 the expiry date may remain unchanged provided one or more annual surveys, as appropriate, are carried out so that the maximum intervals between the surveys prescribed by regulation E-1 are not exceeded.

9 A Certificate issued under regulation E-2 or E-3 shall cease to be valid in any of the following cases:

.1 if the structure, equipment, systems, fittings, arrangements and material necessary to comply fully with this Convention is changed, replaced or significantly repaired and the Certificate is not endorsed in accordance with this Annex;

.2 upon transfer of the ship to the flag of another State. A new Certificate shall only be issued when the Party issuing the new Certificate is fully satisfied that the ship is in compliance with the requirements of regulation E-1. In the case of a transfer between Parties, if requested within three months after the transfer has taken place, the Party whose flag the ship was formerly entitled to fly shall, as soon as possible, transmit to the Administration copies of the Certificates carried by the ship before the transfer and, if available, copies of the relevant survey reports;

.3 if the relevant surveys are not completed within the periods specified under regulation E-1.1; or

.4 if the Certificate is not endorsed in accordance with regulation E-1.1.

APPENDIX I

FORM OF INTERNATIONAL BALLAST WATER MANAGEMENT CERTIFICATE

INTERNATIONAL BALLAST WATER MANAGEMENT CERTIFICATE

Issued under the provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments (hereinafter referred to as "the Convention") under the authority of the Government of

……
(full designation of the country)

by ……

(full designation of the competent person or organization authorized under the provisions of the Convention)

Particulars of ship[88]

Name of ship .....

Distinctive number or letters .....

Port of registry .....

Gross Tonnage .....

IMO number[89] .....

Date of Construction ……

Ballast Water Capacity (in cubic metres) .....

Details of Ballast Water Management Method(s) Used

Method of Ballast Water Management used ……...

Date installed (if applicable) .....

Name of manufacturer (if applicable) .....

[88] Alternatively, the particulars of the ship may be placed horizontally in boxes.
[89] IMO Ship Identification Number Scheme adopted by the Organization by resolution A.600(15).

The principal Ballast Water Management method(s) employed on this ship is/are:

- in accordance with regulation D-1
- in accordance with regulation D-2

(*describe*) .....

- the ship is subject to regulation D-4

THIS IS TO CERTIFY:

1 That the ship has been surveyed in accordance with regulation E-1 of the Annex to the Convention; and

2 That the survey shows that Ballast Water Management on the ship complies with the Annex to the Convention.

This certificate is valid until …… subject to surveys in accordance with regulation E-1 of the Annex to the Convention.

Completion date of the survey on which this certificate is based: dd/mm/yyyy

Issued at .....

(Place of issue of certificate)

....

(Date of issue) *Signature of authorized official issuing the certificate)*

(Seal or stamp of the authority, as appropriate)

ENDORSEMENT FOR ANNUAL AND INTERMEDIATE SURVEY(S)

THIS IS TO CERTIFY that a survey required by regulation E-1 of the Annex to the Convention the ship was found to comply with the relevant provisions of the Convention:

Annual survey: Signed .....

(Signature of duly authorized official)

Place .....

Date.....…

(Seal or stamp of the authority, as appropriate)

Annual*/Intermediate survey*: Signed .....

(Signature of duly authorized official)

Place .....

Date.....…

(Seal or stamp of the authority, as appropriate)

Annual*/Intermediate survey*: Signed .....

(Signature of duly authorized official)

Place .....

Date.....…

(Seal or stamp of the authority, as appropriate)

Annual survey: Signed .....

(Signature of duly authorized official)

Place .....

Date.....…

(Seal or stamp of the authority, as appropriate)

* Delete as appropriate.

