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**Presidential Decree to Approve the Access of the Republic of Yemen to the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004, and Amend Law No. (16) of 2004 regarding the Protection of Marine Environment from Pollution**

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

**Submitted By: Ms. Raghda Abdulrazzak Al-Hakimi (Yemen)**

**Supervisor: Ms. Elda Belja**

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قال تعالى

((حَسْبِيَ اللَّهُ لَا إِلَهَ إِلَّا هُوَ عَلَيْهِ

تَوَكَّلْتُ وَهُوَ رَبُّ الْعَرْشِ الْعَظِيمِ))

سورة التوبة

## **Declaration**

In accordance with the Regulation for the Degree of LLM in International Maritime Law, I, the undersigned, do hereby declare that the legislative Drafting Project being presented with this declaration is my own personal work and that it has not been previously submitted, or is not concurrently being submitted in candidature for any other degree or diploma.

Raghda Abdulrazzak Al-Hakimi

## **Dedication**

To Dad for opening my eyes to the world.

To Mom for her patience and instilling in me the importance of hard  
work.

To my sister Reyam & my brothers Ans and Osama for their  
encouragement & support.

## **ACKNOWLEDGEMENTS**

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# **Presidential Decree to Approve the Access of the Republic of Yemen to the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004, and Amend Law No. (16) of 2004 regarding the Protection of Marine Environment from Pollution**

## **Explanatory Note**

### **1. INTRODUCTION**

The preservation of the marine environment is considered as one of the most important issues in the world as our planet comprises of 71 per cent water. Since ancient time, humans have been dependent on the seas as a source of their food and as a transport route. The developments that have taken place in the maritime sector have created many adverse effects to the marine environment and have drawn the attention to its protection. Pollution, as a product of the industrial era, raised awareness in the twentieth century, in particular when scientists first recognized the signs of an alien species introduction after a mass occurrence of the Asian phytoplankton algae *Odontella* in the North Sea in 1903.<sup>1</sup>

Accordingly, States, media, and scholars having paying attention to the forms of marine pollution and offered international legal response. However, less attention has been attached to biopollution resulting from the transfer of invasive aquatic species through ships than to oil pollution and chemical pollution. It was not until 1970s when measures to combat alien species transferred by ships and consequently known as 'ships' ballast water', were introduced to the international agenda.<sup>2</sup>

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<sup>1</sup> Fonseca de Souza Rolim, Helena Maria; *The International Law on Ballast Water*, Martinus Nijhoff Publishers, Leiden. Boston, 2008, p. xvi.

<sup>2</sup> *Ibid* pp. 1-21.



## **1.1 What is Ballast Water?**

Ballast water is fresh or saltwater held in the ballast tanks and cargo holds of ships. It is used to provide stability and maneuverability during a voyage when ships are not carrying cargo, not carrying heavy enough cargo, or when more stability is required due to rough seas.<sup>3</sup> Ballast water may also be used to add weight so that a ship sinks low enough in the water to pass under bridges and other structures.<sup>4</sup>

## **1.2 Why is Ballast Water an Environmental Issue?**

Ships move around all over the world and pass through different kinds of environment, and for their sailing operation ships take on water from one port and discharge it at another. This water includes 'thousands of aquatic species, together with bacteria and other microbes, micro-algae, and various life stages of aquatic plant and animal species'.<sup>5</sup> These species have had deleterious effects not only on native species and ecosystem functions, but also on fishing and aquaculture industries, on commercially important species, and thus on the economies of the riparian countries.<sup>6</sup>

Moreover, biopollution from ballast water has dangerous effect due to the ability of living organisms to reproduce and spread as long as they find hospitable environment. In comparison with chemical and oil pollution which can be reduced or dissipated within a period of time, depending on the amount of the pollution, the biopollution from ships' ballast water is permanent and the impact of invasive marine species is usually irrevocable.<sup>7</sup>

Thus ballast water is one of the major pathways for the introduction of non-indigenous marine species which pose potential damage for ecological and economic system of the coastal State.

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<sup>3</sup> Marine Bioinvasions Fact Sheet: Ballast Water, MIT Sea Grant Coastal Resources, <http://massbay.mit.edu/exoticspecies/ballast/fact.html> (25- March- 2013). See Annex 1.

<sup>4</sup> Ibid.

<sup>5</sup> Fonseca de Souza Rolim, Helena Maria; op. cit., p. 16.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid, p.16-17.

### **1.3 The International Response and the Efforts that Led to the Emergence of the Ballast Water Convention**

Since the 1970s, the international community has addressed the problem that resulted from invasive species in ballast water through international instruments. Such instruments are the United Nations Convention on the Law of the Sea, 1982 (UNCLOS),<sup>8</sup> which is considered as the global framework and the basis of all conventions relating to the pollution of the marine environment; the International Health Regulations (IHR) as amended in 2005,<sup>9</sup> which include some provisions to prevent marine bio-pollution; and Convention on Biological Diversity, 1992 (CBD).<sup>10</sup>

UNCLOS recognizes the profound responsibility that all States have to govern the oceans in a manner that respects the marine creatures that inhabit them. It poses obligations upon States 'to prevent, reduce and control human caused pollution of the marine environment,<sup>11</sup> including the intentional or accidental introduction of harmful or alien species to a particular part of the marine environment'.<sup>12</sup>

However, these Conventions and Regulations were not adequate due to their provisions not covering the subject of ballast water's pollution as whole, or in other words the pollution from ships' ballast water was not the central focus. Additionally, those Conventions are proved to be insufficient to counter the increasing problems of pollution from ships' ballast water as a result of the expansion of trade and traffic volume over the past few decades.

Furthermore, the increasing volume of seaborne trade around the world raised a universal concern about the biopollution. Hence the international community attempted to promote collaboration among governments, economic sectors and non-

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<sup>8</sup> United Nations Convention on the Law of the Sea, Montego Bay, Jamaica, 10 December 1982.

