

*Extract from:*

# UNITED NATIONS JURIDICAL YEARBOOK

2004

Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter IV. Treaties concerning international law concluded under the auspices of the United Nations and related intergovernmental organizations



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## Chapter IV

### TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

#### A. TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS

UNITED NATIONS CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR  
PROPERTY. ADOPTED BY THE GENERAL ASSEMBLY ON 2 DECEMBER 2004\*

The States Parties to the present Convention,

*Considering* that the jurisdictional immunities of States and their property are generally accepted as a principle of customary international law,

*Having in mind* the principles of international law embodied in the Charter of the United Nations,

*Believing* that an international convention on the jurisdictional immunities of States and their property would enhance the rule of law and legal certainty, particularly in dealings of States with natural or juridical persons, and would contribute to the codification and development of international law and the harmonization of practice in this area,

*Taking into account* developments in State practice with regard to the jurisdictional immunities of States and their property,

*Affirming* that the rules of customary international law continue to govern matters not regulated by the provisions of the present Convention,

Have agreed as follows:

#### PART I. INTRODUCTION

##### *Article 1. Scope of the present Convention*

The present Convention applies to the immunity of a State and its property from the jurisdiction of the courts of another State.

##### *Article 2. Use of terms*

1. For the purposes of the present Convention:

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\* Adopted during the 65th plenary meeting of the General Assembly by resolution 59/38 of 2 December 2004.

(a) “court” means any organ of a State, however named, entitled to exercise judicial functions;

(b) “State” means:

- (i) the State and its various organs of government;
- (ii) constituent units of a federal State or political subdivisions of the State, which are entitled to perform acts in the exercise of sovereign authority, and are acting in that capacity;
- (iii) agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State;
- (iv) representatives of the State acting in that capacity;

(c) “commercial transaction” means:

- (i) any commercial contract or transaction for the sale of goods or supply of services;
- (ii) any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;
- (iii) any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.

2. In determining whether a contract or transaction is a “commercial transaction” under paragraph 1 (c), reference should be made primarily to the nature of the contract or transaction, but its purpose should also be taken into account if the parties to the contract or transaction have so agreed, or if, in the practice of the State of the forum, that purpose is relevant to determining the non-commercial character of the contract or transaction.

3. The provisions of paragraphs 1 and 2 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or in the internal law of any State.

*Article 3. Privileges and immunities not affected by the present Convention*

1. The present Convention is without prejudice to the privileges and immunities enjoyed by a State under international law in relation to the exercise of the functions of:

(a) its diplomatic missions, consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences; and

(b) persons connected with them.

2. The present Convention is without prejudice to privileges and immunities accorded under international law to heads of State *ratione personae*.

3. The present Convention is without prejudice to the immunities enjoyed by a State under international law with respect to aircraft or space objects owned or operated by a State.

*Article 4. Non-retroactivity of the present Convention*

Without prejudice to the application of any rules set forth in the present Convention to which jurisdictional immunities of States and their property are subject under international law independently of the present Convention, the present Convention shall not apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the entry into force of the present Convention for the States concerned.

PART II. GENERAL PRINCIPLES

*Article 5. State immunity*

A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention.

*Article 6. Modalities for giving effect to State immunity*

1. A State shall give effect to State immunity under article 5 by refraining from exercising jurisdiction in a proceeding before its courts against another State and to that end shall ensure that its courts determine on their own initiative that the immunity of that other State under article 5 is respected.

2. A proceeding before a court of a State shall be considered to have been instituted against another State if that other State:

(a) is named as a party to that proceeding; or

(b) is not named as a party to the proceeding but the proceeding in effect seeks to affect the property, rights, interests or activities of that other State.

*Article 7. Express consent to exercise of jurisdiction*

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State with regard to a matter or case if it has expressly consented to the exercise of jurisdiction by the court with regard to the matter or case:

(a) by international agreement;

(b) in a written contract; or

(c) by a declaration before the court or by a written communication in a specific proceeding.

2. Agreement by a State for the application of the law of another State shall not be interpreted as consent to the exercise of jurisdiction by the courts of that other State.

*Article 8. Effect of participation in a proceeding before a court*

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State if it has:

(a) itself instituted the proceeding; or

(b) intervened in the proceeding or taken any other step relating to the merits. However, if the State satisfies the court that it could not have acquired knowledge of facts on

which a claim to immunity can be based until after it took such a step, it can claim immunity based on those facts, provided it does so at the earliest possible moment.

2. A State shall not be considered to have consented to the exercise of jurisdiction by a court of another State if it intervenes in a proceeding or takes any other step for the sole purpose of:

- (a) invoking immunity; or
- (b) asserting a right or interest in property at issue in the proceeding.