ANNUAL/INTERMEDIATE SURVEY
IN ACCORDANCE WITH REGULATION E-5.8.3
*

THIS IS TO CERTIFY that, at an annual/intermediate survey in accordance with regulation E-5.8.3 of the Annex to the Convention, the ship was found to comply with the relevant provisions of the Convention:

Signed .....
(Signature of authorized official)

Place .....
Date.....…..
(Seal or stamp of the authority, as appropriate)

ENDORSEMENT TO EXTEND THE CERTIFICATE IF VALIDFOR LESS THAN 5 YEARS WHERE REGULATION E-5.3 APPLIES

The ship complies with the relevant provisions of the Convention, and this Certificate shall, in accordance with regulation E-5.3 of the Annex to the Convention, be accepted as valid until……

Signed .....
(Signature of authorized official)

Place .....

Date.....….

(Seal or stamp of the authority, as appropriate)

ENDORSEMENT WHERE THE RENEWAL SURVEY HAS BEEN COMPLETED AND REGULATION E-5.4 APPLIES

The ship complies with the relevant provisions of the Convention and this Certificate shall, in accordance with regulation E-5.4 of the Annex to the Convention, be accepted as valid until ……

Signed .....
(Signature of authorized official)

Place .....

Date.....….

(Seal or stamp of the authority, as appropriate)

_____
* Delete as appropriate.

ENDORSEMENT TO EXTEND THE VALIDITY OF THE CERTIFICATE UNTIL REACHING THE PORT OF SURVEY OR FOR A PERIOD OF GRACE WHERE REGULATION E-5.5 OR E-5.6 APPLIES*

This Certificate shall, in accordance with regulation E-5.5 or E-5.6 of the Annex to the Convention, be accepted as valid until ……..

Signed .....
(Signature of authorized official)

Place .....

Date.....…

(Seal or stamp of the authority, as appropriate)

ENDORSEMENT FOR ADVANCEMENT OF ANNIVERSARY DATE WHERE REGULATION E-5.8 APPLIES

In accordance with regulation E-5.8 of the Annex to the Convention the new Anniversary date is …….

Signed .....
(Signature of authorized official)

Place .....

Date.....…

(Seal or stamp of the authority, as appropriate)

In accordance with regulation E-5.8 of the Annex to the Convention the new Anniversary date is …….

Signed .....
(Signature of duly authorized official)

Place .....

Date.....…

(Seal or stamp of the authority, as appropriate)

* Delete as appropriate.

APPENDIX II

FORM OF BALLAST WATER RECORD BOOK

INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS

Period From: ….…… To: ……..

Name of Ship ……..……...

IMO number …….……..…….….

Gross tonnage ……

Flag ……

Total Ballast Water capacity (in cubic metres) …….….

The ship is provided with a Ballast Water Management plan

Diagram of ship indicating ballast tanks:

1 Introduction

In accordance with regulation B-2 of the Annex to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, a record is to be kept of each Ballast Water operation. This includes discharges at sea and to reception facilities.

2 Ballast Water and Ballast Water Management

"Ballast Water" means water with its suspended matter taken on board a ship to control trim, list, draught, stability, or stresses of a ship. Management of Ballast Water shall be in accordance with an approved Ballast Water Management plan and taking into account Guidelines[90] developed by the Organization.

3 Entries in the Ballast Water Record Book

Entries in the Ballast Water record book shall be made on each of the following occasions:

3.1 When Ballast Water is taken on board:

[90] Refer to the Guidelines for the control and management of ships' ballast water to minimize the transfer of harmful aquatic organisms and pathogens adopted by the Organization by resolution A.868(20).

.1 Date, time and location port or facility of uptake (port or lat/long), depth if outside port

.2 Estimated volume of uptake in cubic metres

.3 Signature of the officer in charge of the operation.

3.2 Whenever Ballast Water is circulated or treated for Ballast Water Management purposes:

.1 Date and time of operation

.2 Estimated volume circulated or treated (in cubic metres)

.3 Whether conducted in accordance with the Ballast Water Management plan

.4 Signature of the officer in charge of the operation

3.3 When Ballast Water is discharged into the sea:

.1 Date, time and location port or facility of discharge (port or lat/long)

.2 Estimated volume discharged in cubic metres plus remaining volume in cubic metres

.3 Whether approved Ballast Water Management plan had been implemented prior to discharge

.4 Signature of the officer in charge of the operation.