<sup>9</sup> International Health Regulations, 1969 now International Health Regulations, 2005, 2<sup>nd</sup> Edition.

(Switzerland, World Health Organization 2008);

[http://whqlibdoc.who.int/publications/2008/9789241580410\\_eng.pdf](http://whqlibdoc.who.int/publications/2008/9789241580410_eng.pdf) (25- March- 2013).

<sup>10</sup> Convention on Biological Diversity of the United Nations Conference on the Environment and Development, 5 June 1992, 31 I.L.M. 818

<sup>11</sup> Article 192, UNCLOS.

<sup>12</sup> Article 194 (b), UNCLOS.

governmental organizations through a uniform legal framework aiming to address the pollution resulting from ships' ballast water.

In 1991, one of the practical measures was taken by the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) through the adoption of Guidelines for preventing the introduction of unwanted organisms and pathogens from ships' ballast water and sediments discharges (MEPC Resolution 50(31)).<sup>13</sup> Moreover, the United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro in 1992, recognized the issue of the ASI as a major international concern.<sup>14</sup> And then in November 1993, the IMO Assembly adopted Resolution A.774 (18) based on the 1991 Guidelines requesting the MEPC and the Maritime Safety Committee (MSC) to keep the Guidelines under review with a view to developing internationally applicable, legally-binding provisions.<sup>15</sup>

While continuing its work towards the development of an international treaty, IMO adopted, in November 1997, Resolution A.868 (20) - Guidelines for the control and management of ships' ballast water to minimize the transfer of harmful aquatic organisms and pathogens inviting its Member States to use these new Guidelines when addressing the issue of Alien Invasive Species (ASI).<sup>16</sup>

Since the first step of the IMO to address the problem of the ballast water and after more than 14 years of complex negotiations between IMO Member States, the International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention) was adopted by consensus at a Diplomatic Conference held at IMO Headquarters in London on 13 February 2004.<sup>17</sup>

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<sup>13</sup> 'International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM)', IMO; <http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships'-Ballast-Water-and-Sediments>. (25-March-2012).

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

## **2. The International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention) 2004**

The BWM Convention is the first Convention that deals with biopollution resulting from ships' ballast water and sediments.<sup>18</sup> The aim of the BWM Convention is 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'.<sup>19</sup>

The BWM Convention regulates the rights and obligations of port, coastal, and flag States and provides technical regulations and guidelines for the control and management of the ships' ballast water. The BWM Convention comprises of 22 Articles, an Annex consisting of five sections relating to the control and management of ships' ballast water and sediments. The Convention has also two Appendixes setting out standard formats with respect to the International Ballast Water Management Certificate and the required form of the Ballast Water Record Book for reporting and verification regarding each ballast water operation including discharge at sea and to reception facilities.

Furthermore, 15 Guidelines were adopted and two further Guidelines are being prepared by IMO.<sup>20</sup> These Guidelines integrated with the BWM Convention. The functions of these Guidelines are to provide essential additional technical instruction to support the implementation of the BWM Convention.<sup>21</sup>

### **2.1 The Scope of the Application of the BWM Convention**

The Convention applies to ships entitled to fly the flag of a State Party, or ships not entitled to fly the flag of a State Party but which operate under the authority of that

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<sup>18</sup> Fonseca de Souza Rolim, Helena Maria; op. cit., p.72.

<sup>19</sup> The preamble of the BWM Convention; The BWM Convention; IMO Publication; London; 2005.

<sup>20</sup> 'The IMO Technical Guidelines', Glo Ballast Partnerships, IMO; <http://globallast.imo.org/index.asp?page=resolution.htm> (25- March- 2013). See Annex 2.

<sup>21</sup> Fonseca de Souza Rolim, Helena Maria; op. cit., p.p. 142-143.

State.<sup>22</sup> Thus it is the obligation of the State Parties to require the ships entitled to fly its flag or operate under its authority comply with the BWM Convention.

The BWM Convention does not apply to the following.<sup>23</sup> Firstly, ships not designed or constructed to carry ballast water. Secondly, ships of a State Party which only operate in waters under the jurisdiction of that State unless the authority of that State determines that the discharge of ballast water from such ships would impair or damage its own environment, human health, property or resources. Thirdly, ships of a State Party which only operate in waters under the jurisdiction of another State Party, subject to the authorization of that State for such exclusion; ships which only operate in waters under the jurisdiction of one State Party and on the high seas, except for ships not granted an authorization pursuant to previous sentence, 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. Fourthly, 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. Finally, permanent ballast water in sealed tanks on ships, that is not subject to discharge.

In the case of ships of non- State Parties to the BWM Convention, State Parties shall apply the requirements of the BWM Convention as may be necessary to ensure that no more favourable treatment is given to such ships.<sup>24</sup> Hence the BWM Convention adopted the principle of 'no more favourable treatment'<sup>25</sup> which was first adopted by the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL).<sup>26</sup>

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<sup>22</sup>Article 3, paragraph 1(a, b), BWM Convention.

<sup>23</sup> Article 3, paragraph 2 (a, b, c, d, e, f), BWM Convention.

<sup>24</sup> Article 3, paragraph 3, BWM Convention

<sup>25</sup> Article 5(4) of MARPOL states that 'with respect to the ship of non-parties to the convention, parties shall apply the requirements of the present convention as may be necessary to ensure that no more favourable treatment is given to such ships'.

<sup>26</sup> MARPOL was adopted by the International Conference on Marine Pollution convened by the IMO from 8 October to 2 November 1973.

