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

Comments on the draft International Convention for the Control and Management of
Ships' Ballast Water and Sediments

Submitted by Norway

SUMMARY

Executive summary: This document contains some Norwegian comments on the
International Convention for the Control and Management of Ships' Ballast Water and Sediments.

Action to be taken: Paragraph 4

Related documents: BWM/CONF/2, BWM/CONF/6

Introduction

1 This document contains Norwegian comments on the draft International Convention for
the Control and Management of Ships’ Ballast Water and Sediments. We have chosen to raise
some issues of importance, and not to comment on all Articles and Regulations of the draft
Convention.

2 In considering the draft Convention, it is in the view of Norway important that the
obligations of a Party to the Convention are as unambiguous as possible, that the requirements in
the Regulations are robust over time, and that the balance between anticipated achievable
requirements and proper environmental protection is considered adequate for most States. This
will increase the likelihood of having the Convention entering early into force.

3 The specific comments are given in the Annex to this document.

Action requested of the Conference

4 The Conference is invited to consider the views and proposals in this document and take
action as appropriate.
ANNEX

COMMENTS ON THE DRAFT INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS’ BALLAST WATER AND SEDIMENTS

ARTICLE 2.9

1 Norway takes the view that this paragraph should be deleted and the intention of the paragraph should be included in a Conference resolution. There are several reasons for this:

.1 the need to have this kind of provision is not demonstrated;

.2 the provision is drafted more as a “good intention” and has an unclear burden on Parties, as well as an unclear output; and

.3 the provision has elements that might lead to a less smooth ratification process for some States.

Text proposal:

Article 2.9 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 related to Ballast Water Management.

ARTICLE 4.2

2 Norway takes the view that this paragraph should be deleted and the intention of the paragraph should be included in a Conference resolution. BWM/CONF/6 contains a draft resolution on promotion of Technical Co-operation that could be amended to encompass Article 4.2 of the draft Convention. Norway does not disagree with the intention of Article 4.2, but there are some elements contained in it that might lead to a less smooth ratification process for some States. The provision is drafted more as a “good intention” and has an unclear burden on Parties, as well as an unclear output.

Text proposal:

“Article 4.2 Each Party shall, in accordance with its particular conditions and capabilities, develop national policies, strategies or programmes for Ballast Water Management in its ports and coastal waters that accord with, and promote the attainment of the objectives of this Convention.”

REGULATION A-1.4

3 The definition of “Concerted Area” should be deleted as a consequence of our proposal to delete B-3.4.3 (see paragraph 7 below).
Text proposal:

“[Regulation A-1.4—“Concerted Area” means a sea or portion of a sea designated by a Party or Parties acting through regional or sub-regional agreements in which Ballast Water exchange is controlled.]”

REGULATION B-3

4 Regulation B-3.1 & 2: A general viewpoint on paragraph 1 and 2 of Regulation B-3 is that Norway supports a mechanism to phase in compliance with at least the D-2 standard for new ships at a certain date and for all ships at a later date. The phase in/phase out scheme has to be as speedy as practicable possible.

5 Regulation B-3.4: Compliance with the standard as described in D-2 should in our view phase out Ballast Water Exchange. Therefore, Reg. B-3.4 should be amended as shown below. It is our view that the negative answers to the following questions give the reasoning for our proposal:

- how will it be possible to verify that ballast water exchange meets the D-2 standard?
- how will it be possible to ensure that the D-2 standard is met on every voyage?
- there will be many voyages where it will not be possible to undertake ballast water exchange, so how will it be possible to meet the D-2 standard in these cases?

6 Regulation B-3.4.1 and B-3.4.2: Our preference on sub-these reflects what we consider to be environmentally safe.

7 Regulation B-3.4.3: The draft text on “concerted areas” should be deleted mainly because the concept is not needed because other parts of the Convention take care of the concern that the concept tries to address. Further reasons for deletion of this concept is given by the United States in its document BWM/CONF/13.

8 Regulation B-3.5: We have included a reference to Regulation B-3.4.2 for consideration by the Conference.

9 Regulation B-3.7: Voyages not qualifying for ballast water exchange should also be recorded.

10 The above observations lead to the following proposal for Regulation B-3.4:

“Regulation B-3.4 Ships conducting Ballast Water Management in accordance with paragraphs 1 and 2 of this Regulation, (i.e., Ballast Water exchange), or using Ballast Water exchange to meet the standards in Regulation D-2 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 except as provided in paragraph 4.3, in cases where the ship is unable to conduct Ballast Water exchange in accordance with paragraph 4.1 of this Regulation, such Ballast Water exchange shall be conducted taking into account the Guidelines described in paragraph 4.1 and as far from the nearest land as possible, and in all cases [at least [12]-[50] nautical miles from the nearest land] [and at least [200] metres in depth];

.3 Concerted Areas:

.1 A Party or Parties establishing a Concerted Area may designate locations in which Ballast Water exchange may be conducted or prohibited;

.2 Concerted Areas may be designated for reasons relating to their hydrological, ecological, or cultural characteristics;

.3 Concerted Areas shall include specified locations suitable for Ballast Water exchange, which for oceanographic reasons are most likely to limit significantly the impact of organisms carried in Ballast Water; and

.4 The coordinates of the Concerted Area and the specified locations designated therein for Ballast Water exchange shall be communicated to the Organization at least [6 months] prior to the effective date of any requirements for ships in the Concerted Area;

.43 in cases where the ship is unable to conduct Ballast Water exchange at the distances or depths described in paragraphs 4.1 or 4.2, a port State may allow the ship to conduct Ballast Water exchange taking into account the Guidelines described in paragraph 4.1 in designated areas under its jurisdiction, under such conditions as the port State may prescribe, provided such conditions do not impair the environment, human health, property or resources of adjacent or other States.

5 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 4.1 and 4.2 of this Regulation.

6 Ships conducting Ballast Water exchange shall not be required to comply with paragraphs 4.1, 4.2 or 4.4, 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, vessel architectural design, equipment failure, or any other extraordinary condition.

7 When a ship in accordance with this Regulation does not undertake Ballast Water Management does not comply with paragraph 4.1, 4.2 or 4.4, for the reasons stated in paragraph 6, the reasons shall be entered in the Ballast Water Record Book.”
REGULATION D-4.5

11 Regulation D-4 is in square brackets in the draft Convention. In general we support the inclusion of this Regulation in the Convention, but our comments concern paragraph 5. We believe that the purpose of the paragraph is to safeguard that Regulation D-4 will not be used as a loophole. However, the consequence of the requirement in paragraph 5 will most probably be that the important option under Regulation D-4 will not be used because of the administrative burden embedded in the requirement. We think that Article 6.2 provides for an adequate mechanism to inform other States and that, consequently, Regulation D-4.5 should be deleted.

Text proposal:

“Reg. D-4.5 Any Administration that has approved a programme to test and evaluate promising Ballast Water treatment technologies shall, prior to allowing participation by any ship, seek concurrence to the ship’s participation in the programme from any State whose ports the ship will enter.”