3.4 When Ballast Water is discharged to a reception facility:

.1 Date, time, and location of uptake

.2 Date, time, and location of discharge

.3 Port or facility

.4 Estimated volume discharged or taken up, in cubic metres

.5 Whether approved Ballast Water Management plan had been implemented prior to discharge

.6 Signature of officer in charge of the operation

3.5 Accidental or other exceptional uptake or discharges of Ballast Water:

.1 Date and time of occurrence

.2 Port or position of the ship at time of occurrence

.3 Estimated volume of Ballast Water discharged

.4 Circumstances of uptake, discharge, escape or loss, the reason therefore and general remarks

.5 Whether approved Ballast Water Management plan had been implemented prior to discharge

.6 Signature of officer in charge of the operation

3.6 Additional operational procedure and general remarks

4 Volume of Ballast Water

The volume of Ballast Water onboard should be estimated in cubic metres. The Ballast Water record book contains many references to estimated volume of Ballast Water. It is recognized that the accuracy of estimating volumes of ballast is left to interpretation.

RECORD OF BALLAST WATER OPERATIONS

SAMPLE BALLAST WATER RECORD BOOK

Name of Ship: ……

Distinctive number or letters …….

Date	Item (number)	Record of operations/signature of officers in charge

Signature of master ……..

Article 3

Responsible for the implementation of this Convention is the Ministry of Transport of the Republic of Slovenia.

Article 4

This Act shall enter into force on the fifteenth day following its publication in the Official Gazette of the Republic of Slovenia.

No._____

Ljubljana, dated _____

President of the National Assembly
of the Republic of Slovenia

name_____

9. Rules on Control and Management of Ships' Ballast Water and Sediments in Slovenian Territorial Waters

On the basis of Art. 1, Art. 5, Art. 15, Art. 69, Art. 76 Art. 138 Art. 183 of the Slovene Maritime Code (Official Journal of RS, nos. 26/2001, 21/2002)

The Minister of Transport of the Republic of Slovenia issues in accordance with the Minister of Environment and Spatial Planning the following:

RULES ON CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS IN SLOVENIAN TERRITORIAL WATERS

I. GENERAL PROVISIONS

Article 1

(1) These Rules on the Control and Management of ships Ballast water and sediments in Slovenian waters (hereinafter: Rules) stipulate information and procedures on the basis of which the Slovenian Maritime Administration shall undertake effective control and jurisdiction and decide on the issues of ballast water discharges performed by ships in Slovenian waters, the manner of fulfilment of their obligations according to the Convention of Ships Ballast Water and Sediments and the manner of fulfilment of their obligations in accordance with the proclaimed Particularly Sensitive Sea Area in the North Adriatic.

(2) The Maritime Administration shall obtain *ex officio* information on facts of which it is obliged to keep on official records.

Article 2

(1) Unless otherwise stipulated by this Rules, terms shall be used in the following meanings:
1. "Ballast Water" means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship
2. "Ballast Water Management" means mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of Harmful Aquatic Organisms and Pathogens within Ballast Water and Sediments
3. "Slovenian waters" means waters of the Republic of Slovenia which encompass all ports, bays and the anchorage in the port of Koper, circumscribed by meridian 13 s 39 east and latitude 45 s 35,4 north; territorial sea and ecological zone
4. "Maritime Administration" means the organ working under the cover of The Ministry of Transport responsible for the safety of navigation, pollution prevention, seaways, ports and harbors, ship surveys, issuing of certificates and documents required to be carried on board