## **2.2 Obligations and Requirements of All State Parties to the BWM Convention**

Regarding the implementation of the BWM Convention, State Parties are required to comply with the following. Firstly, they have to undertake to give full and complete effect to its provisions and 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.<sup>27</sup> Secondly, while taking action pursuant to this Convention they have to endeavour not to impair or damage their environment, human health, property or resources, or those of other States.<sup>28</sup> Thirdly, they have to ensure that the ballast water management practices used to comply with the Convention do not cause greater harm than the harm which the Convention intend to prevent to their environment, human health, property or resources, or those of other States.<sup>29</sup> Lastly, they have to 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 IMO.<sup>30</sup>

Moreover, in terms of cooperation, State Parties are under two obligations. Firstly, they have to endeavour to co-operate for the purpose of effective implementation, compliance and enforcement of the Convention.<sup>31</sup> Secondly, they have to endeavour 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.<sup>32</sup>

Furthermore, in respect to the improvement of the combating measures, State Parties have to encourage the continued development of ballast water management and standards to prevent, minimize and ultimately eliminate the transfer of harmful

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<sup>27</sup> Article 2, paragraph 1, BWM Convention.

<sup>28</sup> Article 2, paragraph 6, BWM Convention.

<sup>29</sup> Article 2, paragraph 7, BWM Convention.

<sup>30</sup> Article 2, paragraph 8, BWM Convention.

<sup>31</sup> Article 2, paragraph 4, BWM Convention.

<sup>32</sup> Article 2, paragraph 9, BWM Convention.

aquatic organisms and pathogens through the control and management of ships' ballast water and sediments.<sup>33</sup>

Moreover, there are additional obligations and requirements upon all State Parties. They have to promote scientific and technical research on the ballast water management, and to promote the availability of relevant information to other Parties.<sup>34</sup> Additionally, the BWM Convention requires flag, coastal and port States to establish sanctions for the violation of the requirements of the Convention.<sup>35</sup>

### **2.3 Obligations and Requirements of the Flag States**

Under the BWM Convention there are specific obligations upon the flag States. One of that obligations is that an approved plan for managing ballast water.<sup>36</sup> The flag States shall require all ships flying its flag or operate under their authority to have that plan which must include detailed description of the actions to be taken in order to comply with the BWM Convention.<sup>37</sup> In addition to that, the flag States shall require ships entitled to fly their flag or operate under their authority to keep a ballast water management record book.<sup>38</sup> The record book must provide detailed accounts of ballast water transactions, any ballast water taken on board, circulated, treated, transferred, or discharged in normal or exceptional circumstances must be recorded.<sup>39</sup> Furthermore, regarding sediments management for ships, the flag States have to ensure that ships flying their flag or operate under their authority are 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.<sup>40</sup>

Moreover, the flag States have to ensure that ships entitled to fly their flag or operate under their authority, which are subject to survey and certification, are so surveyed

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<sup>33</sup> Article 2, paragraph 5, BWM Convention.

<sup>34</sup> Article 6, paragraphs 1, 2, BWM Convention.

<sup>35</sup> Article 8, BWM Convention.

<sup>36</sup> Regulation B-1, Section B, Annex, BWM Convention.

<sup>37</sup> Ibid.

<sup>38</sup> Regulation B-2, Section B, Annex, BWM Convention.

<sup>39</sup> Ibid.

<sup>40</sup> Regulation B-5, Section B, Annex, BWM Convention.

and certified in accordance with the regulations in the Annex of the BWM Convention.<sup>41</sup>

## **2.4 Obligations and Requirements of Port States**

The port States have to set out procedures in order to comply with the BWM Convention requirements. Therefore, port States have to establish adequate facilities for the reception of sediments in ports and terminals designated by that Parties where cleaning or repair of ballast tanks occurs, taking into account the Guidelines developed by the IMO.<sup>42</sup> Moreover, port States shall ensure that the reception facilities 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.<sup>43</sup>

Additionally, port States shall report to the IMO and the other parties to the BWM Convention information in respect to the procedures taken by the port States relating to ballast water management, including their laws, regulations, and Guidelines for implementation of the BWM Convention, and the availability and location of their reception facilities for the environmentally safe disposal of ballast water and sediments.<sup>44</sup>

## **2.5 Rights of States Parties**

Under Article 2 paragraph 3 State Parties have the right to take individually or jointly 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. In respect to the flag State, it has the right to establish sanctions under its law applying to ships flying its flag wherever the violation occurs which means the BWM guarantees universal jurisdiction for the flag State.<sup>45</sup> The port State has the right to inspect foreign ship in its port or offshore terminal to determine whether the ship is in

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<sup>41</sup> Article 7, BWM Convention.

<sup>42</sup> Article 5, BWM Convention.

<sup>43</sup> Ibid.

<sup>44</sup> Article 14, BWM Convention.

<sup>45</sup> Article 8, paragraph 1, BWM Convention.



compliance with the BWM Convention.<sup>46</sup> Another right allocated to the port State is the right to designate certain areas where specific measures relating to the ballast water uptake will apply.<sup>47</sup>

## **2.6 Status of the BWM Convention**

In terms of Article 18, the BWM Convention will enter into force twelve months after the date on which it ratified or acceded by 30 States, representing 35 per cent of world merchant shipping tonnage. Presently the number of States which have ratified the Convention is 36 with an aggregate merchant shipping tonnage of 29.07 per cent of the world total.<sup>48</sup>

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<sup>46</sup> Article 9, paragraph 1, BWM Convention

<sup>47</sup> Regulation C-2, Section C 'Special requirements in Certain Areas', BWM Convention.

<sup>48</sup> 'International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM)', Status of Convention, IMO;  
<http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>. (6-March-2013).

### **3. The Importance of the BWM Convention to the Republic of Yemen**

Whereas the BWM Convention has only been ratified by some States in Europe and America, most other countries of the world, particularly the developing countries, including the Republic of Yemen, have not ratified or acceded to the Convention despite its vital importance to those countries and the urgent need for the implementation of such Convention. The Republic of Yemen has to accede to this Convention for several reasons, such as the important role the Convention has acquired in international marine environmental law; the need to protect the marine environment of the Republic of Yemen; Furthermore, the need to have pollution free marine environment, to achieve economic developments; and lastly, the need to promote the efficiency of the Republic of Yemen legal regime.