3. The appearance of a representative of a State before a court of another State as a witness shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

4. Failure on the part of a State to enter an appearance in a proceeding before a court of another State shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

#### *Article 9. Counterclaims*

1. A State instituting a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counterclaim arising out of the same legal relationship or facts as the principal claim.

2. A State intervening to present a claim in a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counterclaim arising out of the same legal relationship or facts as the claim presented by the State.

3. A State making a counterclaim in a proceeding instituted against it before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of the principal claim.

### PART III. PROCEEDINGS IN WHICH STATE IMMUNITY CANNOT BE INVOKED

#### *Article 10. Commercial transactions*

1. If a State engages in a commercial transaction with a foreign natural or juridical person and, by virtue of the applicable rules of private international law, differences relating to the commercial transaction fall within the jurisdiction of a court of another State, the State cannot invoke immunity from that jurisdiction in a proceeding arising out of that commercial transaction.

2. Paragraph 1 does not apply:

- (a) in the case of a commercial transaction between States; or
- (b) if the parties to the commercial transaction have expressly agreed otherwise.

3. Where a State enterprise or other entity established by a State which has an independent legal personality and is capable of:

- (a) suing or being sued; and
- (b) acquiring, owning or possessing and disposing of property, including property which that State has authorized it to operate or manage, is involved in a proceeding which

relates to a commercial transaction in which that entity is engaged, the immunity from jurisdiction enjoyed by that State shall not be affected.

*Article 11. Contracts of employment*

1. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to a contract of employment between the State and an individual for work performed or to be performed, in whole or in part, in the territory of that other State.

2. Paragraph 1 does not apply if:

(a) the employee has been recruited to perform particular functions in the exercise of governmental authority;

(b) the employee is:

(i) a diplomatic agent, as defined in the Vienna Convention on Diplomatic Relations of 1961;

(ii) a consular officer, as defined in the Vienna Convention on Consular Relations of 1963;

(iii) a member of the diplomatic staff of a permanent mission to an international organization or of a special mission, or is recruited to represent a State at an international conference; or

(iv) any other person enjoying diplomatic immunity;

(c) the subject-matter of the proceeding is the recruitment, renewal of employment or reinstatement of an individual;

(d) the subject-matter of the proceeding is the dismissal or termination of employment of an individual and, as determined by the head of State, the head of Government or the Minister for Foreign Affairs of the employer State, such a proceeding would interfere with the security interests of that State;

(e) the employee is a national of the employer State at the time when the proceeding is instituted, unless this person has the permanent residence in the State of the forum; or

(f) the employer State and the employee have otherwise agreed in writing, subject to any considerations of public policy conferring on the courts of the State of the forum exclusive jurisdiction by reason of the subject-matter of the proceeding.

*Article 12. Personal injuries and damage to property*

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributable to the State, if the act or omission occurred in whole or in part in the territory of that other State and if the author of the act or omission was present in that territory at the time of the act or omission.

*Article 13. Ownership, possession and use of property*

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of:

(a) any right or interest of the State in, or its possession or use of, or any obligation of the State arising out of its interest in, or its possession or use of, immovable property situated in the State of the forum;

(b) any right or interest of the State in movable or immovable property arising by way of succession, gift or bona vacantia; or

(c) any right or interest of the State in the administration of property, such as trust property, the estate of a bankrupt or the property of a company in the event of its winding up.

*Article 14. Intellectual and industrial property*

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

(a) the determination of any right of the State in a patent, industrial design, trade name or business name, trademark, copyright or any other form of intellectual or industrial property which enjoys a measure of legal protection, even if provisional, in the State of the forum; or

(b) an alleged infringement by the State, in the territory of the State of the forum, of a right of the nature mentioned in subparagraph (a) which belongs to a third person and is protected in the State of the forum.

*Article 15. Participation in companies or other collective bodies*

1. A State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to its participation in a company or other collective body, whether incorporated or unincorporated, being a proceeding concerning the relationship between the State and the body or the other participants therein, provided that the body:

(a) has participants other than States or international organizations; and

(b) is incorporated or constituted under the law of the State of the forum or has its seat or principal place of business in that State.

2. A State can, however, invoke immunity from jurisdiction in such a proceeding if the States concerned have so agreed or if the parties to the dispute have so provided by an agreement in writing or if the instrument establishing or regulating the body in question contains provisions to that effect.

*Article 16. Ships owned or operated by a State*

1. Unless otherwise agreed between the States concerned, a State which owns or operates a ship cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the operation of that ship if, at



the time the cause of action arose, the ship was used for other than government non-commercial purposes.

2. Paragraph 1 does not apply to warships, or naval auxiliaries, nor does it apply to other vessels owned or operated by a State and used, for the time being, only on government non-commercial service.

3. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the carriage of cargo on board a ship owned or operated by that State if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.