ships, port state control, registration of ships in a ship register, registration of pleasure boats, the issue of seamen books and Certificates of Competence in the Merchant Marine, Boat Leaders Certificates, search and rescue at sea
5. "Harbor Master Officer" means the person performing all tasks regarding maritime traffic, safety at sea and the prevention of pollution at sea
6. "Certificate" means the International Ballast Water Management Certificate
7. "Committee" means the Marine Environment Protection Committee of the Organization.
8. "Convention" means the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004
9. "Gross tonnage" means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969 or any successor Convention
10. "Harmful Aquatic Organisms and Pathogens" means aquatic organisms or pathogens which, if introduced into the sea including estuaries, or into fresh water courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas
11. "Organization" means the International Maritime Organization.
12. "Secretary-General" means the Secretary-General of the Organization.
13. "Sediments" means matter settled out of Ballast Water within a ship
14. "Ship" means a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, FSUs and FPSOs
15. "Military vessel" means any vessel belonging to the armed forces, under the command of a military officer, whose crew is military or under military discipline, and which carries the external identification marks of a military vessel
16. "Port Authorities" means a governmental commission in charge of the traffic and regulations of a port
17. "Ballast water Exchange Area" means an area located in the Adriatic Sea according to the Regulation B-4.2. of the Convention and shall be included in nautical charts and described in manuals and instructors for seamen
18. "Particularly Sensitive Sea Area"; (PSSA); means an area in the Adriatic Sea which need special protection because of recognized ecological attributes where such attributes may be vulnerable to damage by international shipping activities
19. "Adriatic Particular Measures" means a measure required by Adriatic States (Italy, Croatia, Slovenia) before a ship enters into their ports it has to report on ballast water that was taken on board and its disposition.

Article 3

(1) Except as expressly provided otherwise in this Section, this Rules shall apply to:
1. ships registered in Slovenia; and
2. all ships entering in the Adriatic Particularly Sensitive Sea Area from other sea areas calling in Slovenian port.

(2) These provisions shall not apply to:
1. ships not designed or constructed to carry ballast water;
2. ships registered in Slovenia which only operate in Slovenian waters;
3. ships registered in Slovenia which only operate in waters under the jurisdiction of another State subject to the authorization of that State;

4. any warship, naval auxiliary or other ship owned or operated by the Government of Slovenia, and used, for the time being, only on non-commercial service; and
5. permanent ballast water in sealed tanks on ships, that is not subject to discharge.

II. DISCHARGES OF BALLAST WATER

Article 4

(1) Except where expressly provided otherwise, the discharge of ballast water shall only be conducted through Ballast Water Management in accordance with the provisions of these Rules.

(2) All ships entering in the Adriatic Particularly Sensitive Sea Area from other sea areas are required to conduct ballast water management and a to submit a ballast reporting form prior entering into PSSA. For the purposes of this procedure, the shipmaster is responsible for the submission of this report. The preferred method for submitting this report is by electronic means of communication. Before entering into Slovene port, a copy of this form shall be send to the next Port of call and to Italian and Croatian State port Authorities. A copy of this report shall be kept on board for three years.

(3) Ballast water management requirements shall apply to all ships calling at ports inside the Adriatic PSSA from other sea area. A ship should conduct Ballast Water Management:
a) at least 200 nautical miles from the nearest land and in water at least 200 metres in depth or in cases where this is not possible as far from the nearest land, and in all cases at least 50 nautical miles from the nearest land and in water at least 200 metres in depth;
b) every ship shall discharge less than 10 viable organisms per cubic metre greater than or equal to 50 micrometres in minimum dimension and less than 10 viable organisms per millilitre; less than 50 micrometres in minimum dimension and greater than or equal to 10 micrometres in minimum dimension; and discharge of the indicator microbes shall not exceed the specified concentrations as listed in the Appendix I. of this Rules
or
b1) prior entering in a PSSA, ships exchanging Ballast Water by the pumping-through method, pumping through three times the volume of each Ballast Water tank, shall do so with an efficiency of at least 95 percent volumetric exchange of Ballast Water.

(4) A ship conducting Ballast Water exchange shall not be required to comply with this associated measure, as appropriate, if the shipmaster reasonably decides that such exchange would threaten the safety or stability of the ship, its crew, or its passengers because of adverse weather, ship design or stress, equipment failure, or any other extraordinary condition.