The BWM Convention promotes the protection and preservation of the marine environment. The importance of the BWM Convention to the world, and to the Republic of Yemen in particular, is that the BWM Convention appears to be the best international response to the ballast water exchange problem, which has increased as a result of the use of larger ships and commercial oil tankers. The expansion of international trade has led to sever damage to the marine environment, and consequently serious harm to human health and economic life especially in the developing countries, including the Republic of Yemen considering its economic and technological weaknesses. The Republic of Yemen, as a developing country, is facing the extensive costs which are needed in combating the damage and diseases that result from the transfer of the bacteria and invertebrates small eggs and larvae of various species which become invasive and compete native species.<sup>49</sup> Thus as BWM Conventions aims 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, therefore, the economic cost of the environment protection may be reduced.

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<sup>49</sup> Ballast Water Management, IMO, <http://www.imo.org/OurWork/Environment/ballastwatermanagement/Pages/Default.aspx. 1-January-2013>.

The pollution from ships ballast water and sediments is proved to be a great challenge since biological invasions of non-indigenous species constitute one of the four greatest threats to the world's oceans and their biodiversity. The other three being pollutants from land-based sources, over exploitation of living marine resources, and physical destruction of marine habitats.<sup>50</sup> Thus an international response, the BWM Convention was put forward to counter this problem and reduce the damages which are caused by ships' ballast water and sediments. Therefore, the Republic of Yemen as a member of the international community and as a maritime State which has a long coastline of 2,200 kilometers has to keep up with these international efforts.

The strategic location of the Republic of Yemen is an additional argument for the country to accede to the BMW Convention. The Republic of Yemen is located in the heart of the regional geographical map of the Arab Peninsula; as it oversees the Strait of Bab el Mandeb on the west it has 1,600 kilometers of coastline overlooking the Gulf of Aden and the Indian Ocean on the south and 600 kilometers of coastline on the Red Sea.<sup>51</sup> This geographical position makes the Republic of Yemen the largest maritime State in the Arabian Peninsula.<sup>52</sup>

The waters of the Red Sea and Gulf of Aden are famous for their natural beauty and outstanding biological diversity.<sup>53</sup> The area has gained global importance providing habitats to a significant number of unique species. The region is rich in natural resources such as fishery and tourism industries; therefore, ships' ballast water and sediments may threaten the marine and coastal ecosystem of the area. Thus the Republic of Yemen has to take that into account.

Furthermore, the ports of the Republic of Yemen have a strategic position in terms of the special natural harbours lying directly on major international shipping routes. The Gulf of Aden is a key transit zone for ships passing to and from the Red Sea. The United States Energy Information Administration estimated that, as of 2011, as many as 3.4 million barrels of oil per day were transiting the Bab el Mandeb strait between

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<sup>50</sup> Fonseca de Souza Rolim, Helena Maria; *op. cit.*, p. 16.

<sup>51</sup> Haider, Mohammed et al ; Maritime piracy in the Gulf of Aden and the Indian Ocean 'The Threat and the Response', Research and Information Center, Sana'a, the Republic of Yemen, 2010; p 68.

<sup>52</sup> Ibid.

<sup>53</sup>'Red Sea and Gulf of Aden Region';

[http://www.unep.org/regionalseas/programmes/nonunep/redsea/instruments/r\\_profile\\_persga.pdf](http://www.unep.org/regionalseas/programmes/nonunep/redsea/instruments/r_profile_persga.pdf) (25-March- 2013).

the Gulf of Aden and the Red Sea.<sup>54</sup> Therefore, the possibility of biopollution at the Republic of Yemen harbours might be increased.

Thus, the effect of ships' ballast water and sediments cannot be overlooked or denied in respect of the number of ships passing through the ports of the Republic of Yemen. Al-Hodeida Port, whose strategic location at the mouth of the Red Sea makes it a vital stop for the ships bound for the Suez Canal and the many oil tankers passing through every day are susceptible to pollution of any type, including ballast water.<sup>55</sup> The same can be said for Port Aden, which is part of the important Suez Canal shipping route between the Mediterranean Sea and the Arabian Sea in the Indian Ocean.<sup>56</sup>

Moreover, the Port of Aden which has thrived in the past, and is currently showing signs of revival after the establishment of Aden Free Zone which has the aim of transforming Aden into a hub for international trade. The previous President of the Republic of Yemen 'Ali Saleh'<sup>57</sup> committed to transfer Aden as the 'economic growth pole' for the country. Substantially Presidential Decree No. (14) 2011 was adopted creating the Aden Free Zone.<sup>58</sup> As a result, the number of ships passing through Port of Aden has increased,<sup>59</sup> and consequently the pollution from ships' ballast water also increased due to repeated release of ballast water which makes the Republic of Yemen ports vulnerable to the introduction of alien species from the ballast water discharged. To realize this vision and to get economic advantages, the Republic of Yemen needs to guaranty the safety of its ports by reducing any threat from the ships' ballast water and sediments.

Additionally, considering the strategic position of the ports of the Republic of Yemen and its maritime economic area which amounts to 584,000 square kilometers,<sup>60</sup> marine resources comprise an essential element that the Republic of Yemen economy

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<sup>54</sup> 'World Oil Transit Chokepoints' U.S. Energy Information Administration; [http://www.eia.gov/countries/analysisbriefs/World\\_Oil\\_Transit\\_Chokepoints/wotc.pdf](http://www.eia.gov/countries/analysisbriefs/World_Oil_Transit_Chokepoints/wotc.pdf) (25- March-2013).

<sup>55</sup> 'Location, Al-Hodeida Port'; <http://www.portofhodeidah.com/index2.php> (25- March-2013).

<sup>56</sup> 'Why Aden, Port of Aden'. <http://www.portofaden.net/> ( 25- March-2012).

<sup>57</sup> Ali Saleh was the President of the Republic of Yemen since 1978 to 2012.

<sup>58</sup> 'Local news, Archive, Yemen TV'; <http://www.yementv.net/index.php?mod=contents&do=view&cid=4&id=1482> (20- March- 2012).