4. Paragraph 3 does not apply to any cargo carried on board the ships referred to in paragraph 2, nor does it apply to any cargo owned by a State and used or intended for use exclusively for government non-commercial purposes.

5. States may plead all measures of defence, prescription and limitation of liability which are available to private ships and cargoes and their owners.

6. If in a proceeding there arises a question relating to the government and non-commercial character of a ship owned or operated by a State or cargo owned by a State, a certificate signed by a diplomatic representative or other competent authority of that State and communicated to the court shall serve as evidence of the character of that ship or cargo.

#### *Article 17. Effect of an arbitration agreement*

If a State enters into an agreement in writing with a foreign natural or juridical person to submit to arbitration differences relating to a commercial transaction, that State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

- (a) the validity, interpretation or application of the arbitration agreement;
- (b) the arbitration procedure; or
- (c) the confirmation or the setting aside of the award, unless the arbitration agreement otherwise provides.

#### PART IV. STATE IMMUNITY FROM MEASURES OF CONSTRAINT IN CONNECTION WITH PROCEEDINGS BEFORE A COURT

#### *Article 18. State immunity from pre-judgment measures of constraint*

No pre-judgment measures of constraint, such as attachment or arrest, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

- (a) the State has expressly consented to the taking of such measures as indicated:
  - (i) by international agreement;
  - (ii) by an arbitration agreement or in a written contract; or
  - (iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding.

*Article 19. State immunity from post-judgment measures of constraint*

No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

- (a) the State has expressly consented to the taking of such measures as indicated:
  - (i) by international agreement;
  - (ii) by an arbitration agreement or in a written contract; or
  - (iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or

(c) it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum, provided that post-judgment measures of constraint may only be taken against property that has a connection with the entity against which the proceeding was directed.

*Article 20. Effect of consent to jurisdiction to measures of constraint*

Where consent to the measures of constraint is required under articles 18 and 19, consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint.

*Article 21. Specific categories of property*

1. The following categories, in particular, of property of a State shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes under article 19, subparagraph (c):

(a) property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences;

(b) property of a military character or used or intended for use in the performance of military functions;

(c) property of the central bank or other monetary authority of the State;

(d) property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale;

(e) property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.

2. Paragraph 1 is without prejudice to article 18 and article 19, subparagraphs (a) and (b).

## PART V. MISCELLANEOUS PROVISIONS

*Article 22. Service of process*

1. Service of process by writ or other document instituting a proceeding against a State shall be effected:

(a) in accordance with any applicable international convention binding on the State of the forum and the State concerned; or

(b) in accordance with any special arrangement for service between the claimant and the State concerned, if not precluded by the law of the State of the forum; or

(c) in the absence of such a convention or special arrangement:

(i) by transmission through diplomatic channels to the Ministry of Foreign Affairs of the State concerned; or

(ii) by any other means accepted by the State concerned, if not precluded by the law of the State of the forum.

2. Service of process referred to in paragraph 1 (c) (i) is deemed to have been effected by receipt of the documents by the Ministry of Foreign Affairs.

3. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the State concerned.

4. Any State that enters an appearance on the merits in a proceeding instituted against it may not thereafter assert that service of process did not comply with the provisions of paragraphs 1 and 3.

*Article 23. Default judgment*

1. A default judgment shall not be rendered against a State unless the court has found that:

(a) the requirements laid down in article 22, paragraphs 1 and 3, have been complied with;

(b) a period of not less than four months has expired from the date on which the service of the writ or other document instituting a proceeding has been effected or deemed to have been effected in accordance with article 22, paragraphs 1 and 2; and

(c) the present Convention does not preclude it from exercising jurisdiction.

2. A copy of any default judgment rendered against a State, accompanied if necessary by a translation into the official language or one of the official languages of the State concerned, shall be transmitted to it through one of the means specified in article 22, paragraph 1, and in accordance with the provisions of that paragraph.

3. The time-limit for applying to have a default judgment set aside shall not be less than four months and shall begin to run from the date on which the copy of the judgment is received or is deemed to have been received by the State concerned.

*Article 24. Privileges and immunities during court proceedings*

1. Any failure or refusal by a State to comply with an order of a court of another State enjoining it to perform or refrain from performing a specific act or to produce any

document or disclose any other information for the purposes of a proceeding shall entail no consequences other than those which may result from such conduct in relation to the merits of the case. In particular, no fine or penalty shall be imposed on the State by reason of such failure or refusal.

2. A State shall not be required to provide any security, bond or deposit, however described, to guarantee the payment of judicial costs or expenses in any proceeding to which it is a respondent party before a court of another State.

#### PART VI. FINAL CLAUSES

##### *Article 25. Annex*

The annex to the present Convention forms an integral part of the Convention.