(5) Ballast Water Management requirements shall not apply to:
a) ships not designed or constructed to carry ballast water;
b) ships flying a flag of an Adriatic State which only operate in waters under the jurisdiction of that State, unless the State determines that the discharge of Ballast Water from such ships would impair or damage their environment, human health, property or resources, or those of adjacent or other States;
c) ships flying a flag of an Adriatic State which only operate in waters under the jurisdiction of another State, subject to the authorization of the latter State for such exclusion. No State

shall grant such authorization if doing so would impair or damage their environment, human health, property or resources, or those of adjacent or other States. Any State not granting such authorization shall notify the Administration of the ship concerned that this Convention applies to such ship;
d) ships which only operate in waters under the jurisdiction of one of Adriatic States and on the high seas, except for ships not granted an authorization pursuant to sub-paragraph, unless such State determines that the discharge of Ballast Water from such ships would impair or damage their environment, human health, property or resources, or those of adjacent of other States;
e) any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this requirements; and
f) permanent Ballast Water in sealed tanks on ships, that is not subject to discharge.

(6) When a ship is required to conduct Ballast Water exchange and does not do so in accordance with these Rules, the reasons shall be entered in the Ballast Water record book and reported to the competent authority in the port of destination.

Article 5 Ballast Water Management Plan

(1) Every ship to which Ballast Water Management requirements apply shall have on board and implement a Ballast Water Management Plan. Such a plan shall be approved by the competent authority of the state whose flag the ship is entitled to fly or under whose authority the ship is operating taking into account Guidelines developed by the Organization.

(2) The Ballast Water Management Plan shall be specific to each ship and shall consist of:
- detail safety procedures for the ship and the crew associated with Ballast Water Management
- provides a detailed description of the actions to be taken to implement the Ballast Water Management requirements and supplemental Ballast Water Management practices
- detail the procedures for the disposal of Sediments to shore
- include the procedures for coordinating shipboard Ballast Water Management that involves discharge to the sea with the authorities of the State into whose waters such discharge will take place
- designates an officer on board in charge of ensuring that the plan is properly implemented
- contain the reporting requirements.

(3) Ballast Water Management Plan shall be written in the working language of the ship. If the language used is not English, a translation into English shall be included.

Article 6 Ballast Water Record Book

(1) Each ship shall have on board a Ballast Water record book that may be an electronic record system, or that may be integrated into another record book or system and containing at least the information specified in Appendix II. of these Rules.

(2) Ballast Water record book entries shall be maintained on board the ship for a minimum period of two years after the last entry has been made and thereafter in the Company's control for a minimum period of three years.

(3) The Ballast Water Record book shall be kept readily available for inspection at all reasonable times and, in the case of an unmanned ship under tow, may be kept on the towing ship. Each operation concerning Ballast Water shall be fully recorded without delay in the Ballast Water record book. Each entry shall be signed by the officer in charge of the operation concerned and each completed page shall be signed by the shipmaster. The entries in the Ballast Water record book shall be in a working language of the ship. If the language used is not English, a translation into English shall be included. When entries in an official national language of the State whose flag the ship is entitled to fly are also used, these shall prevail in case of a dispute or discrepancy.

Article 7

(1) When the Ballast Water Exchange is conducted in the reception facilities for ballast water and/or sediments located in the Port of Koper; it shall be performed in accordance with the provisions of this Rules.

(2) The Port Authority shall:
- ensure that in the port and terminals located under its territorial competence, where cleaning or repair of ballast tanks occurs, are provided by adequate facilities for the reception of sediments
- ensure that reception facilities operate without causing undue delay to ships
- provide for the safe disposal of such sediments that does not impair or damage the environment, human health, property or resources of Slovenia and of another country.