<sup>59</sup> 'Statistics, Port of Aden'. <http://www.portofaden.net/> ( 25- March-2012) .

<sup>60</sup> Haider, Mohammed et al; op. cit., p. 68.

depends upon. To this end, the Government which plans to develop the economy of the Republic of Yemen based on fishing sector, set a strategic goal to achieve the best utilization of marine resources by 2015. Moreover, the Republic of Yemen has issued laws and regulations to realize that goal.<sup>61</sup> Therefore, the efforts of the Republic of Yemen for economic growth and legal certainty require the protection of the Republic of Yemen marine environment.

The legal regime of the Republic of Yemen pays attention to the protection of the marine environment. The Law No.(16) of 2004 regarding the Protection of Marine Environment from Pollution<sup>62</sup> defines the environmental damage as '[d]amage sustained by marine environment and affects, directly or indirectly, its natural or organic properties, or otherwise affects its function and leads to reduction or loss of its capability and damage sustained, or probably to be sustained, by man, other living beings, natural resources or marine lives as a result of change in the properties of the environments'.<sup>63</sup> The provisions of this Law deal mainly with the issues of oil pollution. Therefore, the Republic of Yemen needs to incorporate the BWM Convention into the Law No. (16) to make it more efficient and to harmonize the Republic of Yemen law with the international requirements.

The importance of the BWM Convention to the Republic of Yemen is obvious. Although the BWM Convention has not yet entered into force, it would be in the best interest of the Republic of Yemen to accede to the Convention and in that manner contribute to the entry into force of the Convention. The adoption of the Convention will enhance the legal regime governing this issue in the Republic of Yemen, will play a role in achieving the desired economic developments, will keep protected the marine environment as far as possible, and will assist Yemen to fulfill its international obligations in the marine environment field especially the obligation under Article

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<sup>61</sup> 'Laws & Regulations, Ministry of fishery and wealth, Yemen'.  
<http://www.yemen.gov.ye/portal/Default.aspx?alias=www.yemen.gov.ye/portal/mof> (22-December-2012)

<sup>62</sup> See Annex 3.

<sup>63</sup> Citations and Definitions, Part 1, Law No.(16) of 2004 concerning the Protection of Marine Environment from Pollution.

192 of the United Nation Convention in the Law of the Sea to which the Republic of Yemen is Party.<sup>64</sup>

#### **4. Constitutional Procedures of the Republic of Yemen**

The Republic of Yemen is a monist country; and therefore once it ratifies or accedes to any international convention it becomes part of the law of the Republic of Yemen. However, according to the Constitution of the Republic of Yemen there are some steps for such accession. Firstly, the Minister, whose ministry is responsible for the Convention in question, shall prepare an explanatory note of the Convention together with a full explanation and clarification of the reasons and the objectives of approval to the Council of Ministers. If the Convention imposes obligations which require procedures to be implemented at the domestic level, the responsible Minister shall attach to that explanatory note a proposal to amend the existing law or to draft a new law as the case may be.<sup>65</sup> Secondly, the Prime Minister will send the explanatory note and the proposal, if any, to the Legal Service Department of the Council of Ministers, which will submit its views on the accession and the proposal requested by the Prime Minister. The Prime Minister shall consider such views and if approved by him and the Council of Ministers, he shall send the said proposal to the Ministry of Legal Affairs for the legal drafting of the new law or the amendment of the existing law. Accordingly, the Ministry of Legal Affairs will draft the Draft Law which then shall be sent with the Convention to the House of Representatives as per their procedure. The House of Representatives will discuss and express their opinions and observations with regards to the Convention and the Draft Law. The responsible Minister shall attend the plenary discussion of the Draft Law to defend it and give any explanation needed.<sup>66</sup> After that, if the House of Representatives approves it, it shall be sent to the President for its signature and shall enter into force upon its publication in the Republic of Yemen Official Gazette as a Presidential Decree.

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<sup>64</sup> Yemen ratified UNCLOS on 21 July 1987 , Declarations or Statements upon UNCLOS ratification; [http://www.un.org/Depts/los/convention\\_agreements/convention\\_declarations.htm](http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm) (30-March-2013)

<sup>65</sup> The Republic of Yemen Constitution Article 137 paragraphs (c, d).

<sup>66</sup> Ibid Article (92).

Therefore, the accession to the BWM Convention has to follow the same procedures which are mentioned above. The Minister of Transport will be responsible for submitting the explanatory note of the BWM Convention to the Council of Ministers. The Minister of Transport will explain in the explanatory note why the accession and the implementation of BWM Convention are important for the Republic of Yemen. Since the fulfillment of the obligations under the BWM Convention needs to be given a complete effect at a domestic level, to the explanatory note will be attached a proposal to amend Law No.(16) of 2004 regarding the Protection of Marine Environment from Pollution. The proposal of the amendment will suggest adding a new chapter to the Law No. (16). And this chapter will become Chapter II of the Law No. (16).

The existing Law No. (16) of 2004 regarding the Protection of Marine Environment from Pollution has a 51 articles divided into 7 parts. By virtue of the proposed amendment the said 7 parts will now constitute Chapter I. A new Chapter II will be inserted to incorporate the relevant provisions of the BWM Convention. The said Chapter II will comprise of parts 8-18, with the numbering of the articles in the said parts continuing from articles 52-83. Moreover, in drafting the amending law the style and format of the existing law will be followed.

Then from the Council of Ministers the explanatory note together with the proposal in respect of the amendment of the Law No. (16) of 2004 goes through the same procedures mentioned previously. When the President gives his approval by signing the documents concerning the BWM Convention accession and the amendment of the Law No. (16) of 2004, the next step will be the publication in the Republic of Yemen Official Gazette. In this case, it is customary to have two Presidential Decrees, one concerning the accession to the BWM Convention and the other concerning the Law amending Law No. (16) of 2004 regarding Protection of Marine Environment from Pollution. After the publication of the Presidential Decrees of the accession to the Convention and the Amendment Law in the Official Gazette, a formal sealed letter referring to the decision of the Republic of Yemen to become a Party to the Ballast Water Convention and signed by the Minister of Foreign Affairs, is then prepared and deposited with the IMO Secretary-General in London.