##### *Article 26. Other international agreements*

Nothing in the present Convention shall affect the rights and obligations of States Parties under existing international agreements which relate to matters dealt with in the present Convention as between the parties to those agreements.

##### *Article 27. Settlement of disputes*

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of the present Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which cannot be settled through negotiation within six months shall, at the request of any of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of, or accession to, the present Convention, declare that it does not consider itself bound by paragraph 2. The other States Parties shall not be bound by paragraph 2 with respect to any State Party which has made such a declaration.

4. Any State Party that has made a declaration in accordance with paragraph 3 may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

##### *Article 28. Signature*

The present Convention shall be open for signature by all States until 17 January 2007, at United Nations Headquarters, New York.

##### *Article 29. Ratification, acceptance, approval or accession*

1. The present Convention shall be subject to ratification, acceptance or approval.
2. The present Convention shall remain open for accession by any State.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

*Article 30. Entry into force*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the present Convention after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

*Article 31. Denunciation*

1. Any State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations. The present Convention shall, however, continue to apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the date on which the denunciation takes effect for any of the States concerned.

3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in the present Convention to which it would be subject under international law independently of the present Convention.

*Article 32. Depositary and notifications*

1. The Secretary-General of the United Nations is designated the depositary of the present Convention.

2. As depositary of the present Convention, the Secretary-General of the United Nations shall inform all States of the following:

(a) signatures of the present Convention and the deposit of instruments of ratification, acceptance, approval or accession or notifications of denunciation, in accordance with articles 29 and 31;

(b) the date on which the present Convention will enter into force, in accordance with article 30;

(c) any acts, notifications or communications relating to the present Convention.

*Article 33. Authentic texts*

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention opened for signature at United Nations Headquarters in New York on 17 January 2005.

## ANNEX TO THE CONVENTION

## UNDERSTANDINGS WITH RESPECT TO CERTAIN PROVISIONS OF THE CONVENTION

The present annex is for the purpose of setting out understandings relating to the provisions concerned.

*With respect to article 10*

The term “immunity” in article 10 is to be understood in the context of the present Convention as a whole.

Article 10, paragraph 3, does not prejudice the question of “piercing the corporate veil”, questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

*With respect to article 11*

The reference in article 11, paragraph 2 (*d*), to the “security interests” of the employer State is intended primarily to address matters of national security and the security of diplomatic missions and consular posts.

Under article 41 of the 1961 Vienna Convention on Diplomatic Relations and article 55 of the 1963 Vienna Convention on Consular Relations, all persons referred to in those articles have the duty to respect the laws and regulations, including labour laws, of the host country. At the same time, under article 38 of the 1961 Vienna Convention on Diplomatic Relations and article 71 of the 1963 Vienna Convention on Consular Relations, the receiving State has a duty to exercise its jurisdiction in such a manner as not to interfere unduly with the performance of the functions of the mission or the consular post.

*With respect to articles 13 and 14*

The expression “determination” is used to refer not only to the ascertainment or verification of the existence of the rights protected, but also to the evaluation or assessment of the substance, including content, scope and extent, of such rights.

*With respect to article 17*

The expression “commercial transaction” includes investment matters.

*With respect to article 19*

The expression “entity” in subparagraph (*c*) means the State as an independent legal personality, a constituent unit of a federal State, a subdivision of a State, an agency or instrumentality of a State or other entity, which enjoys independent legal personality.

The words “property that has a connection with the entity” in subparagraph (*c*) are to be understood as broader than ownership or possession.

Article 19 does not prejudice the question of “piercing the corporate veil”, questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

**B. TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED  
UNDER THE AUSPICES OF INTERGOVERNMENTAL  
ORGANIZATIONS RELATED TO THE UNITED NATIONS**

**International Maritime Organization**

INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS'  
BALLAST WATER AND SEDIMENTS. DONE AT LONDON, 13 FEBRUARY 2004\*

*Preamble*

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,

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\* Adopted at the International Conference on Ballast Water Management for Ships on 13 February 2004, BWM/CONF/36.

*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; 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.

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 responsibil-

ity has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code<sup>1</sup>.

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 per cent 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 per cent or greater, or
  - .2 which changes the ship type, or
  - .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.

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<sup>1</sup> Refer to the ISM Code adopted by the Organization by resolution A.741(18), as amended.

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. be 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 REQUIREMENT 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 50micrometres in minimum dimension and less than 10 viable organisms per millilitre less than 50 micrometres in minimum dimension and greater than or equal to 10micrometres 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<sup>2</sup> to:

- .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.

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.

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<sup>2</sup> 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.

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

#### APPENDIX II.

#### FORM OF BALLAST WATER RECORD BOOK

*[Appendices are not published herein.]*