Article 8

(1) The requirements of article 4 and article 6, shall not apply to:
- the uptake or discharge of ballast water and sediments necessary for the purpose of ensuring the safety of a ship in emergency situations or saving life at sea; or
- the accidental discharge or ingress of ballast water and sediments resulting from damage to a ship or its equipment
- provided that all reasonable precautions have been taken before and after the occurrence of the damage or discovery of the damage or discharge for the purpose of preventing or minimizing the discharge; and
- unless the owner, company or officer in charge wilfully or recklessly caused damage; or
- the uptake and discharge of ballast water and sediments when being used for the purpose of avoiding or minimizing pollution incidents from the ship.

III. SURVEY AND CERTIFICATION

Article 9

(1) Officers duly authorized by the Maritime Administration shall ensure that ships to which these Rules apply are subject to survey and certification.

(2) The survey and certification shall be done without causing any undue delay to the ship.

(3) All officers shall have a prescribed uniform and an official identity card issued by the Port State Authority. The manner and the conditions for wearing the uniform and official insignia and carrying the identity card form shall be prescribed by the Minister of Transport.

(4) The said authorized officers shall inter alia and upon the instructions of the Administration:
1. verify whether there is on board a valid certificate; which if valid shall be accepted;
2. inspect the ballast water record book; and
3. sample the vessel ballast water.

(5) When inspecting the ballast water record book the officers shall make a copy of any entry and require the shipmaster to certify that a copy is a true copy. Any copy so certified shall be admissible in any judicial proceeding as evidence of the facts stated in the entry. The inspection of a Ballast Water record book and the taking of a certified copy shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

(6) The said officers if taking and analyzing ballast water and sediment samples for test should give:
1. purpose for which a sample is taken (i.e. monitoring, research)
2. notice as to the ship how the sampling will occur
3. details concerning the location of sampling points
4. assistance in planning staffing and operational resources.

(7) In the process of sampling the officers shall cooperate with the shipmaster, officers or crew.

(8) For the purposes of inspecting the ship, the time required to analyze the samples shall not unduly delay the operation, movement or departure of the ship.

Article 10 Inspection of Ships

(1) When a ship does not carry a valid Certificate or there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of the Certificate; or the shipmaster or the crew are not familiar with essential shipboard procedures relating to ballast water management, or have not implemented such procedures a detailed inspection may be carried out.

(2) In the circumstances given in previous paragraph of this Article, the Maritime Authority carrying out the inspection shall take such steps as will ensure that the ship shall not discharge ballast water until it can do so without presenting a threat of harm to the environment, human health, property or resources.

Article 11 Detection of Violations and Control of Ships

(1) When a ship is detected to have violated the provisions of this Section the competent officers of the Maritime Administration where the offence is detected may warn, detain, or exclude the ship; however, the competent maritime administration may grant such a ship permission to leave the port or offshore terminal for the purpose of discharging ballast water or proceeding to the nearest appropriate repair yard or reception facility available, provided doing so does not present a threat of harm to the environment, human health, property or resources.

(2) When the sampling described in Article 9 leads to a result, or supports information received from another port or offshore terminal, indicating that the ship poses a threat to the environment, human health, property or resources, the maritime administration shall prohibit such ship from discharging Ballast Water until the threat is removed.

(3) Maritime administration may also inspect a ship when it enters into port or offshore terminals in Slovenian Waters, if a request for an investigation is received from any State, together with sufficient evidence that a ship is operating or has operated in violation of a provision in this Section. The report of such investigation shall be sent to the State requesting it and to the competent authority of the Administration of the ship concerned, therefore appropriate action may be taken.

Article 12 Violations

(1) If the maritime administration is informed by the violation, it shall investigate and it may request the reporting party to furnish additional evidence of the alleged violation. If the maritime administration is satisfied that sufficient evidence is available for proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be brought as soon as possible.

(2) The Minister of Transport shall without delay inform the reporting State, as well as the Organization, of any action taken.