**Presidential Decree No. ( ) of 2013 Concerning the Republic of  
Yemen Accession to the International Convention for the Control  
and Management of Ships' Ballast Water and Sediments, 2004**

IN THE NAME OF THE PEOPLE  
THE PRESIDENT OF THE REPUBLIC

In compliance with:

- The Constitution of the Republic of Yemen;
- Presidential Decree NO. (15) of 1994 regarding Maritime Law;
- Law No. (16) of 2004 regarding the Protection of Marine Environment from Pollution;

And upon the approval by the House of Representatives of the present Law as submitted by the Council of Ministers,

**DETERMINES**

Article (1):

The accession by the Republic of Yemen to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 shall be approved.

Article (2):

This Decree shall enter into force as from the date of its issuance and publication in the Official Gazette.

Issued by the President of the Republic on Day Month 2013

/Signed/

President of the Republic



**Presidential Decree No. ( ) of 2013 Amending Law No. (16) of 2004  
regarding the Protection of Marine Environment from Pollution**

IN THE NAME OF THE PEOPLE  
THE PRESIDENT OF THE REPUBLIC

In compliance with:

- The Constitution of the Republic of Yemen.
- Presidential Decree No. (15) of 1994 regarding Maritime Law;
- Law No. (16) of 2004 regarding the Protection of Marine Environment from Pollution;
- Presidential Decree No. ( ) of 2013 concerning the Republic of Yemen accession to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004;

And upon the approval by the House of Representatives of the present Law as submitted by the Council of Ministers,

**DETERMINES**

Article (1):

Parts 1-7 of the Law No.(16) of 2004 concerning the Protection of Marine Environment from Pollution (hereafter referred to as the Principal Law) shall be considered as Chapter I of the said law and shall be entitled 'Pollution from Oil and Other Substances'.

Article (2):

Parts 8- 18 shall be added to the Principal Law, and shall be considered as Chapter II of the said Law, and entitled 'Control and Management of Ships' Ballast Water and Sediments'.

Article (3):

Chapter II reads as follows:

## **Chapter II**

### **Part (8)**

#### **The Purpose of Chapter II**

Article (52):

The purpose of this Chapter is to give full effect to the provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, in accordance with the Presidential Decree No.( ) of 2013 concerning the Republic of Yemen accession to the said Convention.

### **Part (9)**

#### **Citation and Definitions**

Article (53):

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

a)	Ballast Water:	Water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship.
b)	Ballast Water Management:	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 sediment.
c)	Ballast Water Management Record Book:	The on board book that ships are required to use for recording ballasting operations.
d)	Ballast Water Plan:	A plan specific to the ship that has been approved by the Ministry of Transport as meeting international guidelines under IMO resolutions.

e)	Ballast Water Reporting Form:	A document required by the Ministry, developed in accordance with IMO resolutions.
f)	Certificate:	International ballast water management certificate
g)	Company:	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.
h)	Competent court:	The commercial court of the Republic of Yemen.
i)	Convention:	The International Convention for the Control and Management of Ships' Ballast Water and Sediments and its Annex which is an integral part of the Convention.
j)	Gross Tonnage:	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.
k)	Harmful Aquatic Organism and Pathogens:	Aquatic organism or pathogens which, if included 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.
l)	IMO:	International Maritime Organization.
m)	MAA:	The Maritime Affairs Authority which was established by the

		Presidential Decree No. (325) of 2001 as a part of the Ministry of Transport.
n)	Minister:	The Minister of Transport.
o)	Ministry:	The Ministry of Transport.
p)	PSCO:	The Maritime Affairs Authority's Port State Control Officers.
q)	Republic:	The Republic of Yemen.
r)	Sediments:	Matter settled out of ballast water within a ship.
s)	Ships:	A vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, floating storage unite and floating production storage and offloading units.
t)	Republic of Yemen Jurisdictional Waters:	The inland waters, port waters, territorial sea, and exclusive economic zone, as defined in the Law No. (37) of 1991 regarding the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone, and the Continental Shelf.
u)	YR:	Yemeni Rail.
v)	Yemeni ships:	A ship registered in one of the Yemeni ports in the appropriate ships register and owned by either a physical or moral person of a Yemeni nationality, as defined in the Presidential Decree Enacting Law No.15/1994 regarding the Maritime Law.

**Part (10)**  
**The Scope of Application**

**Article (54):**

- 1- This Chapter shall apply to:
  - a- Yemeni Ships;
  - b- Ships not entitled to fly the flag of the Republic but which operate under the authority of the Republic; and
  - c- All ships entering or in transit through the Republic jurisdictional waters.
- 2- This Chapter shall not apply to:
  - a- Ships not designed or constructed to carry ballast water;
  - b- Yemeni ships which only operate in waters under the jurisdiction of the Republic, unless the Ministry determines that the discharge of ballast water from such ships would impair or damage the Republic environment, human health, property or resources;
  - c- Yemeni ships which only operate in waters under the jurisdiction of another State, subject to the authorization of that State for such exclusion.
  - d- 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; and
  - e- Permanent ballast water in sealed tanks on ships, which is not subject to discharge.

**Part (11)**  
**Responsible Authorities**

**Article (55):**

- 1- The Ministry shall be responsible for the implementation of this Chapter and shall issue the necessary regulations pursuant thereto.

2-The MAA shall be responsible for scientific and technical research and monitoring. 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.

3- The PSCO shall be responsible for the inspections for the purpose of determining whether the ship is in compliance with this Chapter.

## **Part (12)**

### **Sediments Reception Facilities**

#### **Article (56):**

The system to retain and dispose of sediments removed from ballast tanks during cleaning, repair or demolition of a ship shall be established in Port of Aden and Port of Al-Hodeida.