(3) Any violation, whenever occurs, of the requirements of this Rules within the Slovenian waters shall be prohibited, the maritime administration shall:
1. cause proceedings to be taken in accordance with Slovenian Law; or
2. furnish to the Administration of the ship such information and evidence as may be in its possession that a violation has occurred.

Article 13 Notification of Control Actions

(1) When an inspection conducted pursuant to Article 9 or 10 indicates a violation of these Rules, the ship shall be notified. A report, including any evidence of the violation, shall be forwarded to the Administration of the ship concerned.

(2) In the event that any action is taken pursuant to Article 10 the competent Port State Officer shall forthwith inform, in writing, the Administration of the ship concerned, or if this is not possible, the consul or diplomatic representative of the ship concerned, of all the

circumstances in which the action was deemed necessary. In addition, the recognized organization responsible for the issue of certificates shall be notified.

(3) The Port State Authority concerned shall, in addition to parties mentioned in paragraph 2, notify the next port of call of all relevant information about the violation, if it is unable to take action as specified in paragraph 4 of Article 9, Article 10 or if the ship has been allowed to proceed to the next port of call.

Article 14 Undue Delay to Ships

(1) All efforts shall be exerted by the Port State Control to avoid a ship being unduly detained or delayed under Articles 9, 10 or 11.

(2) When a ship is unduly detained or delayed under Articles 9, 10, or 11 mentioned above, it shall be entitled to compensation for any loss or damage.

IV. SCIENTIFIC AND TECHNICAL RESEARCH AND MONITORING

Article 15

(1) The Minister of Transport shall endeavour to:
1. promote and facilitate scientific and technical research on ballast water management; and
2. monitor the effects of ballast water management in Slovenian waters.

(2) If required by other States for the purpose of prevention from transfer of harmful marine species, a report shall be made available which contains:
1. scientific and technology programmes and technical measures undertaken with respect to ballast water management; and
2. the effectiveness of ballast water management deduced from any monitoring and assessment programmes.

Article 16 Technical Assistance, Co-operation and Regional Cooperation

(1) The Port of Koper undertake, directly or through the Organization and other international bodies as appropriate, in respect of the control and management of ships ballast water and sediments, to provide support for those Parties which request technical assistance:
1. to initiate joint research and development programmes
2. to ensure the availability of relevant technology, equipment and facilities.

V. PENAL PROVISIONS

Article 17

(1) A legal person shall be fined an amount between EUR 30.000 and EUR 50.000 for the following offences:

1. if it does not discharge Ballast Water in accordance with the provisions of these Rules (paragraph 1 and 3 of Article 4).

(2) The responsible person of the legal person which commits an offence mentioned in the preceding paragraph shall be fined an amount between EUR 10.000 and EUR 15.000.

(3) A shipmaster for the offence referred to previous points of the paragraph 1 of this Article shall be fined an amount between EUR 5.000 and EUR 10.000.

Article 18

(1) A legal person shall be fined an amount between EUR 10.000 and EUR 20.000 for the following;
1. if it does not submit a ballast reporting form prior entering into PSSA (paragraph 2 and 6 of Article 4);
2. if it does not have on board or does not implement a Ballast Water Management Plan. (paragraph 1 of Article 5);
3. if it does not follow the rules regarding Ballast Water record book (Article 6).

(2) The responsible person of the legal person which commits an offence under the preceding paragraph shall be fined an amount between EUR 3.000 and EUR 8.000.

(3) A shipmaster for the offence referred to previous points of the paragraph 1 of this Article shall be fined an amount between EUR 1.500 and EUR 5.000.

VI. TRANSITIONAL AND FINAL PROVISIONS

Article 19 Provisions of rules and regulations inconsistent with the Ballast Water Convention

(1) Save as provided for in these Regulations, where any provision of any rules and regulations made under the Act are inconsistent with the provisions of the Ballast water Convention, the provision of the Convention shall, unless specifically provided for in such rules or regulations prevail.

Article 20

(1) These Rules shall enter into force 3 months after their publication in the Official Gazette of the Republic of Slovenia.

No.: _____

Done at Ljubljana,_____

_____, Minister of Transport

_____, Minister of Environment and Spatial Planning
I consent hereto.

APPENDIX I.

Indicator microbes, as a human health standard, shall include:

1. Toxicogenic Vibrio cholerae (O1 and O139) with less than 1 colony forming unit (cfu) per 100 millilitres or less than 1 cfu per 1 gram (wet weight) zooplankton samples;
2. Escherichia coli less than 250 cfu per 100 millilitres;
3. Intestinal Enterococci less than 100 cfu per 100 millilitres.

APPENDIX II.

FORM OF BALLAST WATER RECORD BOOK INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS

Period From: …..…… To: ……..

Name of Ship ……..……...

IMO number …….……..…….….

Gross tonnage ……

Flag ……

Total Ballast Water capacity (in cubic metres) …….….

The ship is provided with a Ballast Water Management plan

Diagram of ship indicating ballast tanks:

1 Introduction

In accordance with regulation B-2 of the Annex to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, a record is to be kept of each Ballast Water operation. This includes discharges at sea and to reception facilities.

2 Ballast Water and Ballast Water Management

"Ballast Water" means water with its suspended matter taken on board a ship to control trim, list, draught, stability, or stresses of a ship. Management of Ballast Water shall be in accordance with an approved Ballast Water Management plan and taking into account Guidelines[91] developed by the Organization.

3 Entries in the Ballast Water Record Book

[91] Refer to the Guidelines for the control and management of ships' ballast water to minimize the transfer of harmful aquatic organisms and pathogens adopted by the Organization by resolution A.868(20).

Entries in the Ballast Water record book shall be made on each of the following occasions:

3.1 When Ballast Water is taken on board:

3.1.1 Date, time and location port or facility of uptake (port or lat/long), depth if outside port

3.1.2 Estimated volume of uptake in cubic metres

3.1.3 Signature of the officer in charge of the operation.

3.2 Whenever Ballast Water is circulated or treated for Ballast Water Management purposes:

3.2.1 Date and time of operation

3.2.2 Estimated volume circulated or treated (in cubic metres)

3.2.3 Whether conducted in accordance with the Ballast Water Management plan

3.2.4 Signature of the officer in charge of the operation

3.3 When Ballast Water is discharged into the sea:

3.3.1 Date, time and location port or facility of discharge (port or lat/long)

3.3.2 Estimated volume discharged in cubic metres plus remaining volume in cubic metres

3.3.3 Whether approved Ballast Water Management plan had been implemented prior to discharge

3.3.4 Signature of the officer in charge of the operation.

3.4 When Ballast Water is discharged to a reception facility:

3.4.1 Date, time, and location of uptake

3.4.2 Date, time, and location of discharge

3.4.3 Port or facility

3.4.4 Estimated volume discharged or taken up, in cubic metres

3.4.5 Whether approved Ballast Water Management plan had been implemented prior to discharge

3.4.6 Signature of officer in charge of the operation

3.5 Accidental or other exceptional uptake or discharges of Ballast Water:

3.5.1 Date and time of occurrence

3.5.2 Port or position of the ship at time of occurrence

3.5.3 Estimated volume of Ballast Water discharged

3.5.4 Circumstances of uptake, discharge, escape or loss, the reason therefore and general remarks.

3.5.5 Whether approved Ballast Water Management plan had been implemented prior to discharge

3.5.6 Signature of officer in charge of the operation

3.6 Additional operational procedure and general remarks

4 Volume of Ballast Water

The volume of Ballast Water onboard should be estimated in cubic metres. The Ballast Water record book contains many references to estimated volume of Ballast Water. It is recognized that the accuracy of estimating volumes of ballast is left to interpretation.

RECORD OF BALLAST WATER OPERATIONS

SAMPLE BALLAST WATER RECORD BOOK

Name of Ship: ……

Distinctive number or letters …….

Date	Item (number)	Record of operations/signature of officers in charge

Signature of shipmaster ……..

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