## **Part (13)**

### **Management and Control Requirements for Ships**

#### **Ballast water management plan**

#### **Article (57):**

Each ship shall have on board and implement a ballast water management plan. Such a plan shall be approved by the Ministry taking into account any additional requirements by the IMO. The ballast water management plan shall be specific to each ship and shall at least:

- a- Detail safety procedures for the ship and the crew associated with ballast water management as required by the Convention;
- b- 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 the Convention;
- c- detail the procedures for the disposal of sediments:

- 1- at sea; and

- 2- to shore;
- d- include the procedures for coordinating shipboard ballast water management that involves discharge to the sea with the PSCO;
- e- designate the officer on board in charge of ensuring that the plan is properly implemented;
- f- contain the reporting requirements for ships provided for under the Convention; and
- g- be written in the working language of the ship. If the languages used are not Arabic or English, a translation into these languages shall be included.

### **Ballast water record book**

#### **Article (58):**

- 1- Each ship shall have on board a ballast water record book which may be an electronic, or that may be integrated into another record book or system and, which shall at least contain the information specified in Annex I of this Chapter.
- 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 Article (59) paragraph (6) hereunder, or in the event of other accidental or exceptional discharge of ballast water not otherwise exempted by the 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 PSCO 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 Arabic or English the entries shall contain a translation into these languages.

6- PSCO may inspect the ballast water record book on board any ship to which this Article applies while the ship is in the Republic's 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.

### **Ballast water management for ships**

Article (59):

1- A ship constructed before 2009:

a- with a ballast water capacity of between 1,500 and 5,000 cubic meters, inclusive, shall conduct ballast water management that at least meets the standard described in Article (62) or Article (63) until 2014, after which time it shall at least meet the standard described in Article (63);

b- with a ballast water capacity of less than 1,500 or greater than 5,000 cubic meters shall conduct ballast water management that at least meets the standard described in Article (62) or Article (63) until 2016, after which time it shall at least meet the standard described in Article (63).

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 meters shall conduct ballast water management that at least meets the standard described in Article (63).

4- A ship constructed in or after 2009, but before 2012, with a ballast water capacity of 5,000 cubic meters or more shall conduct ballast water management in accordance with paragraphs (1, 2).



5- A ship constructed in or after 2012 with a ballast water capacity of 5000 cubic meters or more shall conduct ballast water management that at least meets the standard described in Article (63).

6- The requirements of this Article do not apply to ships that discharge ballast water to a reception facility designed taking into account the Guidelines developed by the IMO for such facilities.

### **Ballast water exchange**

Article (60):

1- A ship conducting ballast water exchange to meet the standard of the IMO shall:

a- whenever possible, conduct such ballast water exchange at least 200 nautical miles from the nearest land and in water at least 200 meters in depth, taking into account the Guidelines developed by the IMO;

b- in cases where the ship is unable to conduct ballast water exchange in accordance with paragraph 1(a), such ballast water exchange shall be conducted taking into account the guidelines described in paragraph 1(a) 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 meters in depth.

2- 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).

3- A ship conducting ballast water exchange shall not be required to comply with paragraphs (1) 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.

4- When a ship is required to conduct ballast water exchange and does not do so in accordance with this Article, the reasons shall be entered in the ballast water record book.

## **Sediment management for ships**

Article (61):

1- All ships shall remove and dispose of sediments from spaces designated to carry ballast water in accordance with the provisions of the ships' ballast water management plan.

2- Ships described in Article (59) paragraphs (3, 4, and 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 IMO. Ships described in Article (59) paragraph (1) should, to the extent practicable, comply with this paragraph.

## **Ballast water exchange standard**

Article (62):

1- Ships performing ballast water exchange in accordance with this Chapter 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.

## **Ballast water performance standard**

Article (63):

1- Ships conducting ballast water management in accordance with this Article shall discharge less than 10 viable organisms per cubic meter greater than or equal to 50 micrometers in minimum dimension and less than 10 viable organisms per milliliter less than 50 micrometers in minimum dimension and greater than or equal to 10 micrometers in minimum dimension.

## **Part (14)**

### **Survey and Certification Requirements for Ballast Water Management**

#### **Surveys**

Article (64):

1-Ships of 400 gross tonnage and above to which this Chapter applies shall be subject to surveys of the PSCO, and shall hold the international ballast water management certificate.

#### **Issuance or endorsement of a certificate**

Article (65):

1- The Ministry shall ensure that a ship to which paragraph (1) applies is issued a certificate after successful completion of a survey conducted in accordance with Article (64).

2- Certificates shall be issued or endorsed by the Ministry, and the Ministry assumes full responsibility for the certificate.

#### **Form of the certificate**

Article (66):

The certificate shall be drawn up in Arabic and English, in the form set forth in Annex II of this Chapter.

#### **Duration and validity of the certificate**

Article (67):

1- A certificate shall be issued for a period specified by the Ministry that shall not exceed five years.

2- For renewal surveys, the Ministry shall regulate its requirements and procedures.

## **Part (15)**

### **Ballasting Operation in the Republic Jurisdictional Waters**

Article (68):

Ballasting operations by ships to which this Chapter applies, are prohibited in Republic jurisdictional waters without prior permission.

Article (69):

Permission to discharge will be granted by the Ministry after reviewing the ballast water reporting form and, if deemed necessary upon, inspection, without undue delay to the ship.

Article (70):

All ships that use ballast water shall file directly, or through an agent, a ballasting water reporting form with the Ministry 24 hours before entering into Republic jurisdictional waters.

Article (71):

All ships that use ballast water and intend to discharge ballast water in the Republic jurisdictional waters shall submit their ballast water management plan before entering the Republic jurisdictional waters.

Article (72):

Ships that do not file a ballasting water reporting form or the submit ballast water management plan:

- a-will be subject to inspection by PSCO;
- b- may have ballast water sampled and analyzed before discharge is permitted;
- c- may, if deemed necessary to protect the marine ecosystem or human health in the Republic, be denied permission to discharge ballast water or entry to a port.

Article (73):

Refusal to file a ballasting water reporting form, or when filling such form providing false or misleading information, shall be sanctioned pursuant to Article (78) hereof.

## **Part (16)**

### **Inspection of Ships**

Article (74):

1- A ship to which this Chapter applies may, in any port or offshore terminal of the Republic, be subject to inspection by PSCO for the purpose of determining whether the ship is in compliance with this Chapter. 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 IMO.

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; or
- b- 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.

2-The time required for the inspection shall not be used as a basis for unduly delaying the operation, movement or departure of the ship.

## **Part (17)**

### **Civil Responsibility**

Article (75):

If discharge of ballast water and sediments containing harmful aquatic organisms and pathogens or other materials that may cause damage to the environment and marine life is committed in the Republic jurisdictional waters by a ship, a civil responsibility shall arise against the owner of that ship for all costs emanating from remedial actions, in addition to compensations entailed, or that might entail, from such damage and penalties prescribed in accordance with this Law, regardless of any causes or justifications for the discharge, or damage to the environment.

Article (76):

A written notice shall be addressed to the owner in the case of a Yemeni ship or a ship which operates under the Republic's authority or the owner and the flag State of a foreign ship responsible for the costs and damages identified under Article (75) hereof. If the amount indicated in the notice is not settled or a guarantee for payment of the same amount is not presented to the Ministry within 48 hours of the notice, the Ministry may take the proper actions, as authorized by this Law.

Article (77):

If the person responsible for payment of compensation for costs and damage sustained as a result of a discharge, pursuant to Article (75) hereof, does not pay the amount demanded within 48 hours of the notice, the Ministry may order the detention of the ship and file a compensation case before the competent court.

## **Part (18)**

### **Penalties**

Article (78):

Without prejudice to any other effective Laws that may impose penalties, whosoever violates the provisions of this Law shall be subject to the penalties indicated hereunder.

Article (79):

1- Any ship which violates the provisions of Articles (57) and (58) of this Law shall be liable to a financial fine of not less than YR200.0000.

2- Any ship which violates the provisions of Article (68) of this Law shall be liable to a financial fine of not less than YR5 millions.

3- Any ship which violates the provisions of Article (73) of this Law shall be liable to a financial fine of not less than YR5 millions.

Article (80):

In case any violation of the provisions of this Law by an owner of a ship if repeated, the prescribed penalty shall be doubled.

Article (81):

Application of fines and penalties indicated under this Law shall not prevent:

a- Execution of any judgment for compensation and/or costs due to the Ministry or any other agency in accordance with the provisions of this Law.

b- Application of administrative penalties for the negligent violations in accordance with the provisions of this Law.

c- Criminal liability, if commitment of the violation entails a criminal act.

## **Part (19)**

### **Final and General Provisions**

Article (82):

The PSCO may detain any ship when they have good reasons to believe that such ships have violated the provisions of this Law and committed any discharge ballast water of unlawfully.

Article (83):

Anything not provided for under this Law shall be regulated by other effective Laws, subject to the effective provisions of the international agreements and conventions in the Republic.

Article (4):

This Decree shall enter into force by its publication in the Official Gazette.

Issued by the President of the Republic on

/Signed/

President of the Republic



**ANNEX I**  
**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 meters) .....

The ship is provided with a Ballast Water Management plan

Diagram of ship indicating ballast tanks:

**ANNEX II**  
**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

Name of ship.....

Distinctive number or letters .....

Port of registry.....

Gross Tonnage.....

IMO number.....

Date of Construction .....

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

Details of Ballast Water Management Method(s) Used

Method of Ballast Water Management used .....

Date installed (if applicable).....

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

## **The Explanatory Note Annex**

## ANNEX I

### Ballast Water Vocabulary: <sup>67</sup>

- **In Ballast:** A ship carrying ballast water and no cargo.
- **With Ballast:** A ship with cargo and ballast water.
- **No Ballast On Board (NOBOB):** A ship that is technically carrying no ballast water. A NOBOB ship may be carrying residual ballast water and sediments that could not be pumped out of the tanks.
- **Ballast Exchange:** The process of releasing ballast water then taking on new ballast water.

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<sup>67</sup> Marine Bioinvasions Fact Sheet: Ballast Water, MIT Sea Grant Coastal Resources, <http://massbay.mit.edu/exoticspecies/ballast/fact.html> (25- March- 2013)

## ANNEX II

### BWM Convention Guidelines<sup>68</sup>

- Guidelines for sediments reception facilities ([G1](#))
- Guidelines for Ballast Water Sampling ([G2](#))
- Guidelines for ballast water management equivalent compliance([G3](#))
- Guidelines for Ballast Water Management and Development of Ballast Water Management Plans ([G4](#))
- Guidelines for ballast water reception facilities ([G5](#))
- Guidelines for Ballast Water Exchange ([G6](#))
- Guidelines for Risk Assessment under Regulation A-4 ([G7](#))
- Guidelines for approval of Ballast Water Management Systems ([G8](#))
- Procedure for Approval of BWM systems that make use of Active Substances ([G9](#))
- Guidelines for approval and oversight of prototype ballast water treatment technology programmes ([G10](#))
- Guidelines for Ballast Water Exchange Design and Construction Standards ([G11](#))
- Guidelines for sediment control on ships ([G12](#))
- Guidelines for additional measures including emergency situations ([G13](#))
- Guidelines on designation of areas for ballast water exchange ([G14](#))

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<sup>68</sup> 'The IMO Technical Guidelines', Glo Ballast Partnerships, IMO; <http://globallast.imo.org/index.asp?page=resolution.htm> (25- March- 2013).

- [Guidelines for Ballast Water Exchange in the Antarctic Treaty area](#)

Two further Guidelines are being prepared:

- Survey Guidelines for the purpose of BWM Convention
- Guidelines on PSC under the BWM Convention

## **ANNEX III**

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